

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (Texas Bar No. 24044908)
Zachery Z. Annable (Texas Bar No. 24053075)
10501 N. Central Expy., Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

**HIGHLAND CAPITAL MANAGEMENT, L.P.'s FIRST SUPPLEMENTAL WITNESS
AND EXHIBIT LIST WITH RESPECT TO HEARING TO BE HELD ON
DECEMBER 18, 2024**

Highland Capital Management, L.P. ("HCMLP" or, as applicable, the "Debtor"), the reorganized debtor in the above-styled bankruptcy case (the "Bankruptcy Case"), by and through its undersigned counsel, submits the following supplemental witness and exhibit list with respect to (a) *Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.* [Docket No. 3657], and (b) *Highland Capital Management*

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



L.P.’s Motion for (A) a Bad Faith Finding and (B) an Award of Attorneys’ Fees Against Highland CLO Management, Ltd. and James Dondero in Connection with HCLOM Claims 3.65 and 3.66 [Docket No. 4176], which the Court has set for hearing at 9:00 a.m. (Central Time) on December 18, 2024 (the “Hearing”) in the Bankruptcy Case.

A. Witnesses:

1. James P. Seery Jr.;
2. David Klos;
3. Frank Waterhouse;
4. James Dondero;
5. Any witness identified by or called by any other party; and
6. Any witness necessary for rebuttal.

B. Supplemental Exhibits:²

Number	Exhibit	Offered	Admitted
88.	Designations from deposition of Frank Waterhouse, individually and as corporate representative of HCLOM Ltd., 9/24/24 (replaces Exhibit 3 filed at Docket No. 4176)		
89.	Designations from deposition of James Dondero, 11/4/2024 (replaces Exhibit 62 filed at Docket No. 4176)		
90.	Certificate of Incorporation Highland CLO Management Ltd. dated 10/27/2017 [HCLOM00009427]		
91.	Registration Declaration (section 156) Highland CLO Management Ltd. dated 10/27/2017 [HCLOM00010372]		
92.	Pollack, Ltd. transfer of shares in Neutra, Ltd. to Highland CLO Assets Holdings, Ltd., a British Virgin Islands entity, dated 12/20/2017 [HCLOM01663013]		

² The exhibits identified herein supplement the Witness and Exhibit List filed with the Bankruptcy Court at Docket No. 4175 on November 21, 2024.

Number	Exhibit	Offered	Admitted
93.	Designations from sealed transcript from proceedings held in Acis bankruptcy (Case No. 18-30264), 3/23/18 [HCLOM00247175-00247230]3		
94.	Certificate of Incorporation for Highland CLO Assets Holdings Limited, 12/19/2017 [HCLOM00007296]		
95.	Memorandum and Articles of Association Highland CLO Assets Holdings Limited, 12/19/2017 [HCLOM00007476-7504]		
96.	Register of Members: Highland CLO Assets Limited, 2/1/2018 [HCLOM00007520]		
97.	Register of Members: Neutra, Ltd. [HCLOM00007527-7528]		
98.	Register of Members: Highland CLO Management Ltd. [HCLOM00010489-10490]		
99.	Written Resolutions (Share Transfer) Highland CLO Management, Ltd. dated 2/2/2023 [HCLOM00010508-10509]		
100.	Share Transfer Form (Class A – Okada) Highland CLO Management, Ltd., 2/2/2023 [HCLOM00010512]		
101.	Share Transfer Form (Class A&B – Dugaboy) Highland CLO Management, Ltd., 2/2/2023 [HCLOM00010510-10511]		
102.	Share Transfer Form (Class B – Okada) Highland CLO Management, Ltd., 2/2/2023 [HCLOM00010513]		
103.	IRS Form SS-4 Highland CLO Management, Ltd., signed by Dondero, President, 6/18/2018 [HCLOM02026806]		
104.	Designations from Acis Trial Transcript, 3/23/18 [HCLOM00246926-00247174] (replaces Exhibit 76 filed at Docket No. 4176)		
105.	Designations from Dondero deposition transcript (Acis), 3/19/18 [HCLOM00288431-00288486] (replaces Exhibit 78 filed at Docket No. 4176)		
106.	Notice of Filing of Debtor’s Amended Schedules [Dkt. 1082] filed 9/22/20		

³ In order to avoid unnecessary fees and burdens on the Court and parties, Highland obtained prior written confirmation from counsel to all parties in the underlying matter that none object to the public filing of this transcript notwithstanding any prior sealing order.

Number	Exhibit	Offered	Admitted
107.	Any document entered or filed in the Debtor's chapter 11 bankruptcy case, including any exhibits thereto		
108.	All exhibits necessary for impeachment and/or rebuttal purposes		
109.	All exhibits identified by or offered by any other party at the Hearing		

Dated: December 13, 2024

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward (Texas Bar No. 24044908)
Zachery Z. Annable (Texas Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
E-mail: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for Highland Capital Management, L.P.

EXHIBIT 88

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
)
Reorganized Debtor.)

ORAL/ VIDEOTAPED/ REALTIME DEPOSITION OF
FRANK WATERHOUSE

INDIVIDUALLY AND AS CORPORATE REPRESENTATIVE OF
HIGHLAND CLO MANAGEMENT, LTD.

SEPTEMBER 24, 2024

ORAL/ VIDEOTAPED/ REALTIME DEPOSITION OF FRANK
WATERHOUSE, produced as a witness at the instance of the
Reorganized Debtor, and duly sworn, was taken in the
above-styled and numbered cause on September 24, 2024,
from 10:09 a.m. to 4:44 p.m., before Christy Cortopassi,
CSR in and for the State of Texas, reported by machine
shorthand, at the law offices of Stinson LLP, 2200 Ross
Avenue, Suite 2900, Dallas, Texas 75201, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE REORGANIZED DEBTOR:

Mr. John Morris
PACHULSKI STANG ZIEHL & JONES LLP
780 3rd Avenue
Suite 34
New York, New York 10017
310.277.6910
jmorris@pszjlaw.com

FOR HIGHLAND CLO MANAGEMENT, LTD.:

Mr. Michael P. Aigen
STINSON LLP
2200 Ross Avenue
Suite 2900
Dallas, Texas 75201
214.560.2201
michael.aigen@stinson.com

ALSO PRESENT:

Alexis Frank - Videographer

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Please be advised that an UNCERTIFIED ROUGH
DRAFT version of this transcript exists. If you are in
possession of said rough draft, please replace it
immediately with this CERTIFIED FINAL TRANSCRIPT.

P R O C E E D I N G S

THE VIDEOGRAPHER: We are going on the record in the videotaped deposition of Frank Waterhouse for Highland CLO Management, LTD.

This deposition is being taken under the Federal Rules of Civil Procedure in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in re: Highland Capital Management, LP, Chapter 11, Case Number 19-34054-SGJ11.

Today's date is September 24, 2024. The time is 10:09 a.m. This is the start of Media 1.

For the record, counsel will state their appearances and the court reporter will swear in the witness.

MR. MORRIS: Good morning, John Morris, Pachulski Stang Ziehl & Jones for the reorganized Debtor, Highland Capital Management, LP.

MR. AIGEN: Michael Aigen from Stinson representing HCLOM.

FRANK WATERHOUSE,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. Waterhouse,

A. Good morning.

1 Q. I'm going to give to you a document that has
2 been labeled Highland Capital Management's Amended
3 Notice of Rule 30(B)(6) Deposition and ask you if you --
4 I would like to mark that as Exhibit 1.

5 MR. MORRIS: Do you have a stapler?

6 Thank you.

7 (Exhibit 1 marked.)

8 Q. (BY MR. MORRIS) Have you had a chance to look
9 at Exhibit 1, sir?

10 A. Yes.

11 Q. Have you seen it before?

12 A. I haven't -- I don't think I have seen this
13 particular document.

14 Q. Have you seen a form of this document before?

15 A. Yes.

16 Q. Do you understand that you are here today in
17 your individual capacity and as in your capacity as a
18 corporate representative of Highland CLO Management
19 Ltd.?

20 A. I thought I was just the representative for
21 HCLOM but if I'm here individually, then understood.

22 Q. And do you understand that as the corporate
23 representative of Highland CLO Management, Ltd., your
24 answers and testimony will be binding on that entity?

25 MR. AIGEN: Objection; form.

1 A. Yes.

2 Q. (BY MR. MORRIS) If I use the phrase "HCLOM,"
3 will you understand that I'm referring to the entity
4 that is named Highland CLO Management, Ltd. and no other
5 entity?

6 A. I'm sorry. You said HCLOM?

7 Q. Yes.

8 A. Yes.

9 Q. Are you aware that there's a different entity
10 called Highland CLO Management, LLC?

11 A. I'm not aware. I just don't recall.

12 Q. So when I use the phrase "Highland CLO
13 Management, Ltd.," I'm -- withdrawn.

14 When I use the phrase "HCLOM," I'm only
15 referring to Highland CLO Management, Ltd. Do you
16 understand that?

17 A. Yes.

18 Q. Okay. Did you do anything to prepare for
19 today's deposition?

20 A. Yes.

21 Q. What did you do?

22 A. I met with Michael here and Deborah. We went
23 through documents and just had a discussion.

24 Q. Did any of the documents refresh your
25 recollection?

1 A. Yes. I mean, the -- they refreshed
2 recollection to the extent that I had memories of that.

3 Q. Okay. And can you describe for me the
4 documents that you reviewed that refreshed your
5 recollection in any way?

6 A. Yes. There was a note agreement between
7 Highland and Acis. There was a purchase and sale
8 agreement of servicing fees between Acis and Highland.
9 There was a transfer agreement between Acis for the note
10 or there was a transfer agreement from the note between
11 Acis and HCLOM.

12 We reviewed other documents like topics.
13 We reviewed Pachulski's, I don't know, we'll call it
14 observations, Stinson's answers, things like that.

15 Q. Did you review any emails?

16 A. No.

17 Q. Did you review any transcripts of any prior
18 testimony or any prior proceeding?

19 A. I briefly reviewed some testimony, yes.

20 Q. And do you recall who was testifying?

21 A. It was Jim Dondero.

22 Q. And do you know, was that in the Highland case
23 or was that in the Acis case; do you recall?

24 A. That was the Acis case.

25 Q. And do you recall if it was deposition

1 testimony or trial testimony or both?

2 A. I don't recall that.

3 Q. Did you review an entire transcript on your
4 own?

5 A. No.

6 Q. Were there portions of the transcript that you
7 were focused on?

8 A. Not really. Just scanning the document that
9 was provided to me.

10 Q. Were you previously familiar with Mr. Dondero's
11 testimony as you read it?

12 A. No.

13 Q. So can you describe for me what you recall
14 about the testimony that you read?

15 A. Yeah. It was focused around the transactions
16 between Highland and Acis.

17 Q. And was the note and the purchase and sale
18 agreement and the transfer agreement among the
19 transactions that were the subject of the deposition
20 testimony that you reviewed?

21 A. I don't know, because they weren't specifically
22 stated.

23 Q. Did you review any other -- withdrawn.

24 You are aware that at some point Acis was
25 put into involuntary bankruptcy, right?

1 A. Yes.

2 Q. Okay. And you just testified that you reviewed
3 at least portions of the transcript in which Mr. Dondero
4 gave testimony in connection with the Acis bankruptcy,
5 right?

6 A. Yeah. I believe it's a transcript or a summary
7 or something that had portions of what he testified. I
8 mean, it wasn't -- I have reviewed transcripts where you
9 have people's names. It wasn't like that, but it was
10 testimony that Jim Dondero gave.

11 Q. Do you recall if you reviewed any other
12 document or transcript that was created in connection
13 with the Acis bankruptcy?

14 A. I did not.

15 Q. Are you aware that there's ongoing litigation
16 in the Acis bankruptcy between Acis and Mr. Dondero?

17 A. I am not.

18 Q. Do you recall what year Mr. Dondero testified
19 that resulted in the transcript that you reviewed?

20 A. I don't know.

21 Q. Did you speak with anybody other than counsel
22 in connection with the preparation for today's
23 testimony?

24 A. I did not.

25 Q. So just to be clear, you're here today as

1 HCLOM's 30(b)(6) witness but you never spoke with

2 Mr. Dondero to prepare for today's deposition, correct?

3 A. Correct.

4 Q. Do you know who John Cullinane is?

5 A. I know -- yes. He's -- yes, I do.

6 Q. Did you make any attempt to speak with
7 Mr. Cullinane in connection with the preparation for
8 today's deposition?

9 A. I did not.

10 Q. Have you ever spoken with Mr. Cullinane?

11 A. No.

12 Q. Have you ever communicated with Mr. Cullinane
13 by email or otherwise?

14 A. Not that I recall. But I don't have access to
15 emails that I would have acted in a capacity. So I
16 could have, but I don't remember.

17 Q. Okay. How about J.P. Savilla, did you speak
18 with him as part of your preparation for today's
19 deposition?

20 A. No.

21 Q. Did you speak with Scott Ellington to prepare
22 for today's deposition?

23 A. No.

24 Q. Did you speak with Isaac Levanton to prepare
25 for today's deposition?

1 A. No.

2 Q. So again, other than counsel, you did not speak
3 with any person to prepare for today's deposition; is
4 that fair?

5 A. Correct.

6 Q. Let's just look at the topics quickly on
7 Exhibit 1. If you can turn, I guess, to the document
8 that says 7 of 9 at the top. You will see their topics.

9 A. Uh-huh.

10 Q. The first topic concerns the purchase
11 agreement. Do you see that?

12 A. Yes.

13 Q. And did you review the purchase agreement to
14 prepare for answering questions on Topic 1?

15 A. Yes. I reviewed the purchase agreement.

16 Q. Are there any other documents that you reviewed
17 to prepare for answering questions on Topic 1 --

18 MR. AIGEN: Objection; form.

19 Q. (BY MR. MORRIS) -- that you recall?

20 A. I just read portions of the purchase agreement
21 and discussed it with counsel.

22 Q. Okay. Would the answer be the same for the
23 note, do you recall -- withdrawn.

24 Did you review the note?

25 A. Yes.

1 Q. Okay. Do you recall reviewing any other
2 documents to prepare to answer questions about the note?

3 A. No. I -- no.

4 Q. How about the assignment, did you review the
5 assignment?

6 A. Yes.

7 Q. And did you review any other documents to
8 prepare to answer questions concerning the assignment?

9 A. No.

10 Q. I have defined the term "ancillary agreement"
11 to refer to several other agreements. Are you prepared
12 to answer questions on the topic of the ancillary
13 agreements?

14 A. Yeah. We did review other ancillary agreements
15 as well. So yes.

16 Q. And when you say other ancillary agreements, if
17 we can go to the definition of ancillary agreement, it
18 refers specifically to three agreements or four
19 agreements, rather.

20 A. Yes. Counsel and I reviewed the forbearance
21 agreements.

22 Q. Right.

23 A. And the acknowledgement -- we reviewed these
24 agreements together.

25 Q. Did you review any other agreement other than

1 the ancillary agreements and the ones that were the
2 subject of the prior topics in connection with the
3 preparation of today's deposition?

4 A. Not that I'm aware.

5 Q. Okay. On the next page, Topic 5 refers to
6 actually one more agreement, the cancellation agreement.

7 Are you familiar with the cancellation
8 agreement?

9 A. Cancellation agreement? Generally.

10 Q. Okay. How about the formation and operation of
11 HCLOM, are you prepared to testify as to the facts and
12 circumstances concerning the formation and operation of
13 HCLOM?

14 A. Yes.

15 Q. And are you prepared to testify to the balance
16 of the topics that are here? We don't need to go
17 through them all, but is it safe to say that you are
18 prepared to testify to all topics on this notice?

19 A. Sure.

20 Q. Okay. What's your current position, sir?

21 A. I'm the chief financial officer for Skyview
22 Group.

23 Q. And what is Skyview Group?

24 A. Skyview Group is a -- it's an entity that
25 provides back-office services to financial services

1 firms.

2 Q. Does Skyview Group provide financial services
3 to any firm in which Mr. Dondero lacks an ownership, a
4 direct or indirect ownership interest, or control
5 position?

6 A. Yeah, there are entities -- if you are
7 asking -- if I'm understanding your question correctly,
8 that Skyview Group provides services to -- that are
9 not -- that Mr. Dondero does not own, yes. If that's
10 the question.

11 Q. It was a little broader than that. Don't
12 worry. I'll just move on.

13 Did you ever serve as an officer of HCLOM?

14 A. I don't recall.

15 Q. Do you know if you're an officer of HCLOM
16 today?

17 A. I don't know. But I am the representative.

18 Q. For today's deposition?

19 A. For today's deposition.

20 Q. I appreciate that.

21 Did you ever serve as a director of HCLOM?

22 A. No.

23 Q. No. So you can affirmatively state that you
24 have never served as a director but you are unsure as to
25 whether you have ever served as an officer; is that

1 fair?

2 A. Correct.

3 (Exhibit 2 marked.)

4 Q. (BY MR. MORRIS) All right. Let's mark as
5 Exhibit 2, a document ending in Bates Number 9363 and
6 it's certain resolutions that are dated October 27,
7 2017. Let me know when you have had a chance to review
8 that.

9 A. Okay. Okay.

10 Q. All right. So do you understand that these are
11 certain resolutions that were prepared for HCLOM?

12 A. I think that's -- yeah, that's what it appears
13 to be.

14 Q. Have you ever seen this document before?

15 A. Not that I recall.

16 Q. You didn't see this document in connection with
17 your preparation for today's deposition, right?

18 A. I did not.

19 Q. Do you see that it's signed and dated as of
20 October 27, 2017?

21 A. Yes.

22 Q. Do you understand that that's the date on which
23 HCLOM was formed?

24 A. That's what this -- yes.

25 Q. Okay. And do you see that under paragraph two,

1 Summit Management, Limited was appointed the sole
2 director of HCLOM?

3 A. Yes.

4 Q. Do you know who Summit Management, Limited is?

5 A. It's -- they are the directors of HCLOM.

6 Q. Do you know where Summit Management, Limited is
7 located?

8 A. They would be located in where this entity was
9 incorporated.

10 Q. Do you know where this entity was incorporated?

11 A. Yeah, I believe it was the Cayman's.

12 Q. What's the basis for that belief?

13 A. Just looking at Ltd., you know, reviewing the
14 documents with counsel prior, John Cullinane, as you
15 alluded to, was a director. So, you know, he's -- this
16 is an officer entity. So that's my belief.

17 Q. Okay. Do you know how Summit Management came
18 to be HCLOM's sole director at formation? Do you know
19 who decided that?

20 A. I don't.

21 Q. Are you aware of any communications with either
22 Mr. Cullinane or Summit Management, Limited concerning
23 the formation of HCLOM?

24 A. I -- I'm -- no. I'm not aware of any
25 communications.

1 Q. Do you know whether someone at Highland caused
2 HCLOM to be created?

3 A. Do I know why someone at Highland --

4 Q. Do I know -- withdrawn.

5 Do you know whether Highland caused HCLOM
6 to be created?

7 A. I don't know who formed HCLOM.

8 Q. Were you aware that HCLOM was formed in
9 October 2017?

10 A. Generally, yes.

11 Q. Do you recall any discussions concerning the
12 formation of HCLOM?

13 A. I generally recall discussions of -- yes, of
14 HCLOM's formation.

15 Q. Who did you have those discussions with?

16 A. Generally been the Highland legal team and
17 Mr. Dondero.

18 Q. Do you recall anything about your conversations
19 with the Highland legal team and Mr. Dondero concerning
20 the formation of HCLOM?

21 MR. AIGEN: And, John, I just want to
22 interject. Obviously, that brings a privilege but it is
23 your privilege. Are you willing to waive privilege
24 related to that?

25 MR. MORRIS: We have waived all privileges

1 prepetition.

2 MR. AIGEN: Okay.

3 MR. MORRIS: So can't call that back now.

4 That was in the Kirschner suit.

5 MR. AIGEN: Okay.

6 A. I, generally, recall with the need for HCLOM to
7 be formed due to the issues that Acis was having.

8 Q. (BY MR. MORRIS) What issues was Acis having?

9 A. Acis was -- basically had a large liability to
10 Josh Terry that it was not able to meet. You know, it
11 wasn't in a position to continue to serve as the manager
12 for the CLOs that it managed. So therefore, there was a
13 need to create a new CLO asset manager.

14 Q. Okay. So is it fair to say that in
15 October 2017, you discussed with Highland's team and
16 Mr. Dondero the need to form HCLOM, who was intended to
17 substitute as the collateral manager and portfolio
18 manager of the Acis CLOs?

19 A. I don't recall specifically whether that was in
20 October. I don't -- I don't remember. But I remember
21 generally that there were discussions about the issues
22 that Acis was having and therefore there was a need to
23 create a successor asset manager for the CLOs.

24 Q. Was Acis facing any issues other than the
25 adverse judgment that Mr. Terry obtained?

1 A. From what I re- -- yes.

2 Q. Can you identify any issue that Acis was
3 confronting in October 2017 that caused the formation of
4 HCLOM, other than Mr. Terry's judgment -- or arbitration
5 award?

6 A. Again, I can't speak directly to the date. So
7 I don't know if it was October 2017. But Highland, from
8 what I recall, notified Acis that it would no longer
9 support Acis from a personnel prospective.

10 Q. Anything else?

11 A. I generally recall that having been told that
12 the investors in the CLOs did not want to be associated
13 with Acis due to its difficulties.

14 Q. Who told you that?

15 A. Just Highland personnel.

16 Q. Do you know -- can you tell me -- can you
17 identify any of Highland's personnel who told you that,
18 in fact, investors didn't want to be associated with
19 Acis?

20 A. These were general discussions that I don't --
21 I mean, I -- this was seven years ago. I generally
22 recall those discussions being had or being informed of
23 them. I can't tell you who exactly or where. This was
24 seven years ago; it's a long time.

25 Q. Do you recall if any investors were identified?

1 A. I -- I -- as an asset manager, what I do recall
2 is that, you know, the asset manager knows who the
3 investors are that are invested in the deals, especially
4 the CLO. So I don't recall who those investors were,
5 but we had a team at Highland who's -- that's what they
6 did and, you know, they were in touch with those
7 investors.

8 Q. Okay. But my only question is whether you
9 recall whether anybody identified any particular
10 investor who expressed the view that they didn't want to
11 be associated with Acis any longer?

12 A. I don't recall. Again, I heard -- I remember
13 general conversations. So I don't recall.

14 Q. Do you recall whether any of these
15 conversations occurred before the Terry arbitration
16 award was issued?

17 A. I don't remember.

18 Q. Do you know why HCM, LP told Acis it would no
19 longer support it?

20 A. I don't remember specifically, no.

21 Q. Do you know whether HCLOM ever engaged in any
22 business activities?

23 MR. AIGEN: Objection; form.

24 A. Yes, generally.

25 Q. (BY MR. MORRIS) Can you describe the business

1 activities that you believe HCLOM engaged in?

2 A. Well, HCLOM was formed to be the successor CLO
3 servicer for the Acis deals.

4 Q. I appreciate that's the reason it was formed.
5 But it never served in that capacity,
6 correct?

7 A. Correct.

8 Q. Okay. So did HCLOM ever generate a dollar of
9 revenue?

10 A. Not that I'm aware.

11 Q. Did HCLOM ever incur any expenses?

12 A. It may have -- I don't remember. There may
13 have been some expenses incurred for formation.

14 Q. As well as preps, director fees; is that right?

15 A. Perhaps.

16 Q. Okay. And are you aware that Highland paid all
17 of HCLOM's expenses?

18 A. I don't remember.

19 Q. Other than formation expenses and perhaps
20 director's fees or other lawyer's fees, do you know
21 whether HCLOM ever incurred any other expenses?

22 A. I don't have access to HCLOM's records. So I
23 don't know.

24 Q. You were the treasurer of HCLOM, right?

25 A. I -- like I said earlier, I don't know.

1 Q. Do you know if HCLOM ever had any employees?

2 A. Not that I'm aware.

3 Q. Do you know if HCLOM ever had a shared services
4 agreement with Highland or any other entity?

5 A. Not that I remember.

6 Q. Do you know if HCLOM was ever party to an
7 advisory agreement or a sub-advisory relationship with
8 Highland or any other entity?

9 A. Not that I'm aware.

10 (Exhibit 3 marked.)

11 Q. (BY MR. MORRIS) Okay. All right. Let's mark
12 as Exhibit 3 a one-page document ending in Bates
13 Number 1373468, which are written resolutions of HCLOM
14 dated February 7, 2018, and have you had a chance to
15 review this exhibit, sir?

16 A. Yes.

17 Q. And have you ever seen this before?

18 A. Not that I recall.

19 Q. Do you see that you are identified as the
20 treasurer of HCLOM?

21 A. Yes.

22 Q. But until you saw this document, you had no
23 recollection of being HCLOM's treasurer; is that fair?

24 A. I don't have recollection but, you know, I'm
25 not surprised that I was named treasurer due to my

1 former position at Highland Capital Management. So I
2 just didn't remember if I was or not.

3 Highland Capital Management owned a lot of
4 entities and so there was -- you know, he had a lot of
5 assets under management, things like that. So, I mean,
6 I can't remember every single position that I'm a part
7 of.

8 Q. Right. But this is the entity that is
9 asserting a \$10 million claim against Highland, right?

10 A. Again, I'm not the lawyer here. But, I guess,
11 yes. Again, as the representative of HCLOM, I think
12 HCLOM's books and records and all of their -- were held
13 at Highland, or things like, you know, documents.

14 Q. Right. Do you see that we produced this
15 document in response to your lawyer's request since it
16 has got that Bates number on it?

17 A. If that's what the Bates number identifies,
18 sure. I see a number here.

19 Q. All right. And one of the topics you were
20 asked about, if you look back at Exhibit 1, is the
21 formation and operation of HCLOM, including as set forth
22 in subpart C, the identification, appointment, and/or
23 selection of HCLOM's officers and directors.

24 Do you have any idea who HCLOM's officers
25 and directors are today?

1 A. I do not.

2 Q. Other than the people identified as officers on
3 Exhibit 3 and Summit Management, Limited who is
4 identified as the director of HCLOM on Exhibit 2, are
5 you able to identify who at any time was an officer or
6 director of HCLOM?

7 A. I don't have a list of all the officers and
8 directors at HCLOM, no.

9 Q. Okay. So is it fair to say you don't recall
10 anybody discussing with you becoming the treasurer of
11 HCLOM in February of 2018?

12 A. I don't remember those discussions,
13 specifically.

14 Q. Okay. Is it fair to say that since you weren't
15 aware that you were the treasurer of HCLOM, you didn't
16 perform any services for HCLOM, in your capacity as the
17 treasurer of HCLOM?

18 A. I don't recall myself providing services. You
19 know, like I said, HCLOM was formed to be the successor
20 manager of the Acis CLOs.

21 Q. And it never did that, correct?

22 A. It tried to. But, yeah, I mean, HCLOM tried to
23 become the successor manager of the Acis CLOs. What I
24 don't recall about providing services is there were --
25 you are asking -- I'm a representative, I'm an

1 individual and now you are asking me for treasurer.

2 So, John, it is a little bit difficult to
3 kind of -- you know, HCLOM was working with the
4 investors of the Acis deals because, again, there was
5 issues with Acis.

6 So there were likely numbers that were
7 needed. There were likely presentations, data, you
8 know, things like that provided to those investors.

9 So I mean, again, do I remember
10 specifically if I provided those services seven years
11 ago when this was formed? I -- you know, that's so long
12 ago. But HCLOM definitely did a lot of work. They
13 tried hard, worked with investors, communicated with
14 investors. There were resets that were in the market.
15 They did a lot with the investors to become the
16 successor managers of the Acis CLOs.

17 Q. Okay. Do you know if everything you just
18 described was done not by HCLOM but by Highland CLO
19 management, LLC, or do you not know the difference?

20 A. I don't recall.

21 Q. You don't recall that there were two entities
22 that were called Highland CLO Management, one of which
23 was Ltd. and one of which was LLC?

24 A. John is -- Pachulski and Highland has asserted
25 throughout this case, there are thousands of entities in

1 the Highland company. I don't remember every single
2 entity that was there.

3 Q. Okay.

4 A. And if we're talking about the substitution of
5 one word seven years ago, I don't recall.

6 Q. Okay. Do you know if HCLOM ever held title to
7 a bank account?

8 A. Not that I recall.

9 Q. Do you know if HCLOM ever had a bank account?

10 A. Not that I recall.

11 Q. Do you know if anybody ever prepared financial
12 statements for HCLOM?

13 A. Not that I recall.

14 Q. Do you know if anybody ever maintained any
15 books and records on behalf of HCLOM?

16 A. Not that I recall.

17 Q. Do you know if HCLOM was a registered
18 investment advisor?

19 A. Not that I recall.

20 Q. Do you know if HCLOM was ever qualified to be a
21 portfolio manager?

22 A. I mean, presumably. Right? When HCLOM is
23 working with the investors to transfer the agreements to
24 HCLOM, they would have demonstrated the ability to
25 manage those assets. And, you know, the investors would

1 not have submitted, you know, these resets if they
2 didn't feel confident that HCLOM had the ability to
3 manage the CLOs.

4 Q. Have you ever seen a document concerning resets
5 where HCLOM was identified as the proposed portfolio
6 manager as opposed to Highland CLO Management, LLC?

7 A. I have not.

8 Q. Okay. I'm getting to my last document to try
9 to move this along.

10 A. Okay.

11 Q. I'll mark as Exhibit 4 a document entitled
12 Acknowledgment and Waiver, which begins at Bates Number
13 ending in 2807.

14 (Exhibit 4 marked.)

15 Q. (BY MR. MORRIS) This is one of the ancillary
16 documents that was cited in the Rule 30(b)(6) Notice.

17 Are you aware of that?

18 A. Yes.

19 Q. Have you seen this before?

20 A. Yes.

21 Q. Do you know what it is?

22 A. Yes.

23 Q. What is it?

24 A. Pursuant to the transfer agreement, it says
25 here in paragraph -- "Acis was required to promptly

1 provide notice to the controlling class of each CLO and
2 subsequent to the delivery notices to each of Acis and
3 each H-C-L-O-M, HCLOM was required to promptly pursue an
4 appointment for each CLO."

5 So basically -- this document basically
6 waives that.

7 Q. Okay. And do you see that it is signed by
8 Mr. Dondero on behalf of Highland and it's acknowledged
9 by him on behalf of Acis?

10 A. Yes.

11 Q. And do you see Mr. Cullinane signed on behalf
12 of HCLOM?

13 A. Yes.

14 Q. And do you see at the top that it's dated as of
15 January 19, 2018?

16 A. Yes.

17 Q. And so this is just about, what, ten weeks
18 after the transfer agreement is signed -- withdrawn.

19 I can bring it out if you would like, but
20 do you recall that the transfer agreement was dated
21 November 3rd, 2017?

22 A. It says under the paragraph two. So yeah,
23 sure.

24 Q. Okay. So this acknowledgment and waiver is
25 signed, what, about ten weeks later?

1 A. Yes.

2 Q. And it's signed by Mr. Dondero and
3 Mr. Cullinane in their capacities as indicated?

4 A. Yes.

5 Q. Okay. And is there anything about this
6 document that you think is inaccurate or incorrect?

7 MR. AIGEN: Objection; form.

8 A. Not that I'm aware.

9 Q. (BY MR. MORRIS) Okay. And you would agree,
10 then, as set forth in paragraph three, "That pursuant to
11 Sections 1 and 2 of the transfer agreement, Acis was
12 required to promptly provide notice to the controlling
13 class of each CLO, and subsequent to the delivery of the
14 notices, each of Acis and HCLOM was required to promptly
15 pursue an appointment for each CLO."

16 Have I read that accurately?

17 A. Yes.

18 Q. And are you aware that this acknowledgment and
19 waiver is signed and executed before the involuntary
20 bankruptcy was filed against Acis?

21 A. I don't remember the exact date for the Acis
22 involuntary.

23 Q. Do you recall that it was at the end of
24 January?

25 A. I remember it was towards the end of January.

1 Q. Right. And so HCLOM and Highland acknowledge
2 in this document that A, each CLO was going to be reset.

3 Have I paraphrased that fairly?

4 A. Yes. It was intended for each CLO to be reset.

5 Q. B, that each reset transaction will need to
6 comply with certain rules.

7 Is that fair?

8 A. Fair.

9 Q. C, in order to comply with those risk retention
10 rules in connection with each reset, "Each applicable
11 CLO issuer will appoint Highland CLO Management, LLC as
12 the collateral manager of the CLO."

13 Do you see that?

14 A. Yes.

15 Q. Okay. So is it your understanding as the
16 corporate representative of HCLOM, that in this
17 acknowledgment and waiver from January 19, 2018, that
18 HCLOM was acknowledging that Highland CLO Management,
19 LLC would succeed Acis as the collateral manager and not
20 HCLOM, Ltd.?

21 A. I don't know. I mean, I didn't draft this
22 document or sign it. It could be just a typo.

23 Q. That's pure speculation on your part, right?

24 A. I -- yeah. I'm just -- but I don't know. But
25 it could be just a typo.

1 Q. Well, do you still think it's a typo when you
2 look at the next clause that says, "None of the notices
3 have been nor will be delivered"?

4 A. That's what it says.

5 Q. And do you understand that to be a fact that as
6 of January 19, 2018, quote, "None of the notices have
7 been nor will be delivered pursuant to Section 1 of the
8 transfer agreement and none of the appointments have
9 been nor will be made pursuant to Section 2 of the
10 transfer agreement"?

11 A. As of January 19, 2018, it is my understanding
12 that none of the CLOs were reset at the time and -- but
13 that's what this document says.

14 Q. Doesn't it also say that the notices and
15 appointments required under the transfer agreement will
16 never occur?

17 A. Yes.

18 Q. And, in fact, the notices and appointments
19 described in the transfer agreement never occurred,
20 correct?

21 A. Yes. But, I mean, there could be other
22 ancillary reasons for that.

23 Q. Okay. But you are not aware of any?

24 A. I'm not aware of any.

25 Q. And is it fair to say that since the Acis

1 bankruptcy started after the date of this acknowledgment
2 and waiver, that the Court's injunction preventing the
3 resets had nothing to do with the failure to deliver the
4 notices or attend the appointments as set forth in this
5 document?

6 MR. AIGEN: Objection; form.

7 A. I mean, I can't say that with -- agree with
8 that with certainty. I mean, if, again, it's asset
9 managers talk to their investors, and yes, there are
10 policies and procedures that are in deal, but if you
11 are talking to investors and they're going to reset
12 deals or do certain things, the manager and the
13 investors can -- you know, they can agree to whatever
14 they want to agree to.

15 So I wasn't in any of these discussions;
16 that wasn't my position. But it doesn't surprise me
17 that an asset manager or the investors can say, "Hey,
18 we're going to reset these deals. We are just not going
19 to give you these notices, because we're talking about
20 it, you don't need it."

21 I mean, I'm not saying it didn't happen;
22 I'm not saying it did happen. But it wouldn't surprise
23 me that this -- that something like this would be filed.

24 MR. MORRIS: I'm going to move to strike.

25 Q. (BY MR. MORRIS) Let's try and take this in

1 smaller bites.

2 A. Well, you were asking about if these were
3 delivered.

4 MR. AIGEN: Let John ask a question.

5 THE WITNESS: Okay.

6 Q. (BY MR. MORRIS) Are you prepared to testify
7 about the resets?

8 A. I know generally of the resets.

9 Q. Okay. And does your general knowledge include
10 knowledge about the identity of the specific entity that
11 was identified in 2018 to be the substitute collateral
12 manager and portfolio manager for the Acis CLOs?

13 A. I'm sorry. I don't follow the question.

14 Q. Do you know who -- withdrawn.

15 Do you know the name of the entity that was
16 designated in 2018 to be the successor collateral
17 manager or portfolio manager of the Acis CLOs?

18 A. I mean, Highland CLO manager or HCLOM, as we
19 have been referring to it, it was my general
20 understanding that it was going to be the manager.

21 Q. And looking at this document, was it your
22 understanding that it was going to be HCLOM, Ltd. or
23 HCLOM, LLC or you didn't really have an understanding at
24 the time?

25 A. Well, I -- again, Highland CLO Management, LLC

1 could be a subsidiary of HCLOM, Ltd. I mean, I don't --

2 Q. Do you have any facts that support that
3 statement?

4 A. Well, just given the fact that HCLOM was going
5 to be the successor manager, it just makes sense.

6 Q. Okay. Other than what you think makes sense,
7 are you aware of any facts? Do you know who owns HCLOM?

8 A. Yeah. Today, yeah. Yes.

9 Q. And who owns HCLOM?

10 A. Dugaboy and Okada.

11 Q. Okay. And who owns HCLOM, LLC?

12 A. I don't know who the name there is -- or who
13 the owner is. I said it could be the -- it could be
14 HCLOM, for all I know.

15 Q. Or it could be you, right?

16 A. Well, no. I would know if I owned it.

17 Q. You didn't know you were the treasurer of
18 HCLOM; isn't that right?

19 A. That doesn't mean I -- being a treasurer and
20 owning something --

21 MR. AIGEN: Objection; form. I don't think
22 that was a serious question.

23 A. Being treasurer and owning something are pretty
24 big distinctions.

25 Q. (BY MR. MORRIS) Well, is there a distinction

1 in your -- if -- I think you said that you thought HCLOM
2 was formed in the Cayman Islands because it ended in
3 Ltd. Do I have that right?

4 A. Yes.

5 Q. Okay. In your experience, do Cayman Island
6 entities ending in LLC, are they formed in the Cayman
7 Islands?

8 A. Well, this says here it's a Delaware Limited
9 Liability Company and it says it right there.

10 Q. Okay.

11 A. But that doesn't mean that -- just because you
12 have an officer entity, it doesn't mean that an officer
13 entity can't be owned by an officer, you know.

14 Q. It's a very simple question, sir. Can you tell
15 me any facts to support your speculation --

16 A. It --

17 Q. Let me finish the question.

18 A. Okay.

19 Q. -- that there is an ownership relationship
20 between HCLOM, Ltd. and HCLOM, LLC?

21 A. No. It's generally based on my experience of
22 being the CFO at Highland Capital Management for -- for
23 my work there since being employed from October of 2006
24 to February of 2021.

25 MR. MORRIS: Okay. I move to strike

1 everything after the word "no."

2 Q. (BY MR. MORRIS) And I will ask you to turn
3 back to Exhibit 1, and let's look at Topic 6(e), which
4 refers to the direct or indirect ownership of HCLOM at
5 all time since formation and the timing and reasons for
6 ownership changes.

7 I think you mentioned that Dugaboy and
8 Mr. Okada owned HCLOM; is that right?

9 A. They're the owners now, yes.

10 Q. And have there ever been any other owners of
11 HCLOM?

12 A. Yes.

13 Q. Who were the other owners of HCLOM?

14 A. Highland Capital Management.

15 Q. And when was Highland Capital Management the
16 owner of HCLOM?

17 A. I think as recently as 2022.

18 Q. Are you sure that Highland had an ownership
19 interest as opposed to a voting interest?

20 A. I -- it may have had both. I don't -- I
21 don't -- it's my understanding that Highland was the
22 owner of HCLOM until a few years ago.

23 Q. Has any other person or entity ever had an
24 ownership in HCLOM, other than Highland Capital
25 Management, L.P., Mr. Okada, and Dugaboy?

1 A. Not that I'm aware.

2 Q. Did you do any work to prepare to answer
3 questions about the ownership of HCLOM or were you just
4 going from your memory?

5 A. Just what I generally understand or know.

6 Q. Okay. And based on your general understanding,
7 you have no reason to believe that Highland CLO
8 Management, LLC ever had an ownership interest in
9 Highland CLO Management, Ltd., correct?

10 A. I don't recall Highland CLO Management. I --

11 Q. I'm not sure that -- that sounded like a
12 fragment there.

13 A. Sorry.

14 Q. I'm going to ask the question again.

15 Based on your general understanding, you
16 have no reason to believe that Highland CLO Management,
17 LLC ever had a direct or indirect ownership interest in
18 Highland CLO Management, Ltd., correct?

19 A. I don't know.

20 Q. Do you know who owned HCLOM at the time it was
21 formed?

22 A. From what I recall, it was Highland Capital
23 Management.

24 Q. Do you know when Dugaboy and Mr. Okada obtained
25 an ownership interest in HCLOM?

1 A. It was sometime in 2022.

2 Q. So it's your testimony as the 30(b)(6)
3 representative today, that HCLOM was owned solely by
4 Highland at all times from formation until 2022 when
5 Mr. Okada and Dugaboy became owners?

6 A. I would say that without these records, I mean,
7 generally, that's my understanding, yes. You know, I
8 haven't been -- you know, Highland could have assigned
9 its interest, you know, to another Highland entity prior
10 to 2022. Again, I don't -- I was let go of Highland in
11 February 2021. So something could have happened in
12 between but...

13 Q. Okay. I don't want the speculation. I just
14 want your knowledge here today, sir.

15 A. Well, that's -- I mean, I can only talk to what
16 I know. And so if there were things that happened when
17 I wasn't there, then, I mean, I can't really speak to
18 that.

19 Q. And that's fine.

20 But based on what you know, based on your
21 understanding, Highland was the sole owner of HCLOM from
22 the time of formation until sometime in 2022 when
23 Dugaboy and Mr. Okada obtained ownership interest in
24 HCLOM; is that right?

25 A. Yeah. That's generally my understanding.

1 Q. And when Mr. Okada and Dugaboy obtained the
2 ownership interest in HCLOM, did they obtain 100 percent
3 of the ownership interest or something less than that?

4 A. A hundred percent is my understanding.

5 Q. Okay. So to the best of your knowledge, at the
6 time of this transaction, Highland sold its 100 percent
7 interest in HCLOM to Mr. Okada and Dugaboy, right?

8 A. I don't know whether they sold it or they
9 transferred it, assigned it. But Mr. -- or Dugaboy and
10 Mr. Okada were -- became new owners of HCLOM.

11 Q. Okay. Do you know who controlled HCLOM from
12 the time it was formed until the time it was sold to
13 Dugaboy and Mr. Okada?

14 A. You showed me the officer and director list
15 earlier. So those would have been the officers and
16 directors at -- you know, after that. I don't know.

17 Q. Let's switch gears now to Acis.

18 You're familiar with an entity called Acis
19 Capital Management, L.P., right?

20 A. Yes.

21 Q. Do you know when Acis was first formed?

22 A. I don't remember. It was -- I don't recall.

23 Q. Were you at Highland when it was formed?

24 A. Yes.

25 Q. Do you know if Mr. Terry had a role at Acis at

1 least until June of 2016?

2 A. Yes.

3 Q. And was he the portfolio manager of Acis?

4 A. I mean, he was a portfolio manager.

5 Q. Who else served as portfolio manager of Acis
6 prior to June of 2016?

7 A. I recall Mr. Okada and Mr. Dondero having, you
8 know, involvement with Acis.

9 Q. Do you know if Mr. Terry was ever employed by
10 Acis?

11 A. He wasn't an employee.

12 Q. He was employed by Highland, right?

13 A. Yes.

14 Q. And he was terminated on June 9, 2016, correct?

15 A. I -- I don't remember.

16 (Exhibit 5 marked.)

17 MR. MORRIS: Let's just mark this as
18 Exhibit 5 --

19 THE WITNESS: I don't mean to rush -- slow
20 things down but can we take a bathroom break soon.

21 MR. MORRIS: Yeah. Of course. Just --

22 THE WITNESS: We can do it whenever is a
23 good stop time.

24 MR. MORRIS: It's perfectly fine. Let's go
25 off the record.

1 THE VIDEOGRAPHER: Off the record. The
2 time is 11:13.

3 (Break taken from 11:13 a.m. to 11:23 a.m.)

4 THE VIDEOGRAPHER: Back on the record. The
5 time is 11:23.

6 Q. (BY MR. MORRIS) Are you ready to proceed,
7 Mr. Waterhouse?

8 A. Yes.

9 Q. Earlier I asked you about your preparation for
10 today's deposition and you mentioned that you met with
11 counsel. Do I have that right?

12 A. Yes.

13 Q. And you looked at documents; is that right?

14 A. Yes.

15 Q. And you searched your memory; is that right?

16 A. Yes.

17 Q. And those were all the things you did to
18 prepare for today, correct?

19 A. Yes.

20 Q. How many times did you meet with counsel for
21 purposes of preparing for today's deposition?

22 A. Just once.

23 Q. And when was that?

24 A. A couple of weeks ago.

25 Q. And how long did you spend with counsel to

1 prepare for today's deposition during that one meeting?

2 A. Two or three hours.

3 Q. Where did the meeting take place?

4 A. In his conference room.

5 Q. Did anybody participate in that meeting, other
6 than you and Mr. Aigen, Ms. Deitsch-Perez?

7 A. No.

8 Q. I have put in front of you what we have marked
9 as Exhibit 5, which is one of the bankruptcy court's
10 decisions from the Acis matter, just to identify some
11 basic facts. If you look at paragraph seven, does that
12 refresh your recollection that Mr. Terry was terminated
13 on June 9, 2016?

14 A. It doesn't refresh my recollection, but I -- if
15 it's in here, sure.

16 Q. You don't have any reason to dispute that,
17 correct?

18 A. I don't.

19 Q. Okay. Are you aware of the circumstances
20 surrounding Mr. Terry's termination?

21 A. Generally.

22 Q. Can you tell me generally what you know about
23 the circumstances surrounding Mr. Terry's termination?

24 A. From what I recall, Mr. Dondero was not happy
25 with Mr. Terry and decided to terminate him.

1 Q. Do you know what made Mr. Dondero unhappy with
2 Mr. Terry?

3 A. Honestly, at this point, I have kind of blanked
4 it all out.

5 Q. So you have no recollection of why Mr. Dondero
6 was so unhappy with Mr. Terry that he terminated him?

7 A. I don't remember if it was for performance
8 reasons or, you know, things like that. I don't
9 remember the specifics of what led to his termination on
10 this date, on June 9th. Just he wasn't --

11 Q. Would that be -- I'm sorry.

12 A. He wasn't -- obviously, he wasn't happy with
13 him. I don't remember exactly why.

14 Q. Okay. Were you ever an officer of Acis?

15 A. Yes.

16 Q. What position did you hold?

17 A. I was likely treasurer.

18 Q. And do you know when you became the treasurer
19 of Acis?

20 A. I don't remember.

21 Q. Is -- do you know -- I assume you ceased to be
22 the treasurer of Acis at some point?

23 A. Yes.

24 Q. And do you know when that was?

25 A. It was likely sometime during the bankruptcy.

1 I don't remember the exact date.

2 Q. Okay. Are you aware that after Mr. Terry was
3 terminated, you and Mr. Dondero were the only officers
4 of Acis?

5 A. I don't remember, but...

6 Q. Okay. Let's mark as Exhibit 6 -- I'm sorry.

7 A. I mean, I don't remember. This was long ago
8 and I don't remember. I didn't -- we're going off
9 memory of years ago and, you know, we were preparing on
10 HCLOM, not Acis too. So I don't...

11 Q. Well, Acis is very much involved in the
12 transactions that we're here to talk about, right? Acis
13 entered into the original participation agreement,
14 right?

15 A. Yes.

16 Q. Okay.

17 THE COURT REPORTER: Are we marking this?

18 MR. MORRIS: Yes.

19 (Exhibit 6 marked.)

20 Q. (BY MR. MORRIS) Have you seen this before,
21 sir?

22 A. Not that I remember.

23 Q. Do you see that it's the consent of the sole
24 member of Acis Capital Management, GP and it's dated
25 June 10, 2016?

1 A. Yes.

2 Q. And at least based on Judge Jernigan's
3 decision, this is the day after Mr. Terry was
4 terminated?

5 A. Yeah. That was June 9, right?

6 Q. Yeah.

7 A. Yes.

8 Q. And do you see the first resolution below
9 states that Mr. Terry was removed as the portfolio
10 manager of the company?

11 A. Yes.

12 Q. And you and Mr. Dondero are identified as the
13 sole officers of Acis as of that time, correct?

14 A. Yes.

15 Q. Do you know if anybody was ever added as an
16 officer of Acis at any time prior to the Acis
17 bankruptcy?

18 A. I don't remember. I -- it wasn't -- I don't
19 remember. No, I don't remember.

20 Q. All right. This consent is signed by Nancy
21 Dondero in her capacity as the trustee of the Dugaboy
22 Investment Trust. Do you see that?

23 A. Yes.

24 Q. Did you ever discuss your appointment as
25 treasurer of Acis with Ms. Dondero?

1 A. No. I mean, if I was --

2 Q. Sure.

3 A. No, because if I was treasurer before, I
4 wouldn't have talked to Nancy.

5 Q. Okay. I'm asking a broader question without
6 regard to time.

7 A. Okay.

8 Q. Did you ever have a conversation with Nancy
9 Dondero concerning your appointment as the treasurer of
10 Acis?

11 A. No.

12 Q. Have you ever had a conversation with Nancy
13 Dondero regarding anything having to do with Acis?

14 A. Not that I recall.

15 Q. Do you know who made the decision that you and
16 Mr. Dondero would be the only officers of Acis following
17 Mr. Terry's departure?

18 A. I don't remember.

19 Q. I think we have established that in late
20 January 2018, Mr. Terry filed an involuntary bankruptcy
21 petition against Acis and its general partner, right?

22 A. Yes.

23 Q. And do you recall that sometime in the spring
24 of 2018, Robin Phalen was appointed the trustee of the
25 Acis entities?

1 A. I have heard that name, yes.

2 Q. And do you recall that Mr. Phalen was appointed
3 sometime in the spring of 2018?

4 A. I really don't know.

5 Q. Okay. Do you know if there were any changes in
6 Acis' roster of officers between June 10, 2016, and the
7 time of Mr. Phalen's appointment as trustee?

8 A. I don't know.

9 Q. Do you know whether Acis was a registered
10 investment advisor at least until control shifted to
11 Mr. Phalen?

12 A. I generally recall that it filed form A, D & Es
13 so that would I think make it an RAA.

14 Q. Would you agree that Mr. Dondero controlled
15 Acis from at least June 2000 -- withdrawn.

16 Would you agree that Mr. Dondero controlled
17 Acis at all times from at least June 10, 2016, until
18 Mr. Phalen's appointment during the bankruptcy case?

19 A. Yes.

20 Q. Nobody else controlled Acis during that period,
21 true?

22 A. I mean, Dugaboy is the -- you know, like I
23 said, Dugaboy Investment Trust, Trustee of Acis Capital
24 Management GP, LLC, there could have been. I mean,
25 again, I didn't have discussions with Nancy. The other

1 officer could have. There could have been other things.
2 I wasn't involved in that.

3 Q. And you certainly never turned to Nancy Dondero
4 for her approval with regard to anything having to do
5 with Acis, correct?

6 A. I didn't talk -- I didn't talk to Nancy. I
7 didn't have a conversation with Nancy. But again, I --
8 but that's my experience. I'm not saying that -- you
9 are asking about Acis in general. I don't know if there
10 were other things if -- you know, if she was involved in
11 Acis, talking with Jim, I don't know.

12 Q. Okay. But whenever you believed you needed
13 approval to do something in your capacity as the
14 treasurer of Acis, you sought that approval from
15 Mr. Dondero and nobody else, correct?

16 A. I -- yeah. I would talk to Jim.

17 Q. Okay. And the reason that you would talk to
18 Jim is because it was your perception that he controlled
19 Acis, correct?

20 A. When I was employed at Highland Capital
21 Management, Jim Dondero was my boss.

22 Q. Is it your understanding that from the time
23 Acis was formed until the bankruptcy filing in 2018,
24 that Acis never had any employees?

25 A. Correct.

1 Q. But Acis was party to a shared services
2 agreement as amended with Highland, correct?

3 A. Yes.

4 Q. Acis was also party to an advisory agreement as
5 amended with Highland, correct?

6 A. Acis -- I believe Acis and Highland were --
7 there was a sub-advisory agreement.

8 Q. Okay. And is it your understanding that Acis
9 was able to perform its duties as portfolio manager
10 because it had entered into the shared services
11 agreement and the sub-advisory agreement with Highland?

12 A. Yes.

13 Q. Acis couldn't have fulfilled its duties as
14 portfolio manager unless it entered into the shared
15 services and sub-advisory agreements, correct?

16 MR. AIGEN: Object to form.

17 A. Yes.

18 Q. (BY MR. MORRIS) Withdrawn. That's a fair
19 objection.

20 The services that Acis received from
21 Highland under the shared services agreement as amended
22 and the sub-advisory agreement as amended were required
23 in order to enable Acis to fulfill its duties as
24 portfolio manager, correct?

25 MR. AIGEN: Object to form.

1 A. Yes. Acis hadn't -- had no employees.

2 Q. (BY MR. MORRIS) Right. And Acis paid Highland
3 for those services under those two agreements as
4 amended, correct?

5 A. Yes.

6 Q. Let's take a look at those agreements for a
7 moment. The first one we'll look at is The Second
8 Amended and Restated Sub-Advisory Agreement, which we
9 will mark as Exhibit 7 and actually attached to it as
10 Exhibit A is the Shared Services Agreement. So it's all
11 in one document.

12 (Exhibit 7 marked.)

13 A. Thank you.

14 Q. (BY MR. MORRIS) And the first document here is
15 The Second Amended and Restated Sub-Advisory Agreement.

16 Do you see that?

17 A. Yes.

18 Q. And if you turn to the page ending in Bates
19 Number 5305, you will see some signatures. Let me know
20 when you are there.

21 A. I'm there.

22 Q. Okay. And am I right that Mr. Dondero signed
23 this agreement on behalf of both Acis and Highland
24 Capital Management?

25 A. Yes.

1 Q. And this document is signed the month after
2 Mr. Terry was terminated, correct?

3 A. Um.

4 Q. At the top. I apologize. It said it was made
5 this 29th day of July 2016 but effective as of the
6 beginning of the year. Do you see that?

7 A. Yes.

8 Q. Okay. So Mr. Dondero signs this agreement the
9 month after he terminates Mr. Terry, correct?

10 A. Yes.

11 Q. Were you aware that a second amended and
12 restated sub-advisory agreement was being prepared?

13 A. I don't recall. I don't remember.

14 Q. Do you recall discussing whether Acis
15 sub-advisory agreement with Highland needed to be
16 amended at any time in the summer of 2016?

17 A. I wasn't -- I don't -- I wasn't in any of those
18 discussions. If those discussions were had, I wasn't in
19 those discussions, that I can recall.

20 Q. Did anybody ask for your input with respect to
21 any of the terms of the proposed second amended and
22 restated sub-advisory agreement?

23 A. I don't remember. And this was -- I don't
24 remember.

25 Q. Okay. Do you recall doing any analysis in

1 connection with the preparation of this document?

2 A. This was eight years ago; I don't remember.

3 Q. Do you recall whether you directed anybody on
4 your team to undertake any work or any analysis in
5 connection with the preparation of this agreement?

6 A. I don't remember. I don't remember. I mean --
7 when I'm saying I don't remember, could it have
8 happened? Maybe. Could it have not happened? Maybe.
9 I don't remember.

10 Q. Okay. And, Mr. Waterhouse, we have done this a
11 few times. And you must know that "I don't remember" is
12 a perfectly reasonable answer if you don't remember.

13 A. Yeah. I don't.

14 Q. Okay? I don't mean to embarrass you. I don't
15 mean to make you uncomfortable. I do understand it was
16 a while ago. I'm just going to ask my questions and if
17 you remember, great. If you don't, just say "I don't
18 remember."

19 What I don't want you to do is say "I don't
20 remember" when you do; is that fair?

21 A. Yeah. Sure.

22 Q. Okay. Do you know why the sub-advisory
23 agreement was amended and restated the month after
24 Mr. Terry was terminated?

25 A. I don't remember. I don't recall. I don't

1 know.

2 Q. Do you know if Mr. Terry's departure was a
3 factor in the decision to amend and restate the
4 sub-advisory agreement?

5 A. I don't remember what the sub-advisory
6 agreement said. I would have to read -- yeah, I don't
7 remember the sub-advisory agreement.

8 Q. Okay. Let's take a look at Section 2 of this
9 document where the heading is Sub-Advisory Duties. Do
10 you see that?

11 A. Yes.

12 Q. Is it generally fair -- is it fair to summarize
13 this paragraph as saying that Highland, in its capacity
14 as the sub-advisor, would provide both the shared
15 services as set forth in Exhibit A and it would also
16 provide advisory services as set forth in this document?

17 A. Yes.

18 Q. Okay. And at the time, Highland was controlled
19 by Mr. Dondero, right? As Highland's president?

20 A. Yes.

21 Q. And Highland was to provide the shared services
22 and the advisory services to Acis in its capacity as the
23 investment manager, correct?

24 A. Yes.

25 Q. And Acis was also controlled by Mr. Dondero at

1 the time, correct? In his capacity as Acis president?

2 A. Yes.

3 Q. Okay. Turn to page five, please. And we'll
4 look at paragraph five, Compensation. Simply take your
5 time to read it and let me know when you have done that.

6 A. Okay.

7 Q. All right. Did you have any input into
8 paragraph five?

9 A. I don't remember.

10 Q. Do you remember having any conversation with
11 anybody in July 2016 concerning the compensation that
12 Highland was to receive from Acis in exchange for this
13 shared services and the sub-advisory services Highland
14 was going to provide?

15 A. I remember having general conversations with
16 Mr. Dondero, but this was eight years ago.

17 Q. Do you remember anything about those general
18 conversations?

19 A. I just remember we had discussions about -- but
20 I don't -- again, I just remember there were just
21 discussions.

22 Q. Okay. And is it fair to just summarize
23 paragraph five by saying the compensation for shared
24 services was set forth in the shared services agreement
25 attached as Exhibit A and the compensation for the

1 sub-advisor fees were going to be set forth in Schedule
2 A to this agreement?

3 A. Yes.

4 Q. All right. So let's just take a look at
5 Schedule A. It's on the page ending Bates Number 5306.

6 A. Okay.

7 Q. All right. Simple question. Is it your
8 understanding that under this agreement, Acis agreed to
9 pay Highland 20 bases points for sub-advisory services?

10 A. That's -- as I am reading it now, that's what
11 it appears to say.

12 Q. And does that interpretation of this agreement
13 comport with your memory, did Acis in fact begin paying
14 Highland 20 bases points for sub-advisory services in
15 July 2016?

16 A. I don't re- -- I mean, there was a prior
17 sub-advisory agreement. I don't recall when Acis
18 started paying Highland fees as sub-advisory. I don't
19 remember.

20 Q. Is it your recollection that there was a period
21 of time when Highland was providing sub-advisory
22 services to Acis without compensation, without receiving
23 compensation?

24 A. I don't remember.

25 Q. Do you remember if there was any method of

1 calculating the compensation by which Acis would pay
2 Highland for sub-advisory services, other than 20 bases
3 points?

4 A. I don't remember how, you know, how 20 bases
5 points was derived. I don't remember.

6 Q. Do you know who determined that the
7 compensation would be set at 20 bases points?

8 A. I mean, I -- since Mr. Dondero signed the
9 agreement I would -- I mean, I -- the assumption is he
10 was fine with 20 bases points being the appropriate
11 amount of fees to be remitted to Highland.

12 Q. And even though you were the treasurer of
13 both -- well, withdrawn.

14 Even though you were the treasurer of Acis
15 and the CFO of Highland at this time, you don't know
16 whether the 20 bases points set forth in Schedule A
17 represented a change in the method of compensation for
18 sub-advisory services; is that fair?

19 A. Yeah. I don't remember something that happened
20 eight years ago. I don't remember what was on the
21 initial document. I mean, I -- if we had the other
22 document we could compare the first document to this
23 document but I don't remember.

24 Q. Do you know if this was ever an issue in the
25 Acis bankruptcy case, the amount of fees that were being

1 charged pursuant to this agreement?

2 A. I wasn't involved in the Acis bankruptcy case.

3 Q. Okay. The last sentence says quote, "The
4 parties may agree to a different allocation from that
5 set forth above during any period in order to reflect
6 the then current fair market value of the services
7 rendered."

8 Do you see that? I'm still on Exhibit A or
9 Schedule A.

10 A. I'm --

11 Q. Yeah, it ends in 06.

12 A. 06.

13 Q. Take your time. Do you see that last sentence?

14 A. Yes.

15 Q. Okay. Do you have any recollection as to
16 whether the parties ever agreed to a different
17 allocation than the 20 bases points set forth in
18 Schedule A?

19 A. I don't recall.

20 Q. Okay. Do you see that it's -- the fee is
21 retroactive to January 1st, 2016?

22 A. It says effective January 1st, 2016.

23 Q. Do you recall any discussion as to why the
24 agreement was made retroactive to January 1st, 2016?

25 A. I don't. I mean, I don't -- I don't --

1 Q. Do you recall whether Acis had to pay Highland
2 any money on account of the retroactive date of January
3 1, 2016 to make Highland whole?

4 A. I don't recall. I -- but if the agreement was
5 effective as of another date, I mean, you know, I just
6 don't remember. I mean, I just don't remember what
7 happened.

8 To the extent that the document that was
9 executed, you know, one date but effective another date,
10 what happened, you know, to make that effective.

11 Q. Okay. But the fact that it's retroactive to
12 January does suggest to you that there is a change,
13 right? Otherwise, there would be no reason to make it
14 retroactive, fair?

15 A. Yeah. Yeah. I mean, fair.

16 Q. But you just don't know what the change is as
17 you sit here today, fair?

18 A. Yeah. I don't remember.

19 Q. And you don't know who determined what the
20 change would be, fair?

21 A. I mean, I don't. I don't -- I don't -- again,
22 I don't -- I don't remember what -- again, I don't --
23 can't even -- I can't tell you if there was a change
24 because I don't have the other document.

25 And again, presume -- I don't know if

1 Mr. Dondero determined this number -- you know, I mean,
2 he signed the document, but I don't know.

3 Q. Is it fair to say that from your prospective,
4 Mr. Dondero would have had to have approved the
5 20-bases-point formula on behalf of both Acis and
6 Highland before it was effective?

7 A. Yes.

8 Q. Okay. Do you recall whether any analysis of --
9 withdrawn.

10 To the best of your knowledge, as Acis'
11 treasurer and Highland's CFO, was -- did Acis pay
12 Highland 20 bases points for sub-advisory agreements
13 from January 1, 2016 until the time Brigade took over in
14 the summer of 2018?

15 A. I recall Acis remitting payments to Highland.
16 But I don't recall when that started or exactly when
17 it -- you know, I don't -- or when it stopped. I
18 don't -- don't have those details from that long ago.

19 Q. Okay. Let's go to Section 10 of this
20 agreement. No, I apologize, it's 14. Do you see
21 Section 14 deals with duration and termination?

22 A. Yes.

23 Q. Okay. And do you see that in Subpart A on page
24 six, there's a reference to the agreement being in
25 effect for ten years?

1 A. Yes.

2 Q. Okay. And then on the next page it says that
3 "Subject to Section 14(b), the agreement could be
4 terminated under (i) by Highland at any time with 60
5 days written notice."

6 A. Yes.

7 Q. Okay. Are you aware as to whether or not
8 Highland ever provided written notice of termination
9 under this agreement?

10 A. I'm not aware.

11 Q. You never saw a written termination of this
12 agreement, correct?

13 A. Yeah. No. I'm not aware.

14 Q. And nobody ever told you that Highland had
15 given notice of termination of this agreement, correct?

16 A. Not that I recall.

17 Q. And the shared services agreement was amended
18 and restated at the same time, correct? If you take a
19 look at the agreement beginning with the page ending in
20 Bates Number 5308, do you see that's the Third Amended
21 and Restated Shared Services Agreement?

22 A. Yes.

23 Q. And again, if you go to page 12 of the
24 agreement ending in Bates Number 5319, can you confirm
25 that Mr. Dondero signed on behalf of both parties?

1 A. Yes.

2 Q. And were you aware that the shared services
3 agreement was being amended in the summer of 2016?

4 A. I don't recall.

5 Q. Okay. Do you recall whether anybody asked for
6 your input with respect to any of the terms of this
7 agreement?

8 A. I don't recall specifically. But generally,
9 with shared services agreements, you know, there was an
10 analysis, you know, we tried to put together to estimate
11 the cost of providing services under Annex A.

12 Q. Okay. Do you have any recollection as to why
13 the shared services agreement was amended and restated
14 at this time?

15 A. I -- I don't remember what prompted this to be
16 amended and restated.

17 Q. Okay. Turn to Article IV on page four, please.
18 Are you familiar with the methodology set
19 forth in Article -- in Section 4.01?

20 A. I don't recall this cost allocation formula but
21 I -- I am reading it now.

22 Okay.

23 Q. Was there somebody on your team who was
24 responsible for making sure that Acis paid Highland the
25 proper amounts under this amended and restated shared

1 services agreement?

2 A. There would be someone who would be responsible
3 for that.

4 Q. Do you recall who that person was?

5 A. I don't -- it would have been someone on the
6 corporate accounting team.

7 Q. And so would that be either Mr. Closs or
8 Ms. Hendrix?

9 A. Yes. I mean -- okay. We're going back to
10 2016. I don't remember what their titles were eight
11 years ago but we had other individuals there. You know,
12 Drew -- there were other individuals besides Mr. Closs,
13 Ms. Hendrix -- Ms. Hendrix, you know, we typically had
14 another accountant. So it would have been someone on
15 that team.

16 Q. And it would have been someone who reported to
17 you, correct?

18 A. Yes.

19 Q. Do you know if Highland sent bills to Acis for
20 shared services or did Acis just remit payment to
21 Highland?

22 A. I didn't generate any of these invoices, but
23 for form they -- Highland should have, you know,
24 generated an invoice out of the accounting system to
25 bill Acis for the services rendered.

1 And I can't tell you sitting here today
2 what was provided but it was always -- we always tried
3 to, you know, to the extent possible provide support.

4 Q. All right. If we go back to Article IV, is it
5 fair to summarize it as saying that in Subpart A, if
6 there is an item demonstratively attributable to Acis,
7 Acis will pay a hundred percent of the cost; if a
8 specific percentage could be identified, that under B,
9 that specific percentage would be charged, but under C,
10 if you are not really sure, you would go to exhibit B --
11 Annex B?

12 A. No. If you weren't sure, it says that cost
13 would be allocated between fee-earning assets. So you
14 would -- I -- what I'm reading is you would take Acis'
15 proportion of the fee-earning assets related to Highland
16 and they would be allocated that way.

17 Q. Okay. And if you look at Annex B, which is the
18 last page --

19 A. And annex -- that's what this said. Maybe
20 that's what Annex B says. I'm just reading.

21 Q. That's okay.

22 So am I reading this correctly that under
23 Annex B, if to the extent Annex B was being relied upon
24 to set the shared service fee, Acis was agreeing to pay
25 15 bases points from each of the funds that it managed?

1 A. Yeah. It looks like -- yes. So under Annex B,
2 there was a 15 bases point shared service fee that was
3 being paid from these funds listed in the annex, to
4 Highland.

5 Q. Okay. Can you recall at any time after June
6 of 2016 that Acis was charged 100 percent of an item
7 that was demonstratively attributable to it? I'm
8 looking at 4.01A. Yeah. Let me try this differently.

9 Are you aware of any methodology that was
10 used to calculate the fees due for shared services,
11 other than the application of the 15 bases points, after
12 the summer of 2016?

13 A. I -- what I do remember is, if there were costs
14 attributable to Acis outside of this annex, Acis was
15 charged those expenses. They paid those expenses. I
16 don't recall that changing in time, so after 2016. I
17 don't recall that changing.

18 So to the extent there were items that were
19 allocable to Acis under this cost allocation, I don't
20 recall that changing.

21 Q. Okay. Is it fair to say, looking at the two
22 documents, the sub-advisory agreement and the shared
23 services agreement, that it's your understanding of --
24 both based on recollection and looking at the documents
25 now, that Acis was going to pay Highland a total of 35

1 bases points for sub-advisory services and shared
2 services?

3 A. Under these documents, yes.

4 Q. Okay. Can we go to Section 7.02, Termination.
5 And you will see in Subpart A, it says that "Subject to
6 7.02(b), either party may terminate this agreement upon
7 at least 30 days' advance written notice at any time
8 prior to expiration."

9 Do you see that?

10 A. Yes.

11 Q. Okay. To the best of your knowledge, did
12 either party ever provide 30 days' written notice of
13 termination of this agreement?

14 A. I -- earlier I said that Highland notified Acis
15 that it would not be providing services. That's what I
16 recall.

17 Q. Okay. So let me ask my question again.

18 A. Uh-huh.

19 Q. To the best of your knowledge, did either party
20 ever provide 30 days' written notice of termination of
21 this agreement as set forth in Section 7.02 A?

22 A. I don't recall.

23 Q. Okay. Did you ever see a written notice of
24 termination?

25 A. I may have. I don't remember.

1 Q. Okay.

2 A. I don't recall.

3 Q. Okay. Did anybody ever tell you that the --
4 that the written notice of termination had been tendered
5 by one party to the other?

6 A. That -- I don't remember. This was -- I don't
7 know how many years -- I don't remember.

8 Q. Okay. In fact, both of these agreements were
9 amended in 2017, right?

10 A. This is -- this is made in July 2016.

11 Q. That's right.

12 And do you recall that the following spring
13 in 2017, the agreements were amended yet again?

14 A. I -- again, this was years ago. I don't
15 remember.

16 Q. Okay. Let's just look at them quickly and then
17 we can take our lunch break.

18 (Exhibit 8 marked.)

19 Q. (BY MR. MORRIS) So I have marked as Exhibit 8,
20 the Fourth Amended and Restated Shared Services
21 Agreement dated March 17, 2017. You know what, I'm just
22 going to go ahead and mark as Exhibit 9, the Third
23 Amended and Restated Sub-Advisory Agreement also dated
24 March 17, 2017.

25 (Exhibit 9 marked.)

1 Q. (BY MR. MORRIS) And looking at Exhibit 8, do
2 you see the title page, the Fourth Amended and Restated
3 Shared Services Agreement between Acis and Highland
4 dated March 17, 2017?

5 A. Yes.

6 Q. And if you go to the page ending in Bates
7 Number 3337, do you see that Mr. Dondero has signed on
8 behalf of both entities again?

9 A. Yes.

10 Q. Okay. And if you look at the last page, do you
11 see the annualized staff and services fees is 15 bases
12 points for each of the funds?

13 A. Yeah. Yes. Yes.

14 Q. Okay. And if we look at Exhibit 9, that's the
15 Third Amended and Restated Sub-Advisory Agreement
16 between Acis and Highland dated also March 17, 2017.

17 Do you see that?

18 A. Yes.

19 Q. And if you go to page ending in Bates Number
20 3483, you will see Mr. Dondero has signed on behalf of
21 both parties, correct?

22 A. Yes.

23 Q. And if you go to Exhibit A, the chart that's on
24 the page ending in 3485, you will see that the
25 sub-advisory fee was 20 bases points, correct?

1 A. Yes.

2 Q. So that with these amended agreements, Acis
3 agreed, again, to pay a total of 35 bases points to
4 Highland on account of the shared services and
5 sub-advisory services, correct?

6 A. Yes.

7 Q. Okay. And do you know why the agreements were
8 amended and restated in March 2017?

9 A. I don't remember.

10 Q. This is -- so if Mr. Terry was terminated in
11 June of 2016, this is about nine months after he was
12 terminated, right?

13 A. Yes.

14 Q. So is it fair to say that Acis was still the
15 vehicle through which the Acis CLOs were expected to be
16 managed?

17 A. Yeah. I mean, these are the agreements in
18 place, correct. That's right.

19 Q. Well, you wouldn't go through the trouble of
20 amending and restating agreements if you didn't think
21 that Acis was going to continue to be the portfolio
22 manager of the Acis CLOs; is that fair?

23 A. Yes. I mean, I -- I don't know why these are
24 restated, but, yes, there is agreements that -- there is
25 sub-advisory, there's shared services arrangements

1 between Highland and Acis dated in March, so...

2 Q. And through these -- through Mr. Dondero's
3 execution of these agreements on behalf of both parties,
4 it was your understanding that Acis would continue to
5 manage the Acis CLOs for the foreseeable future, fair?

6 A. Yes.

7 Q. Do you recall whether as of the first quarter
8 of 2017 anybody ever suggesting that Acis should not
9 continue to manage the Acis CLOs?

10 A. I don't recall.

11 Q. You don't recall any of the investors
12 expressing any concerns about the continuation of Acis
13 as the portfolio manager of the Acis CLOs, correct?

14 A. Yeah. I never talked to the CLO investors
15 directly, so I would hear things secondhand. I don't
16 recall any of those conversations.

17 Q. Right. You don't recall anybody telling you in
18 the first quarter of 2017 that they had heard from
19 investors that they had concerns about Acis continuing
20 on as the manager of the Acis CLOs; is that fair?

21 A. Yeah. Not at this time. In 2018, with all the
22 problems with Acis, yes, there were -- I remember
23 discussions happening then. But not -- these agreements
24 are dated in March of 2017.

25 Q. Okay. We can turn to Article VII, which at

1 Section 7.01, which is on the page ending in Bates
2 Number 3332. Okay. At the bottom it says, "Either
3 party may terminate this agreement at any time upon at
4 least 30 days' written notice to the other."

5 Do you see that?

6 A. Yes.

7 Q. Do you know if either party ever gave written
8 notice of termination to the other party pursuant to
9 this provision?

10 A. I don't recall.

11 Q. Have you ever seen written notice of
12 termination of this agreement pursuant to Section 7.01?

13 A. I don't remember.

14 Q. Do you recall whether anybody ever told you
15 that written notice of termination was given?

16 A. I don't remember.

17 Q. In fact, this agreement was never terminated,
18 correct?

19 MR. AIGEN: Objection; form.

20 MR. MORRIS: Withdrawn.

21 Q. (BY MR. MORRIS) To the best of your knowledge,
22 sir, this agreement was never terminated, was it?

23 MR. AIGEN: Objection; form.

24 A. I mean, yeah. I mean, what --

25 MR. MORRIS: Withdrawn.

1 I appreciate the objection now that I
2 realize what he was objecting to.

3 Q. (BY MR. MORRIS) To the best of your knowledge,
4 this agreement was not -- was never terminated until the
5 transition of services to Brigade in August of 2018,
6 correct?

7 A. I don't even know that. I don't know. I don't
8 recall. All -- what I do remember is there was the
9 involuntary bankruptcies we talked about and there was a
10 TRO put in place. I don't remember -- usually when TROs
11 are put in place, everything stays as is.

12 So I don't -- I don't remember if and when
13 this was terminated or what the TRO did -- I don't
14 recall. I wasn't involved in those proceedings.

15 Q. Do you recall that there was a time that
16 Brigade replaced Highland as the provider of shared
17 services and advisory services to Acis?

18 A. I recall the name Brigade that -- now that you
19 bring that up. I don't remember what capacity they
20 served.

21 Q. Okay.

22 A. But they were involved, you know, while the
23 bankruptcy was going on.

24 Q. Okay. Is it fair to say that you have no
25 reason to believe the shared services agreement was

1 terminated prior to the Acis bankruptcy?

2 MR. AIGEN: Object to form.

3 A. I don't know.

4 Q. (BY MR. MORRIS) Okay. Let's turn to
5 Section 8.01. That deals with amendments. Do you see
6 that?

7 A. Yes.

8 Q. The agreement cannot -- withdrawn.
9 "The agreement may not be amended or
10 modified except by an instrument on writing signed by
11 each party."

12 Do you see that?

13 A. Yes.

14 Q. Do you know if the parties ever amended or
15 modified this agreement in writing?

16 A. I don't remember.

17 Q. Have you ever seen a writing signed by both
18 parties that amended or modified this agreement?

19 A. I may have. I don't remember.

20 Q. Okay. Do you remember if anybody ever told you
21 that a written amendment or modification existed?

22 A. I don't recall.

23 Q. Okay. The next section is 8.02; it deals with
24 assignment and delegation. Do you see that?

25 A. Yes.

1 Q. Do you know if this agreement was ever assigned
2 or delegated to anybody?

3 A. I don't remember this ever -- that ever
4 happening, so I don't recall.

5 Q. You never saw a written consent pursuant to
6 Section 8.02, pursuant to which, you know, all or any of
7 the rights or responsibilities under this agreement were
8 assigned or delegated, correct?

9 A. Again, I may have. I don't remember. This was
10 years ago. I may have at some point. I just don't
11 remember.

12 Q. Okay. Do you remember if anybody ever told you
13 that Acis or Highland had assigned or delegated any part
14 of their rights or obligations under this agreement?

15 A. I don't recall.

16 Q. Looking at Subsection C, there's a reference to
17 the staff and services provider.

18 That's Highland, correct?

19 A. The agreement doesn't say Highland but, I mean,
20 I don't think it names Highland. It just says staff and
21 services provider.

22 Q. If you look on the very first page.

23 A. Uh-huh. Is it Highland?

24 Q. Yeah. Ending in 3319.

25 A. Okay.

1 Q. You see there's a reference to Highland Capital
2 Management as the staff --

3 A. Staff and services provider.

4 Q. Okay.

5 A. Yes.

6 Q. So you will agree, based on that, that Highland
7 is the staff and services provider referred to in
8 Section 8.02(c)?

9 A. Yes.

10 Q. And do you see that it didn't need to obtain
11 prior written consent to assign any of its rights or
12 obligations under the agreement as long as it was
13 assigning it to an affiliate under the circumstances set
14 forth in that paragraph?

15 A. Yes.

16 Q. Okay. So do you know whether Highland ever
17 assigned any of its rights or obligations under this
18 agreement to any affiliate?

19 A. Not that I'm aware.

20 Q. Have you ever seen anything, any document that
21 purported to assign any of Highland's rights or
22 obligations under this agreement to an affiliate?

23 A. I'm not aware.

24 Q. And you don't have any recollection of anybody
25 ever telling you that Highland had assigned any of its

1 rights or obligations under this agreement to an
2 affiliate, correct?

3 A. Yeah. I don't recall any of those discussions.

4 Q. Okay. Let's just knock off the sub-advisory
5 agreement and then we'll take a break. If we can switch
6 to Exhibit 9. Again, I apologize if I asked you this
7 question, but if you turn to page ending in Bates Number
8 3483, can you just confirm that those are Mr. Dondero's
9 signatures?

10 A. Yes.

11 Q. And do you have any recollection as to why the
12 sub-advisory agreement was amended and restated in
13 March of 2017?

14 A. I don't.

15 Q. If you take a look at -- oh, no, look at that.

16 Let's go to Section 6, Termination, which
17 is page eight.

18 A. Okay.

19 Q. Okay. So for purposes of this agreement, Acis
20 is identified as the management company and Highland is
21 either Highland or the sub-advisor.

22 Do you see under 6(a), Acis had the ability
23 to terminate this agreement upon 30 days' prior written
24 notice to Highland?

25 A. Yes.

1 Q. Okay. Do you know if Acis ever gave written
2 notice of termination of this agreement to Highland?

3 A. I'm not aware.

4 Q. Okay. Did anybody ever tell you that Acis had
5 provided written notice of termination of this
6 agreement?

7 A. I don't recall any of those discussions.

8 Q. Okay. Do you know if this agreement was ever
9 terminated by anybody at any time prior to the Acis
10 bankruptcy?

11 A. I'm not aware of that.

12 Q. You never saw any document that stated that the
13 Third Amended and Restated Sub-Advisory Agreement had
14 been terminated prior to the Acis bankruptcy, correct?

15 A. The third -- I don't remember seeing a
16 document.

17 Q. And nobody ever told you that the Third Amended
18 and Restated Sub-Advisory Agreement had been terminated
19 at any time prior to the bankruptcy, correct?

20 A. I don't -- yeah, I don't remember those
21 conversations but...

22 Q. Okay. If we can turn to page nine, Section 9.
23 That deals with amendments and assignments.

24 Do you know if this agreement was ever
25 amended?

1 A. I don't remember.

2 Q. Did you ever see any document that purported to
3 amend this agreement?

4 A. There could be a fourth amendment. I don't
5 remember.

6 Q. Okay. Do you recall if anybody ever told you
7 that this agreement was amended?

8 A. I don't remember. And again, I don't know.

9 Q. Okay.

10 A. There could be an amendment. I don't remember.

11 Q. How about assignment, are you aware of this
12 agreement ever being assigned to anybody?

13 A. I'm not aware of that.

14 Q. Have you seen a -- do you recall ever seeing
15 any documents that purported to assign this agreement to
16 anybody?

17 A. No. I don't recall any.

18 Q. Did anybody ever tell you that Highland had
19 assigned any of its rights or obligations under this
20 agreement to an affiliate?

21 A. Not that I recall.

22 Q. All right.

23 MR. MORRIS: Let's break.

24 THE VIDEOGRAPHER: Off the record. The
25 time is 12:26.

1 (Lunch break from 12:26 p.m. to 1:13 p.m.)
2 THE VIDEOGRAPHER: Back on the record. The
3 time is 1:13.
4 Q. (BY MR. MORRIS) Mr. Waterhouse, are you ready
5 to proceed?
6 A. Yes.
7 MR. MORRIS: Mr. Aigen, you ready to go?
8 MR. AIGEN: Absolutely.
9 MR. MORRIS: Okay.
10 Q. (BY MR. MORRIS) We're going to mark as the
11 next exhibit, Exhibit Number 10, the Acis -- the
12 agreement for purchase and sale of CLO participation
13 agreements that begins with Bates Number ending in 3384.
14 THE COURT REPORTER: Oh.
15 MR. MORRIS: Uh-huh. You're up.
16 (Exhibit 10 marked.)
17 Q. (BY MR. MORRIS) All right. Have you seen this
18 document before, sir?
19 A. Yes.
20 Q. What is it?
21 A. To summarize, Highland purchased an interest
22 of -- interest in Acis' SM management fees.
23 Q. And what did it pay for the -- what -- do you
24 have an understanding of what it paid for that interest,
25 if anything?

1 A. What Highland actually purchased -- I mean, it
2 exchanged a promissory note for that.

3 Q. So is it your understanding that -- we'll look
4 at this in a bit. Okay. Do you know who prepared this
5 document?

6 A. What I recall is like on page nine, Hunton &
7 Williams was involved, which is why they were referenced
8 under Section 5.6. But I don't recall specifically who
9 prepared this.

10 But I remember an outside law firm being
11 involved and it could have been involved with in-house
12 attorneys again, but there was -- there was several --
13 there were many people involved in this.

14 Q. Okay. And if you go to the page ending in
15 3398, can you just confirm for me that Mr. Dondero
16 signed this agreement on behalf of both Acis and
17 Highland?

18 A. Yes, he did.

19 Q. Do you know who came up with the idea to enter
20 into this agreement, the idea of a participation
21 interest agreement?

22 A. I mean, yeah. Generally, yeah. It was -- this
23 agreement and a promissory note were the -- it was an
24 overall tax -- it was a tax-driven strategy to enter
25 into these agreements, both on Acis' and Highland's

1 part.

2 Q. And is it your understanding that that's the
3 purpose of this agreement and the note, was that
4 those -- the entry into both agreements was part of a
5 tax strategy?

6 A. I would say generally tax and there's also,
7 from Highland's prospective, some cash management
8 advantages as well.

9 Q. What cash management advantages were there from
10 this arrangement?

11 A. Well, I mean Highland would receive fees in
12 advance of when they had to pay them out. So they had
13 the ability to use cash. It is like -- it's kind of
14 like -- what's a good analogy? Like, you have the cash,
15 you can use it, right? And then you don't have to pay
16 for it until a later day.

17 Q. Okay. So if I understand you correctly, Acis
18 was going to pay Highland the servicer fees at a faster
19 rate than Highland was supposed to pay under the terms
20 of the note?

21 A. Yeah. Acis was remitting fees as they received
22 them on a quarterly bases, while Highland's obligation
23 to remit payments under the note were done on a yearly
24 bases.

25 Q. So that -- and at the end of the process, was

1 the expectation that Highland would pay to Acis an
2 amount that equalled what Acis was expected to pay to
3 Highland?

4 A. I don't remember the specifics of the numbers.
5 I think there -- I think it's in the ballpark.

6 Q. So that at any given moment in time, Acis may
7 have paid more to Highland than Highland paid to Acis,
8 but the expectation was at the end of the agreement,
9 everybody should be about equal; is that fair?

10 A. I mean, maybe Acis has paid a little more
11 and -- but, yeah. I mean, I -- I, again, it's a timing
12 so -- and, again, not -- there's all sorts of
13 calculations that go into what the quarterly service
14 fees are, right?

15 The promissory note was fixed at inception.
16 You know, you could have assets that go down in the --
17 right in the -- again, there's a lot of unknowns going
18 in the future. But I think in -- if you just take the
19 assumption that nothing -- everything stays kind of
20 static and the same, which it's very hard to predict the
21 future, the cash flows are in a ballpark.

22 Q. Okay.

23 A. Yeah.

24 Q. Okay. And that was the intent; is that fair?

25 A. Yeah. I mean, I think, yeah. I mean, I think

1 the intent of -- yes.

2 Q. Okay.

3 A. Yes.

4 Q. Did you participate in any discussions
5 concerning this agreement before it was actually
6 executed?

7 A. Yes. I was involved in discussions, for sure.

8 Q. And do you remember the substance of any of the
9 discussions?

10 A. I mean, the substance was around -- and in tax
11 planning, it was around, just like I said, you know,
12 cash management. But it's more optimizing, you know,
13 they're more focused around tax.

14 Q. And who is "they"?

15 A. Just with internal tax folks at Highland and
16 outside tax counsel.

17 Q. And who is the internal tax folks that you
18 spoke to?

19 A. It would have been Mark Patrick, Rick Swadley.

20 Q. Did you speak with Mr. Dondero about this
21 agreement before you signed it?

22 A. Yes. Yes. We definitely spoke with Jim.

23 Q. And was Jim supportive of creating a mechanism
24 that would assist in tax planning and cash management?

25 A. Yes.

1 Q. Are you aware of any discussions with anybody
2 at any time that suggested there was a purpose or intent
3 with the participation and agreement other than tax
4 planning and cash management?

5 A. I generally, what I generally remember is that
6 these were, again, the drivers for the transaction.

7 Q. Okay. And this agreement is entered into in
8 October 2016, if you look at the first page; is that
9 right?

10 A. Yes.

11 Q. And this is just four months after Mr. Terry
12 was terminated, correct?

13 A. Yes.

14 Q. And just maybe a month after litigation was
15 commenced between Terry and Highland, correct?

16 A. I don't recall the -- when litigation between
17 Terry and Highland commenced.

18 Q. Did anything happen in September or October
19 of 2016 that caused folks to think that of -- that that
20 was the right moment to do this tax planning and cash
21 management through these agreements?

22 A. I don't recall a significant, you know, "Oh,
23 this really happened therefore" -- you know, at Highland
24 we are tax planning and, you know, optimizing things are
25 always just part of the job.

1 Q. Okay. Do you know whether the concept of a
2 participation agreement was ever considered before
3 Mr. Terry was terminated?

4 A. Again, we're going back many years. I don't --
5 I remember we had discussions over the years of things
6 of this nature. I can't really put in a timeline around
7 was it post or pre Mr. Terry being terminated.

8 But there were always discussions around
9 tax optimization. It's just so long ago to pinpoint
10 where exactly on the timeline these discussions took
11 place.

12 Q. Okay. Do you know whether Mr. Terry's
13 termination and subsequent litigation was a factor at
14 all in the decision to enter into this agreement?

15 A. I don't recall that being a factor.

16 Q. And do you know if any option was considered to
17 address the tax issues and the cash management issues,
18 other than the participation agreement and note?

19 A. We strive to come up with different tax
20 planning ideas year to year. I don't recall what other
21 options were available in 2016.

22 But there are, I guess, as past practices
23 we do try to brainstorm as business conditions change
24 and, you know, tax laws change, things like that,
25 various options.

1 But I can't tell you, sitting here today,
2 what was on the table in 2016. I just don't remember.

3 Q. Did -- could a loan have addressed the issues
4 that you have identified, the cash management and tax
5 issues, if Highland had just loaned Acis the money?

6 A. No. I don't believe so. No.

7 Q. Is -- Acis was a pass-through entity, correct?

8 A. Yeah. I mean, Acis was a partnership, yes.

9 Q. Do you know who the ultimate beneficial owners
10 of Acis was at the time the participation agreement was
11 executed?

12 A. Um.

13 Q. Is that just Dugaboy and Mr. Okada?

14 A. I don't remember. Mr. Terry was an owner in
15 Acis. I don't remember when he -- when his -- I
16 think -- his ownership, right, was -- I don't remember
17 if it was terminated when he was terminated or exactly
18 what happened to that.

19 But, yes, there was a point where there
20 were three owners in Acis and then it was Mr. Okada and
21 Mr. Dugaboy -- or Dugaboy.

22 Q. Okay. So you mentioned that tax benefits were
23 one of the drivers of this agreement; is that right?

24 A. Correct.

25 Q. And Acis is a pass-through entity, correct?

1 A. Yes.

2 Q. Who was the beneficiary on the Acis side --
3 withdrawn.

4 Were Acis' ultimate beneficial owners the
5 beneficiary of the tax benefits on the Acis side?

6 A. Yes.

7 Q. And the same is true with respect to Highland,
8 correct?

9 A. Yes.

10 Q. Highland was a pass-through entity, correct?

11 A. Correct.

12 Q. And this transaction and the note together
13 created tax benefits for the beneficial owners of
14 Highland, correct?

15 A. Yes. And the beneficial owners of Acis, as
16 well.

17 Q. All right.

18 A. Because they're one and the same. Unless
19 Mr. Terry somehow in there and I can't -- I don't
20 remember what -- when he exited.

21 Q. Do you have an understanding of what the tax
22 benefit was?

23 A. Yes.

24 Q. What's your understanding of the tax benefit?

25 A. It's a deferral of income.

1 Q. And who was deferring the income?

2 A. Acis.

3 Q. And how did this agreement and the note permit
4 Acis to defer income?

5 A. The income that Acis paid to Highland was
6 not -- was not reported as income upon receipt, upon
7 Highland receiving. The income would then be reported
8 as when -- when Acis -- when there were payments made to
9 Acis is -- is -- I mean, that's what I generally
10 remember. I mean, I could be screwing this up.

11 Q. And how about from the Highland side? How did
12 Highland -- how did the beneficial owners of Highland
13 receive a tax benefit from the entry into the
14 participation agreement and note?

15 A. From what I recall, income on the Highland side
16 was shielded by other tax planning.

17 Q. And is that through Hunter Mountain?

18 A. I mean, Hunter Mountain was involved. I don't
19 think it's Hunter Mountain.

20 Q. Well, was Highland able to write off the income
21 it received from Acis against the debt that Hunter
22 Mountain had as the beneficial owner of Highland?

23 A. I don't think it would work like that.

24 Q. Okay. I'll just ask one more time and I -- I
25 can see if we can do this a clean way.

1 Can you describe for me the tax benefits
2 from the participation agreement and the note for
3 Highland and its beneficial owners?

4 A. Highland received income from Acis which was
5 shielded at the Highland level, and then as cash went
6 out from Highland to Acis, that income was then picked
7 up at the Acis' level.

8 So therefore the timing between the cash
9 being received and paid by Acis to Highland versus the
10 deferral of recognition of income just, you know, it
11 created tax benefit because you are deferring when taxes
12 are eventually being paid. Taxes are being paid; it's
13 just a deferral.

14 Q. Do you know if anybody quantified the tax
15 benefit to Acis or Acis' ultimate beneficial owners from
16 the participation agreement and note arrangement?

17 A. Yes. I remember generally.

18 Q. What do you remember generally about that?

19 A. I remember working with Hunton & Williams and
20 there were models that were put together to basically,
21 you know, calculate what the benefits were.

22 Q. Do you have any recollection as to the range of
23 the benefits?

24 A. I don't remember.

25 Q. Do you remember if it was more than a million

1 dollars?

2 A. I don't remember, but it likely was.

3 Q. And how about from the Highland side? Was a
4 similar analysis done to attempt to quantify the tax
5 benefits to Highland from entering into the
6 participation agreement and note?

7 A. It would have been done from both sides. So --
8 and sorry. To clarify that, a million dollars of that
9 was specifically -- if that was just what Acis was
10 saving. I'm just remembering generally from the
11 transaction just with both parties.

12 I can't say with specificity what did Acis
13 say, what did Highland say. I don't remember those
14 details. But it was significant enough where, you know,
15 this transaction with tax benefits was put together.

16 Q. And is it your understanding at the time that,
17 other than perhaps Josh Terry, the ultimate beneficial
18 owners of Acis were the same as the ultimate beneficial
19 owners of Highland?

20 A. Yes. I mean, Highland has -- I mean, what I
21 recall from Acis is you had Dugaboy and you had
22 Mr. Okada. At Highland you had -- on the Okada side you
23 had other trusts that I remember being owners in
24 Highland. I don't -- I can't -- I wasn't involved with
25 Mr. Okada that much.

1 So if you are saying are they the exact
2 same people? I don't know, because I don't know how
3 those trusts reported income, what kind of trusts they
4 were on Mr. Okada's side.

5 I mean, there were Okada entities involved;
6 there were Dondero-related entities involved.

7 Q. Can you identify the Dondero-related entities?

8 A. I mean, it would have been Dugaboy.

9 Q. Okay. So is it fair to say that other than
10 Mr. Terry, all of the beneficial owners of Acis and
11 Highland at the time the participation agreement and
12 note were entered into, were entities that were either
13 owned, controlled, or affiliated with Mr. Dondero and
14 Mr. Okada?

15 A. Yes. Unless Mr. Akada's trusts -- again, I --

16 Q. Right.

17 A. -- I don't know how those trusts were
18 structured.

19 Q. Okay.

20 A. So maybe there was a different beneficiary
21 other than Mr. Okada and those trusts. I don't know.

22 Q. And so the analysis that Hunton & Williams did,
23 was that an analysis done to determine the net tax
24 benefit looking at both entities at once or were each
25 entity looked at in isolation, if you recall?

1 A. I don't remember. I just remember generally
2 they were putting together calculations. I don't
3 remember if it was separate, whether it was together or
4 anything like that.

5 Q. Okay. Now you were the treasurer of Acis and
6 the CFO of Highland at the time, correct?

7 A. Yes.

8 Q. Okay. Would you have recommended this
9 transaction to Mr. Dondero if the only benefit were the
10 cash management issues that you identified earlier and
11 that there was no tax benefit?

12 MR. AIGEN: Objection; form.

13 A. I don't remember -- I don't remember the
14 cash -- I don't remember the significance of the cash --
15 I mean -- and I don't remember where cash was. So -- I
16 don't know. I mean, what I do recall is there were cash
17 benefits and there were also tax benefits. So, again --

18 Q. (BY MR. MORRIS) Do you know -- do you recall
19 if anybody did any analysis to determine the benefit to
20 Highland on the cash management side, on the cash
21 management issue? Was that ever quantified?

22 A. I think what I remember generally, it was part
23 of these models or whatever was put together. It was,
24 you know, again, another benefit of the transaction.

25 Q. All right. So if the cash management was a

1 benefit to Highland, then it must have been a
2 disadvantage to Acis; is that fair?

3 A. No. As we talked about, there was a -- it had
4 these advisory agreements and shared services
5 agreements. But if it had -- and it didn't have any
6 other employees or really any other, you know,
7 significant expenses.

8 So if it is just sitting on -- if it just
9 has cash that's just sitting there and it's not doing
10 anything, you know, I wouldn't say it would hurt Acis,
11 you know.

12 Q. How could the flow of funds under the
13 participation and note benefit one side without hurting
14 the other side? Isn't it binary?

15 MR. AIGEN: Objection; form.

16 A. Well, I mean, I'm looking at this to the --
17 yeah. I -- like, well, I guess, you are right there --
18 well, there is a benefit to Highland. So if the
19 opposite of that is could Acis have used that cash for
20 another purpose? Sure. It could have decided to have
21 done that.

22 I think it looked at this transaction and
23 said, "Hey, you know, this transaction overall with the
24 tax benefits and everything is beneficial, you know,
25 there are benefits." So there could be cash management

1 detriments. But I think maybe, you know, in this
2 transaction it says, well, you know, we do benefit
3 better off from tax, you know, prospective.

4 So I think if there were some cash
5 management detriment to Acis, which I can't really --
6 it could have invested the money or something like that.
7 But it made the decision that it was -- that was in the
8 best benefit or interest of Acis.

9 Q. (BY MR. MORRIS) Is it true that prior to the
10 entry into this agreement, Acis used its revenue to pay
11 its expenses and to make annual distributions to its
12 equity holders?

13 A. Acis -- yes. I, you know, recall Acis paid for
14 its expenses and then there were distributions made to
15 its owners. I don't remember the amounts, magnitude,
16 and frequency. I just don't remember those details but
17 I generally recall that.

18 Q. Okay. If you take a look at the agreement, the
19 first page and you look down at the fourth whereas
20 clause, it says that the seller here, which is Acis,
21 was -- I'm summarizing and paraphrasing. If you
22 disagree with my summary or paraphrasing, let me know.

23 But Acis was engaged -- had engaged a
24 banker to try to actively market a new CLO to
25 prospective investors. Do you see that?

1 A. Yes.

2 Q. Was that true at that time?

3 A. I don't remember.

4 Q. Okay. Were you involved? Do you recall being
5 involved in any activities relating to the marketing of
6 the new CLO to prospective investors in October of 2016?

7 A. I don't remember. I mean -- I -- yeah. I
8 don't remember.

9 Q. Okay. Do you see the next whereas clause
10 refers to a risk retention amount?

11 A. Yes.

12 Q. And are you generally familiar with the concept
13 of risk retention mandates of managers of CLOs?

14 A. Yes.

15 Q. And what's your general understanding of the
16 risk retention mandate?

17 A. It's -- the manager of the CLOs has to retain a
18 certain interest, like it says here, in -- in the equity
19 of the CLO.

20 Q. Okay. And then the next whereas clause refers
21 to a joint venture with another entity to originate and
22 sponsor new CLO investments pursuant to which Acis would
23 contribute 51 percent of the risk retention amount.

24 Do you see that?

25 A. Yes.

1 Q. Do you know anything about that?

2 A. I don't -- I don't remember it.

3 Q. Do you have any idea who the joint venture
4 partner was?

5 A. I don't remember.

6 Q. Do you know if there was a joint venture
7 partner?

8 A. I don't recall.

9 Q. Do you know how it was decided that Acis would
10 contribute 51 percent of the risk retention amount?

11 A. I -- I don't remember. I guess, like I said
12 earlier, we had a special group at Highland that all
13 they did was manage the CLOs. They managed the
14 investments. You know, that's -- that was all their
15 purview.

16 Q. Okay. Do you see towards the bottom, the next
17 of the last whereas clause says, quote, "Cash flows from
18 the servicer fees are unpredictable and unstable."

19 A. Yes.

20 Q. Do you know who made that determination?

21 A. I guess, I don't understand -- I think -- I
22 guess I don't understand the question. Any investments
23 that are -- or any fees that are calculated on an
24 investment portfolio, right, investment portfolio by
25 nature can go up, go down. So I just...

1 Q. So was that a known fact for a long time?

2 A. I think it was a general fact about investments
3 in general. So it's like, I mean.

4 Q. That's all that is intended to convey, is that
5 investments can fluctuate?

6 A. That's how I read. Like earlier I testified
7 like, hey, there's, you know, your -- Acis is paying
8 management fees on Acis. Right? Those can be -- those
9 vary as market conditions can -- market conditions
10 dictate.

11 And, you know, markets depending on --
12 sometimes we've got bear, you know, bull markets or bear
13 markets, right? We could have recessions. How I read
14 that is I think it's unpredictable and completely
15 unstable.

16 Q. Okay. Servicer fees are paid by the issuer to
17 the portfolio manager, right?

18 A. Servicer fee -- so, yeah. Those are paid by
19 the CLO to the manager of the CLO but they are paid by
20 the -- there's a trustee at the CLO. The trustee is the
21 one who calculates that and pays that out.

22 Q. And as -- in the trustee's capacity is the
23 agent for the CLO, right? The trustee is not paying its
24 own money, is it?

25 A. Yeah. No, the trustee is the trustee over the

1 CLO. Yeah.

2 Q. So --

3 A. Yeah, I mean, yeah.

4 Q. And this agreement related to participation
5 interest only in the CLOs that are identified on
6 Schedule A at Bates Number ending 3399, right?

7 A. Yes.

8 Q. Okay. You know, the first of those CLOs was
9 formed in 2013, correct?

10 A. Yes.

11 Q. Okay. Did Acis do anything from 2013 until
12 this agreement was entered into to mitigate the risk of
13 investments in the manner that you described earlier?
14 The instability and the unpredictability of the
15 servicing fees, did they do anything to mitigate that
16 risk until now?

17 A. I mean, I -- just generally, that's the job of
18 the portfolio manager is to -- right? You're managing
19 assets to provide a return but also mitigate risks. I
20 mean, that's just -- that's just -- you know, so I guess
21 it's a long way of saying yes.

22 But I guess I just don't understand the
23 question, because that's their job.

24 Q. I appreciate that's their job.

25 I'm asking you if you can identify anything

1 that Acis did prior to October 2016 to mitigate against
2 the unpredictability and the instability of servicing
3 fees.

4 A. Just by performing its duties, performing its
5 job. That's inherent, it was providing services. So I
6 would say yes.

7 Q. Okay. So it could have -- it was mitigating
8 the risk without a participation agreement, in your
9 view; is that fair?

10 A. Acis was providing advisory services to the
11 CLOs and as part of that agreement. It -- you know,
12 it's managing the assets and the CLO. A participation
13 interest isn't needed for that to occur.

14 Q. Okay. Do you know if the unpredictability and
15 instability of servicing fees ever caused Acis to breach
16 any obligations under any contract?

17 A. I don't -- not that I recall.

18 Q. Okay. Do you recall if the unpredictability
19 and instability of the servicer fees ever caused Acis to
20 fail to timely pay for expenses and goods that it had
21 purchased or acquired?

22 A. Not that I recall.

23 Q. Okay. As the treasurer of Acis and the CFO of
24 Highland, can you identify any adverse consequences
25 flowing to Acis from the alleged unpredictability and

1 instability of servicer fees?

2 A. You are asking if the Acis fees are
3 unpredictable and unstable, what consequences does that
4 do to Acis? Is that what you are --

5 Q. Kind of. You testified that, you know, like
6 all investments, servicer fees, can be unpredictable and
7 unstable; is that fair?

8 A. Yes.

9 Q. Okay. Can you identify any adverse consequence
10 to Acis arising from the instability and uncertainty of
11 the servicing fees? Because they didn't breach
12 contract, right?

13 A. Yeah. I mean, if those servicing fees became
14 unstable where they couldn't pay for expenses, that
15 would be adverse to Acis.

16 Q. Right. But that never happened, correct?

17 A. I mean, in hindsight, yes, that did not happen.
18 That isn't to say when you enter into an agreement that
19 it couldn't happen.

20 Q. I appreciate that but I'm just asking a really
21 simple question.

22 Can you identify any adverse consequence to
23 Acis from the alleged unpredictability and instability
24 of servicing fees?

25 A. Not that I'm aware.

1 Q. Thank you.

2 The contracts that gave Acis the right to
3 receive the servicing fees, those are portfolio
4 management agreements, correct?

5 A. I don't -- there is a special con- -- there is
6 a specific contract between the CLO and the -- the
7 manager of the CLO. I don't know if it's called a
8 portfolio management agreement. I don't -- there -- or
9 an advisory agreement or a servicing fee agreement.
10 There is a special name in the CLO world for the
11 agreement.

12 Q. Okay. And that agreement, whatever it's
13 called, is the agreement that gives -- that obligates
14 Acis to perform portfolio management services and gives
15 it the right to receive the servicing fees in exchange
16 for those services, correct?

17 A. Yes.

18 Q. Okay. And I think you said this earlier, the
19 party who is obligated -- the counterparty is the
20 issuer, correct?

21 A. Yes.

22 Q. Okay. Well, who controlled the Acis CLOs
23 before Mr. Terry was terminated; do you know?

24 A. I guess the trustees control the CLO, right,
25 because they're trustee.

1 Q. Uh-huh. Okay. Withdrawn. Good point.

2 Who controlled the management of the CLOs
3 before Mr. Terry was terminated?

4 A. My recollection is Mr. Terry, Mr. Dondero,
5 Mr. Okada, and there are other analysts that worked at
6 Highland that provided analysis.

7 There was a CLO group at Highland that
8 would provide analysis, right? To -- so it was -- there
9 was a team of people.

10 Q. Right. I don't want to know about who did
11 analyses. I want to know who the ultimate
12 decision-makers were for Acis.

13 Was Mr. Dondero an ultimate decision-maker?
14 Could he have -- did he have the authority and the
15 ability to make decisions on behalf of Acis prior to
16 Mr. Terry's departure?

17 A. Yes.

18 Q. And could Mr. Terry do that too?

19 A. Yes.

20 Q. And could Mr. Okada do that too?

21 A. Yes.

22 Q. Was there anybody else who had that ability?

23 A. Not that I'm aware. They were the owners.

24 Q. Okay. And after Mr. Terry was terminated, did
25 Mr. Dondero and Mr. Okada retain the control and

1 authority to manage Acis?

2 A. Yes.

3 Q. And was that true until Mr. Phalen was
4 appointed the trustee of Acis?

5 A. Yes. Mr. Phalen took over Acis then that
6 presumably ceased.

7 Q. Do you know if any of the Acis CLOs ever
8 breached their obligation to pay the servicing fees to
9 Acis?

10 A. I don't recall.

11 Q. Do you recall whether Acis ever declared a
12 default as a result of the issuers failure to timely pay
13 all servicer fees it owed?

14 A. I don't recall. I'm not aware of any.

15 Q. Okay. Let's go to Section 1 of the agreement,
16 which is on the page ending in Bates-stamped 3387.

17 A. Okay.

18 Q. Section 1 deals with the sale and purchase of
19 the Acis participation agreements, correct?

20 A. Yes.

21 Q. And the participation agreements are shown on
22 Schedule A, correct?

23 A. Yes.

24 Q. And that's at the page ending in Bates-stamped
25 3399, right?

1 A. Yes.

2 Q. And on page -- on Schedule A, Schedule A lists
3 the CLO issuers that are the subject of this agreement,
4 correct?

5 A. Yes.

6 Q. And the total servicer fees or the total fees
7 that Acis is entitled to receive from each CLO in
8 exchange for its portfolio management services, correct?

9 A. I believe so. I mean, I don't remember the
10 agreements but if it is -- this matches the agreement,
11 yes.

12 Q. Okay. And so then the next two columns divide
13 up the total servicer fee between what Acis is going to
14 keep, which is the servicer fee retention amount and the
15 Acis participation interest, which is what Highland is
16 supposed to get; is that right?

17 A. Yes.

18 Q. So, for example, for the 2015-6 CLO, is it fair
19 to say that Acis was going to receive from that CLO 40
20 bases points as its servicing fee, it was going -- and
21 it was going to split that fee between Highland and
22 itself?

23 A. Yes.

24 Q. Okay. Do you remember earlier that we
25 concluded that under the amended and restatement shared

1 services agreement and sub-advisory agreement that Acis
2 was going to pay Highland 35 bases points for those
3 services?

4 A. Yes.

5 Q. And here they're promising to pay Highland an
6 additional 20 to 30 bases points as part of the
7 participation interest, right?

8 A. Yes.

9 Q. So can you conclude -- is it fair to conclude
10 that between this agreement, the shared services
11 agreement and sub-advisory agreement, Acis was obligated
12 to pay to Highland more than it expected to receive in
13 servicing fees?

14 A. Yeah. If all those agreements were in force,
15 yes.

16 Q. Okay. If you look down further on that page
17 there's the purchase price. Do you see that?

18 A. Yes.

19 Q. And in Section 1.1 it says, quote, "In
20 consideration of the sale of the Acis participation
21 interest to the purchasers, to the purchaser, the
22 purchaser shall do two things."

23 It's going to pay the cash purchase price
24 and it's going to give up the note. Is that a fair
25 summary of that?

1 A. Yes.

2 Q. Are you familiar with the phrase "quid pro
3 quo"?

4 A. Yes.

5 Q. Okay. And is the quid pro quo here that Acis
6 would transfer to Highland the Acis participation
7 interest and Highland would give to Acis the cash
8 purchase price and the note?

9 A. I mean, I'm familiar with quid pro quo. I
10 mean, it just says, "In consideration of the sale."

11 Q. Right.

12 A. "Of the Acis part- -- then the purchaser shall
13 pay to seller this amount 606,655 and deliver to seller
14 a promissory note and the initial principle balance of
15 12,666,446."

16 Q. Right. So Highland is giving the cash purchase
17 price and the note to Acis in exchange for Acis' promise
18 to share the Acis participation interest as defined in
19 this agreement, fair?

20 A. Fair.

21 Q. Okay. All right. And that was your
22 understanding as the treasurer of Acis and the CFO of
23 Highland at the time, correct?

24 A. Yes.

25 Q. Do you see that if you add up the -- withdrawn.

1 Do you know how the cash purchase price and
2 the initial principle balance of the note were
3 determined?

4 A. I don't recall. Again, I talked about there
5 were models done and things like that. I'm sure it was
6 in the model.

7 Q. Do you recall whether if you added the cash
8 purchase price and the initial principle balance of the
9 note, if you added those two numbers together, do you
10 recall if that total number equalled to the dollar the
11 projected value of the Acis participation interest as
12 defined in this agreement?

13 A. I don't remember.

14 Q. Do you know if these numbers in Section 1.1
15 were the subject of any negotiation?

16 A. I don't recall.

17 Q. If you turn to the Section 1.3 on the next
18 page, it says that "The parties acknowledge and agree
19 that the purchase price reflects the arm's-length value
20 of the Acis participation interest as of the date of the
21 agreement as determined by mutually-agreed appraisal
22 methods."

23 Do you see that?

24 A. Yes.

25 Q. Isn't that -- do you see that the purchase

1 price is defined as the cash purchase price and the
2 delivery of the note on the bottom of the prior page?

3 A. Yes.

4 Q. So would you agree that in Section 1.3 the
5 parties are agreeing that the value of the cash purchase
6 price plus the note reflects the arm's-length value of
7 the Acis participation interest as of the date of the
8 agreement?

9 A. That's what the parties agreed to.

10 Q. All right. And so your understanding is that,
11 in fact, the purchase price and the value of the Acis
12 participation interest were supposed to be the same, at
13 least as of the date of the agreement?

14 A. I don't know if that's -- I don't know if they
15 were the same.

16 Q. Well, it says that the purchase price reflects
17 the arm's-length value of the Acis participation
18 agreements. Doesn't that mean that they were supposed
19 to be equal? They reflect the same value.

20 A. Arm's-length value doesn't mean the same value.
21 It just means what -- you know, someone will participate
22 in an arm's-length transaction. You know, that's not
23 saying value. I don't agree that arm's-length
24 transaction is saying value.

25 Q. Do you know how the purchase price was

1 calculated?

2 A. I don't remember.

3 Q. Do you know if it was intended to be the
4 equivalent of the expected value of the Acis
5 participation interest?

6 A. Like I said, I don't remember.

7 Q. Well, you're here as the 30(b)(6) witness
8 today. Does HCLOM have a view as to how the purchase
9 price was determined?

10 MR. AIGEN: Objection; form.

11 A. Again, we -- I discussed there is models,
12 right? That was -- that were put together around this
13 transaction, presumably the models, right? Modeled what
14 an arm's-length transaction would have been.

15 So again, there's different ways to value
16 different transactions. So presumably that's what was
17 in the model.

18 Q. (BY MR. MORRIS) All right. I appreciate that
19 you presume a lot of things.

20 Did you do anything to prepare today --

21 A. I don't --

22 Q. -- to determine how the purchase price was
23 calculated?

24 A. I don't have access to the models. HCLOM
25 doesn't have access to the models. I don't know.

1 Q. Okay. Does HCLOM have a view as to whether or
2 not the purchase price was intended to equal the value
3 of the Acis participation interest as of the date of the
4 agreement?

5 MR. AIGEN: Objection; form.

6 A. I mean, from HCLOM's point of view, I don't
7 think HCLOM was around on October 27, 2016. So this
8 agreement was between Acis and Highland. It looks like
9 Acis and Highland's -- those parties acknowledge that it
10 was supposed to be done in an arm's-length transaction.
11 HCLOM wasn't even there.

12 Q. (BY MR. MORRIS) I appreciate that.

13 A. So --

14 Q. Thank you very much. So let me ask the
15 question again.

16 As the treasurer of Acis and the CFO of
17 Highland, do you have a view as to whether the purchase
18 price was intended to equal the value of the Acis
19 participation interest as of the date of this agreement?

20 A. It was intended -- it should have intended to
21 be whatever the arm's-length value was determined.

22 Q. Do you have any idea what that was?

23 A. I don't recall. I don't have any of those
24 models.

25 Q. Can you think of a reason why one party would

1 be giving the other party more money --

2 MR. AIGEN: Objection; form.

3 Q. (BY MR. MORRIS) -- than it was expecting to
4 receive?

5 A. Yeah. What's, you know, there's other benefits
6 involved. We talked about tax benefits or things like
7 that. Sure. I mean, there's all sorts of things that
8 you model into the model.

9 So, again, without looking at the details
10 of the model and you are talking about you are actually
11 going to have to model in maybe variability of servicing
12 fees, and discount rates, and tax benefits, I mean,
13 there's all sorts of things you can assume. But it's
14 intended per 1.3 for however what was decided to reflect
15 the arm's-length value.

16 Q. There's a reference there to mutually agreed
17 appraisal methods. Do you see that?

18 A. Yes.

19 Q. Can you identify those appraisal methods?

20 A. I don't remember what was used.

21 Q. Do you know if any appraisals were actually
22 done?

23 A. Well, I don't -- it doesn't say -- it says
24 appraisal methods. It doesn't say appraisals. So I
25 don't know what appraisals were done. It says appraisal

1 method. So you can put something together using an
2 appraisal method.

3 So again, I don't have access to these
4 records. I don't remember what was done.

5 Q. Okay. Let's look at the promissory note.

6 MR. MORRIS: Let's mark that as Exhibit 11
7 I think.

8 (Exhibit 11 marked.)

9 Q. (BY MR. MORRIS) Have you seen this before,
10 sir?

11 A. Yes.

12 Q. And what is this?

13 A. This is the -- this is the note between
14 Highland Capital and Acis Capital Management.

15 Q. And is this the note that HCLOM contends it's
16 the holder in due course of today?

17 A. Yes.

18 Q. And is this the note that HCLOM contends
19 Highland is obligated to satisfy?

20 A. Yes.

21 Q. Do you know -- this note was executed at the
22 same time as the participation agreement, correct?

23 A. Yes.

24 Q. And they were part and parcel of the same
25 overall transaction, correct?

1 A. Yes.

2 Q. Do you know if the terms of this note were
3 negotiated?

4 A. This was part of the transaction. I don't
5 remember. As we talked about, these numbers were
6 derived from models and things like that.

7 So again, they are -- the different
8 assumptions are in these models. I don't remember the
9 back and forth but it's somehow derived --

10 Q. Are the same people making decisions on behalf
11 of both Acis and Highland at this time in connection
12 with the participation agreement and the note? It's the
13 same human beings, right?

14 A. Yeah. Acis doesn't have employees.

15 Q. Right. And Jim Dondero was signing everything
16 on behalf of everybody, right?

17 MR. AIGEN: Object to form.

18 A. I mean, Jim executed these agreements, correct.

19 Q. (BY MR. MORRIS) Right. And he executed them
20 on behalf of both parties, right?

21 A. Yes.

22 Q. All right. Acis and Highland didn't obtain
23 independent counsel, did they?

24 A. I just recall Hunton & Williams being involved.
25 I don't -- I -- you would have to look at the engagement

1 letter. I don't know how those things are written.

2 Q. Was there a team at Highland that was dedicated
3 to protecting Highland's interest and another team that
4 was dedicated to protecting Acis' interest?

5 A. I don't recall that at Highland. So, again,
6 I -- but, you know, if there's outside counsel involved,
7 maybe there's other dynamics there as well.

8 Q. Do you remember any law firm being involved
9 other than Hunton & Williams?

10 A. No. I just recall Hunton.

11 Q. Do you know who established the terms of the
12 notes -- of the note?

13 A. I don't remember those. I don't remember that
14 detail.

15 Q. Okay. And you don't know how that principle
16 amount of the note was determined, correct?

17 A. Like I said before, it would have been in these
18 analyses, and cash consideration, and other
19 consideration and all that would have been determined.

20 Q. Do you believe Acis would have agreed to give
21 Highland a portion of its servicing fees without
22 receiving an agreement to receive the cash purchase
23 price and the note?

24 MR. AIGEN: Objection; form.

25 A. I'm sorry. Acis would have agreed --

1 Q. (BY MR. MORRIS) Withdrawn.

2 Do you believe that Acis would have agreed
3 to give a portion of its servicing fees to Highland if
4 Highland didn't simultaneously agree to give that cash
5 purchase price and the note to Acis?

6 MR. AIGEN: Objection; form.

7 A. I think that was all -- in order for the tax
8 planning to work, I mean, Acis had to receive
9 compensation later.

10 Q. (BY MR. MORRIS) Stated another way, in order
11 for the tax planning to work, Acis had to share the
12 servicing fees with Highland and Highland had to make
13 that cash purchase price payment and the payments under
14 the note. That was the intent, correct?

15 MR. AIGEN: Objection; form.

16 A. No. I mean, no. I mean, the -- for the tax
17 planning to work the note here had to be a real bona
18 fide note. You don't -- you have to create tax planning
19 with economic substance. Without economic -- real
20 economic substance, it's not tax planning; it's just
21 shuffling papers.

22 So this note is a real binding note between
23 Highland and Acis. If -- you know, and Highland has to
24 pay, and is obligated to pay that to Acis. Without
25 that, it's not tax planning.

1 Q. (BY MR. MORRIS) Okay. I don't mean to quarrel
2 with you but let me try and make this easier.

3 In order for the tax planning to work, you
4 need both pieces to happen, right? You need both Acis
5 to share its participation interest and you need
6 Highland to give the note, correct?

7 MR. AIGEN: Objection; form.

8 A. I mean, the agreement was to share the
9 participation interest because that was agreed to. But
10 if the participation interests were never paid, it's
11 still a bona fide note.

12 But Highland bears the risk of this
13 planning to pay those amounts to Acis. You know, as
14 we -- and as you pointed those whereas clauses, the
15 markets are uncertain and unstable. So, you know, we
16 saw that through the great recession, right, in 2008,
17 2009.

18 So to the extent that those payments --
19 that was the deal, right? As you said, that was the --
20 but if those payments aren't made, the promissory note
21 is still a good note. You have to have -- you have to
22 make good on these agreements.

23 Q. (BY MR. MORRIS) But the failure to pay the
24 servicing fees had nothing to do with the
25 unpredictability and instability of the market, right?

1 MR. AIGEN: Objection; form.

2 Q. (BY MR. MORRIS) It had to do with the
3 involuntary bankruptcy that filed against Acis?

4 A. No. I mean, I'm saying in the -- when we
5 entered into this in 2016, right? The -- you don't know
6 what markets are going to do. So the whole idea is in
7 the event there is turmoil in the markets and here it is
8 an ability not to pay, as we saw in a prior turmoil,
9 there still is an obligation under this note to make
10 payment to Acis.

11 Q. Did you discuss with anybody at any time before
12 this transaction was entered into, that there was a risk
13 that Highland might receive zero in servicing fees?

14 A. Sure. A hundred percent.

15 Q. And Mr. Dondero and you as the officers of
16 Highland agreed to give this promissory note with the
17 understanding that you might receive nothing in return?

18 A. One, I will tell you what I remember and what
19 stands up, 110 percent we sat with Jim, the tax team,
20 and said you understand if you make this note and for
21 some reason these participation interests are not paid
22 on, you still owe this money. Yes, that was the
23 understanding.

24 There was no way we wanted to obl- -- like
25 that's part of tax planning. If you don't do that, the

1 tax planning doesn't work.

2 Q. But isn't the failure to pay servicing fees a
3 breach of the agreement?

4 MR. AIGEN: Objection; form.

5 A. When you say -- we're talking about the note.
6 There is a note between Highland and Acis. This note
7 doesn't say if you don't pay -- like it's my
8 understanding that, you know, these are real -- again,
9 it's my understanding that these payments under the note
10 were real obligations and that was stressed.

11 I remember having those conversations with
12 this transaction.

13 Q. (BY MR. MORRIS) So you are saying that
14 Highland gave the note and -- it gave the note not in
15 exchange for the participation interest?

16 A. No. No. It did. It received the
17 participation interest. But as we talked about, those
18 participation interests can vary, right? There's
19 variability under those participation interests.

20 So to the extent there's -- you know,
21 again, Highland is making a fixed commitment, right,
22 which is outlined in this promissory note.

23 And the fees that are received, you know,
24 you are -- you are -- they are -- they were modeled out
25 initially. But they're models. And models, you know,

1 again, you are projecting out to the best of your
2 ability but I, you know, again, markets move.

3 Q. Did the market cause HCLOM to not pay servicing
4 fees?

5 MR. AIGEN: Objection; form.

6 Q. (BY MR. MORRIS) Withdrawn.

7 HCLOM never paid Highland any servicing
8 fees, right?

9 A. We already talked about that earlier, yes.

10 Q. Okay. Why didn't HCLOM pay Highland any
11 servicing fees?

12 A. Because despite its best efforts, HCLOM --
13 the -- these servicing, you know, these resets we talked
14 about were never effectuated over to HCLOM. It never
15 became the collateral manager of the CLOs.

16 Q. And why didn't it become the collateral manager
17 of the CLOs?

18 A. Because of the Acis bankruptcy.

19 Q. Okay. Great.

20 Can you turn to Exhibit A on the note.

21 A. Yes.

22 Q. The first payment was due on May 31, 2017,
23 correct?

24 A. Yes.

25 Q. And that payment was made, right?

1 A. Yes.

2 Q. Did Highland make the payment that was due on
3 May 31, 2018?

4 A. It did not.

5 Q. Did HCLOM declare default under this note?

6 A. Not that I'm aware of.

7 Q. Did you discuss with anybody declaring a
8 default under the note?

9 A. No, because there was a forbearance in place.

10 Q. Instead of declaring a default you entered into
11 a forbearance agreement, correct?

12 A. Correct.

13 Q. After the participation agreement was signed,
14 Acis satisfied its obligations by paying Highland its
15 allocated portion of the servicing fees through at least
16 October 2017, correct?

17 A. Correct. I mean, I remember Acis making the
18 payments. That's -- so I don't recall when that
19 stopped.

20 Q. And Highland made its payment in the spring of
21 2017, correct? We just established that.

22 A. Yeah, in May of 2017.

23 Q. Do you recall that as of the end of October
24 2017, for the timing reasons you described earlier, Acis
25 had paid Highland about \$3 million more in servicing

1 fees than Highland had paid under the note?

2 A. I don't remember numbers.

3 Q. As of November 1st, 2017, you and Mr. Dondero
4 were the sole officers of Acis, correct?

5 A. Yes.

6 Q. And you remained the sole officers of Acis
7 until Mr. Phalen was appointed in the summer or spring
8 of 2018, correct?

9 A. Yes.

10 Q. Okay. Acis continued to receive servicing fees
11 after November 1st, 2017, correct?

12 A. Yes. I mean, the CLOs paid quarterly. So it
13 would have received -- yeah, I mean -- your question is
14 did it received fees after November? Yes. I mean, the
15 CLOs kept paying. So yes.

16 Q. And did Acis remit any servicing fees to
17 Highland after November 1st, 2017?

18 A. I don't recall.

19 Q. The participation agreement, remember, referred
20 to a potential new CLO issuance by Acis. Do you
21 remember that?

22 A. Yes. There was a...

23 Q. And in fact, in April 2017 a new Acis CLO was
24 issued, correct?

25 A. I don't recall. What was the name of the --

1 Q. It's Acis CLO seven.

2 A. Okay. Okay.

3 Q. And so do you remember that that launched in
4 the spring of 2017?

5 A. Vaguely.

6 Q. Okay.

7 MR. MORRIS: Let's mark this the next
8 Exhibit 12, a portfolio management agreement for Acis
9 seven.

10 (Exhibit 12 marked.)

11 Q. (BY MR. MORRIS) This is 12. Okay. Have you
12 seen this document before, sir?

13 A. I may have. If I did, I just don't remember.

14 Q. And if you go to the page ending in
15 Bates-stamped 7089, you will see Mr. Dondero signed on
16 behalf of Acis CLO Management, LLC, correct?

17 A. Yes.

18 Q. Okay. So here it is April 2017, Mr. Terry's
19 been gone for ten months. And under Mr. Dondero's
20 direction, Acis is launching a brand-new CLO, correct?

21 A. Yes.

22 Q. And he wouldn't have done that if he didn't
23 believe the Acis CLO Management, LLC couldn't perform
24 its obligations as the portfolio manager, correct?

25 A. Yes.

1 Q. You don't recall any discussions before
2 April 20, 2017, where anybody expressed a concern
3 regarding Acis' ability to perform?

4 A. I didn't -- we have a team of folks that put
5 together CLOs. They source the CLOs. They put together
6 the warehouses. I'm not involved in any of that, so...

7 But I don't remember discussions being
8 directed towards myself.

9 Q. Do you know if Acis Seven had a -- had to make
10 a risk retention payment?

11 A. I don't recall. But again, it's part of the
12 rules. So, I mean, presumably an entity made that --
13 you are not going to issue a CLO without the risk
14 retention of that percentage being retained by somebody.

15 Q. Do you have a recollection as to how the risk
16 retention amount was funded?

17 A. I don't remember.

18 Q. Do you remember that Highland actually loaned
19 Acis \$3 million for the purpose of making the risk
20 retention payment in connection with the launch of Acis
21 seven?

22 A. I don't remember. But if that's what happened,
23 that's what happened.

24 Q. Mr. Dondero used Highland to make loans to
25 affiliates from time to time. We know that, right?

1 A. Yes.

2 Q. And did Mr. Dondero cause Highland to make
3 loans to Acis from time to time?

4 A. I don't recall loans between Acis and Highland.
5 You know, if you said that -- if Highland loaned Acis
6 the \$3 million, I don't recall there being a flurry of
7 loans between Highland and Acis.

8 Q. Do you remember that Acis just used the money
9 that it received on May 31, 2017, to repay Highland for
10 the loan that Highland had just made so it could make
11 its risk retention payment? That doesn't ring a bell?

12 A. No. This is seven years ago.

13 Q. Okay. In late 2017 and early 2018, Acis was
14 looking to reset certain of the CLOs, correct?

15 A. Late '17, late '18, yes.

16 Q. Okay. Do you have an understanding of what a
17 reset is?

18 A. Yeah. You're -- yes.

19 Q. What's your understanding of a reset?

20 A. You are basically resetting the cap structure
21 in the underlying CLO.

22 Q. And why was Acis looking to reset the CLOs in
23 late 2017, early 2018?

24 A. From what I recall, it was Acis 2013-3. So I
25 think it had hit -- you know, it -- there was a time, a

1 life of a CLO and you can extend that life by doing a
2 reset.

3 Q. Okay. And was it -- do you know if it was
4 contemplated that a new entity would replace Acis as the
5 portfolio manager for those CLOs that were successfully
6 reset?

7 A. Are you saying -- and can you go back to your
8 timeline? Are you saying at the time of the reset in
9 2017?

10 Q. Yeah. When -- in late 2017, early 2018, when
11 the concept of resets was being discussed, was a
12 decision made that an entity other than Acis would serve
13 as the portfolio manager for the reset CLOs?

14 A. I don't recall the reset of Acis 2013-3 was a
15 reset with Acis Capital being the manager.

16 Q. And when did that take place; do you remember?

17 A. It was like January of '18, early '18.

18 Q. So your recollection is that with the reset of
19 Acis 2013 CLO, Acis was going to remain as the portfolio
20 manager?

21 A. That's what I generally remember. But, again,
22 this was six years ago. So there may be a document that
23 refutes that but that's what I generally remember.

24 Q. Did you look at any documents to prepare for
25 your testimony today on the topic of resets?

1 A. No. I looked -- I looked at the documents that
2 were in the topics. I don't recall the resets being --
3 but I generally am aware of resets.

4 Q. Can you take Exhibit 1 out? It's the first
5 exhibit.

6 A. Yeah. Okay.

7 Q. And the last topic is Topic 12, on page three.

8 A. Uh-huh.

9 Q. Can you tell me what documents you looked at to
10 prepare yourself to answer questions about Topic 12?

11 A. I didn't look at any documents. I am generally
12 aware of the resets that occurred, but I didn't look at
13 any documents.

14 Q. So you didn't look at any documents and you
15 didn't talk to anybody other than counsel, correct?

16 A. Just counsel.

17 Q. And you weren't directly involved in the
18 resets, correct? You had no personal direct involvement
19 in any of the issues concerning the resets, correct?

20 A. I -- we have -- there was a team at Highland
21 Capital that managed that process.

22 Q. Were you part of that team?

23 A. I was not.

24 Q. So, again, you had no personal knowledge about
25 any of the issues surrounding the proposed resets in

1 late 2017 or early 2018, correct?

2 A. I'm aware of the resets that did occur, the
3 potential resets.

4 Q. What resets occurred?

5 A. Well, there's the Acis 2013-3, right? That
6 was -- the reset -- they reset in and it went to market
7 and there was a -- like an article the day before and
8 publication, and then that's when Josh Terry filed the
9 involuntary, like, you know, the day that it was
10 supposed to reset.

11 Q. But it didn't reset, correct?

12 A. No. The -- yeah, but there -- that was the
13 attempted reset, right? So that reset was occurring but
14 it didn't -- it wasn't finalized because of the
15 involuntary bankruptcy.

16 And there was -- there were other reset
17 attempts by investors, I think one in April, April --
18 end of April of 2018, another like mid-June. These are
19 45-day resets. So, again, they're 45 days.

20 But the investors were trying to reset
21 these. Again, with Acis in bankruptcy, right. The
22 investors wanted to reset these.

23 MR. MORRIS: All right. Can we take a
24 break now?

25 MR. AIGEN: Yes.

1 THE VIDEOGRAPHER: Off the record. The
2 time is 2:37.

3 (Break taken from 2:37 p.m. to 2:51 p.m.)

4 THE VIDEOGRAPHER: Back on the record. The
5 time is 2:51.

6 MR. MORRIS: Okay. Let's mark as the next
7 exhibit, it's 13, the Assignment and Transfer Agreement.
8 It was previously marked Exhibit D in a different
9 deposition.

10 (Exhibit 13 marked.)

11 Q. (BY MR. MORRIS) Mr. Waterhouse, do you recall
12 that the arbitration panel issued its final award in
13 favor of Mr. Terry and awarded him damages of \$8 million
14 on October 20, 2017?

15 A. I'm aware of it.

16 Q. Okay. Did the award come as a surprise to you?

17 MR. AIGEN: Objection; form.

18 A. I didn't think of it either way. I wasn't
19 close to the case. I mean, I -- I'm not a lawyer. I
20 don't know. You know, Josh did not treat me well at my
21 time at Highland. So -- but I didn't have a dog in the
22 fight. He was just a very abusive person, abusive
23 towards me and things like that.

24 Q. (BY MR. MORRIS) The trial was in September,
25 right, of 2017?

1 A. I don't recall.

2 Q. And you are part of the senior management team
3 at Highland at the time, right?

4 A. Yes.

5 Q. Were people talking about the case, was the
6 senior management team talking about how the case was
7 going?

8 A. I mean, they may have. I wasn't really talking
9 to them. I mean, I don't really talk to lawyers and
10 say, hey, how's this going or how's that going. And
11 unless someone --

12 Q. Okay.

13 A. -- really offers their view, kind of like near
14 a water cooler, you know, I'm not really -- you know, I
15 think I have testified before, I like to go to work. I
16 like to do a good job. I like to come home. I like to
17 see my family and my kids.

18 Q. Amen. Me too. That's all I want to do myself,
19 to be honest with you.

20 A. So I mean --

21 Q. But around the water cooler, I mean, did
22 anybody give you any indication as to how they thought
23 the case was going?

24 A. Not that -- I mean, I just remember, hey, we
25 have arguments. These guys have arguments as far as --

1 it's being heard.

2 Q. Was there any reaction when the award was
3 rendered on October 20th? Did anybody talk about it?

4 A. Yeah. When the award was rendered. It's like,
5 I remember, you know, I remember it's -- I remember
6 learning at some point that Josh Terry won and I
7 thought -- you said the amount was \$8 million. I
8 thought it was like 6. You know, it was a seven-figure
9 amount.

10 Q. And was anybody -- did anybody express any
11 emotion at the rendering of the award? Did anybody
12 react at all?

13 MR. AIGEN: Objection; form.

14 A. I mean, I think there was disappointment that
15 he -- that Josh Terry won. I mean, I don't remember,
16 you know, people cussing or yelling or -- you know, it
17 wasn't like an emotional lash-out. People weren't
18 happy. But I wouldn't say it was -- there was very
19 disappointment is what I recall.

20 Q. (BY MR. MORRIS) Do you recall any discussion
21 at any time in September, October 2017, about
22 transferring assets away from Acis so that Josh would be
23 unable to collect on his judgment?

24 A. I don't recall the time frame. I don't.

25 Q. Do you recall the substance of what I

1 described, just not when the conversations took place?

2 A. I really don't recall, you know, conversations
3 around Josh or what Josh would get, you know, things
4 like that. I think he was entitled to what he was
5 entitled to.

6 Q. Well, he had judgment against Acis, correct?

7 A. Yes.

8 Q. Okay. Did anybody give any instruction or
9 direction to transfer assets from Acis to other entities
10 in October 2017?

11 A. I don't recall assets leaving Acis at that
12 time. I mean, I don't remember cash moving or Acis -- I
13 don't remember Acis having other, you know, other items
14 of value on its balance sheet, probably just the cash.
15 I don't remember that just leaving.

16 So I don't remember those conversations
17 being had.

18 Q. Are you aware that Josh filed the involuntary
19 against Acis because Acis had no assets to satisfy the
20 arbitration award and judgment he obtained?

21 A. No. I thought -- my understanding was that
22 Josh filed the involuntary when that Acis 2013 was being
23 reset. So, again, when it was being reset into a new --
24 my recollection, it was being reset into a new manager.
25 And that reset is when Josh filed the involuntary.

1 Q. And as the CFO of Acis, you have no
2 recollection of any transfers occurring in the fourth
3 quarter of 2017, any transfer of assets, any assets out
4 of Acis to other Highland affiliates?

5 A. We have billions of dollars of AUM at Highland.
6 Acis was just one part of it. I don't remember every
7 transfer that occurred.

8 Q. I'm not asking you to remember any particular
9 transfer.

10 I'm asking you if you have a recollection
11 of that in the fourth quarter of 2017, transactions were
12 undertaken to transfer Acis' assets to other Highland
13 entities?

14 A. I don't remember those -- I don't remember even
15 generally that happening.

16 Q. Do you recall that the day before the
17 arbitration award was rendered, Highland created
18 Highland CLO Management, LLC?

19 A. I wasn't aware at that time.

20 Q. Are you aware today that Highland caused an
21 entity called Highland CLO Management, LLC to be formed
22 in Delaware?

23 A. I didn't remember that until you showed me --
24 you know, you showed me the entity names earlier or,
25 yeah. Again, I don't recall the entity's date of

1 formation. There's all sorts of entities at Highland
2 that we have gone through and I mean -- I'm not aware of
3 specifics.

4 Q. Did you know before today that an entity called
5 Highland CLO Management, LLC existed?

6 A. I may have known at one time but I just don't
7 remember.

8 Q. So is it fair to say that you also don't know
9 why the entity was formed?

10 A. I can speculate but I don't know.

11 Q. No. Do you know who authorized the creation of
12 that entity?

13 A. I don't.

14 Q. Did you have any discussions with anyone at any
15 time concerning the formation of HCLOM, LLC?

16 A. I don't recall any discussions. I mean,
17 typically -- the lawyers are the ones that are involved
18 in entity formation and things of that sort. I'm
19 typically not in -- you know, in my role at Highland and
20 Acis I'm typically not involved in those types of
21 discussions.

22 Q. Do you know if HCLOM, LLC ever managed any of
23 the Acis CLOs?

24 A. Not that I'm aware.

25 Q. Going back to the transfer agreement, do you

1 know why this agreement was entered into at this time?

2 A. I mean, it's --

3 MR. AIGEN: Are you asking him why it was
4 entered or why it was entered on that specific date?

5 MR. MORRIS: At this time, as of
6 November 3rd, 2017.

7 A. November 3rd, 2017, I mean, I don't recall the
8 events of exactly why it was entered as of November 3rd,
9 2017. But, you know, just that there were issues at
10 Acis and, you know, there are new entities being formed
11 and this was part of -- this assignment and transfer
12 agreement was part of the issues that Acis was facing.

13 Q. (BY MR. MORRIS) Well, other than the adverse
14 judgment entered against it, what other issues was Acis
15 facing at this time?

16 A. I mean, I think we talked about Highland wasn't
17 willing to provide support to Acis as well. So it was
18 facing -- I mean, you know, without employees it's not
19 able to perform its duties.

20 Q. Okay. So we've got the adverse judgment and
21 Highland said it wouldn't support it anymore, right?

22 A. Yes.

23 Q. Anything else?

24 A. That's what I recall generally.

25 Q. Okay. So Mr. Dondero with his Highland hat

1 told Mr. Dondero with his Acis' hat that he wasn't going
2 to support Acis any longer?

3 MR. AIGEN: Objection; form.

4 Q. (BY MR. MORRIS) Do I have that right?

5 A. Highland made that determination that it
6 wouldn't support Acis on a go-forward bases at some
7 point.

8 Q. Okay.

9 A. You know --

10 Q. All right. Other than the adverse judgment --
11 withdrawn.

12 Other than the adverse arbitration award
13 that was entered into against Acis' and Highland's
14 decision that it would no longer support Acis, were
15 there any other issues that Acis was confronting in the
16 fourth quarter of 2017?

17 A. Not that I can recall.

18 Q. And is it your testimony on behalf of HCLOM
19 that those are the two reasons why the assignment and
20 transfer agreement was entered into?

21 A. Yeah. I mean, that's what I -- yes. That's
22 what I generally remember from an HCLOM prospective. I
23 mean, could there be something else that I don't
24 remember? But that's what generally was going on at the
25 time.

1 Q. Okay. And who made the decision to enter into
2 this agreement?

3 A. I don't -- well, we can see who executed it.

4 Q. Right.

5 A. It looks like Jim did. Looks like Jim and the
6 new director of HCLOM.

7 Q. So Jim did it both on behalf of Highland and
8 Acis and Mr. Cullinane did it on behalf of HCLOM,
9 correct?

10 A. Yes.

11 Q. Do you know why Dondero entered into this
12 agreement on behalf of Acis and Highland?

13 A. Yes, generally. I mean, if Mr. Dondero sees,
14 right, that the manager of the Acis CLOs is not going to
15 be Acis Capital Management going forward, then to
16 preserve the planning that's going on, he would have to
17 sign and transfer the fees.

18 Q. And the reason that Acis wasn't going to be the
19 manager of the CLOs is because Highland said that it
20 would no longer support Acis, correct?

21 A. Highland would not support Acis, but also Acis
22 didn't have the wherewithal for -- to make its
23 obligations to Mr. Terry.

24 Q. All right. What was the purpose of the
25 agreement; do you know?

1 A. The purpose of Exhibit 13?

2 Q. Yes, sir.

3 A. To transfer the participation interest.

4 Transfer -- I'm sorry. The interest and the promissory
5 note.

6 Q. Is that the only purpose of the agreement was
7 to transfer the promissory note?

8 A. Well, and the interest too.

9 Q. Which interest are you referring to?

10 A. The CLO participation interest.

11 Q. That's the servicing fees we referred to
12 earlier?

13 A. Yes.

14 Q. Was it anticipated that HCLOM would succeed
15 Acis as the manager of the CLOs?

16 A. That was my understanding.

17 Q. And it was only as the manager of the CLOs that
18 HCLOM would have been entitled to receive the servicing
19 fees that are the subject of the participation interest,
20 correct?

21 A. Yes. For -- HCLOM would only get the -- it had
22 to become the manager, right, of the Acis deals to
23 receive the servicing fees to then in turn remit the
24 participation interest to Highland. That was it.

25 Q. Do you know if this agreement was the subject

1 of any negotiations?

2 A. I don't know.

3 Q. Do you know what role, if any, Mr. Cullinane
4 played in the drafting or negotiation of this document?

5 A. I wasn't involved. I don't know.

6 Q. Did you ever ask anybody who the -- and he was
7 the person acting on behalf of HCLOM at the time,
8 correct?

9 A. He's the director of HCLOM, yes.

10 Q. Did you do any diligence at all to try to
11 figure out what his intent and his motivation was in
12 signing this agreement on behalf of HCLOM?

13 A. At the time of execution?

14 Q. At any time.

15 A. Documents like this are typically handled by
16 the attorneys. So I would assume the attorneys would
17 have hashed any of that out or anything like that.

18 Q. But in preparation for today's deposition as
19 HCLOM's representative, you didn't make any effort to
20 speak with Mr. Cullinane to determine what he was
21 thinking when he entered into this agreement on behalf
22 of HCLOM, correct?

23 A. I did not.

24 Q. Are you aware of any demands or requests
25 Mr. Cullinane made on behalf of HCLOM with respect to

1 this agreement?

2 A. I'm not aware.

3 Q. Okay. If we look at the agreement, the third
4 recital says, "HCM has notified Acis that HCM is
5 unwilling to continue to provide support personnel and
6 other critical services to Acis with respect to the
7 CLOs."

8 Do you see that?

9 A. Yes.

10 Q. Okay. Who made that decision on behalf of
11 Highland that Highland was unwilling to continue to
12 provide support personnel and critical services to Acis?

13 A. I mean, that would be Mr. Dondero.

14 Q. Do you know the reasons for the decision --
15 withdrawn.

16 Did he ever tell you what his reasoning was
17 for that decision?

18 A. I'm trying to -- talking about in November. I
19 mean, I don't know if it was related -- I mean, again,
20 this is in November 2017. I don't know. There is an --
21 you know, Josh Terry has an award that's I think public,
22 from my understanding and you're managing assets at the
23 time with a very public dispute. You have investors
24 that aren't happy about it.

25 So I think my general understanding was

1 it's best to move on from -- you know, you want a clean
2 manager to manage these assets. You don't -- on a
3 go-forward bases.

4 Q. What's the bases for your recollection that the
5 award was public as of November 3rd, 2017?

6 A. I don't know. Just -- that's what I kind of
7 generally remember. I thought it was like a, you know,
8 something that was known.

9 Q. Do you recall seeing any articles in the press
10 prior to November 3rd about the arbitration award?

11 A. I don't recall seeing it in the press. Like,
12 you know, when there's decisions made in court cases,
13 right, those remain -- you know, like those are
14 published by the Court, things like that.

15 So, again, this is -- this happened seven
16 years ago. I kind of -- I thought that was part of the
17 calculus. Sort of like, hey, you know, the investors
18 don't want this, right?

19 You got to -- you have to move to a
20 different manager or otherwise, you know, the business
21 is that -- you just -- it doesn't look good for the
22 business.

23 Q. But Mr. Dondero was in control of Acis before
24 and after the arbitration award, correct?

25 A. Yes.

1 Q. So there was no change in control with the
2 issuance of the arbitration award, correct?

3 A. There was not.

4 Q. Was there a -- did you perceive that there was
5 a loss of confidence in Mr. Dondero?

6 A. No.

7 Q. Mr. Dondero was the face of Acis at this time,
8 correct? He was the leader of Acis, correct?

9 A. Yeah. Yes. He was the control -- but there
10 was a team, a CLO team, right? That -- yeah, but --
11 Mr. Dondero is always kind of the head, right? So he's
12 the head of all these entities. There's a CLO team
13 there that is, you know, interfacing on a day-to-day
14 bases.

15 So there's -- to answer your question,
16 yeah, Mr. Dondero was there. There's a team of people
17 still managing the Acis deals. Jim can't do it all by
18 himself.

19 Q. Right. And that team was the exact same as it
20 had been since Mr. Terry left Acis in June of 2016,
21 correct?

22 A. I believe so. I don't remember anyone leaving
23 afterwards but -- again, it could be. It was so long
24 ago.

25 Q. So, in fact, the only thing that happened to

1 Acis between June 1, 2016, and the date of entry of this
2 agreement is, number one, Mr. Terry left, correct?

3 A. He did, yes.

4 Q. And Mr. Terry's departure didn't cause any
5 problems for Acis, correct?

6 A. I -- look, I think whenever there is portfolio
7 manager turnover and there is -- I mean, there are
8 perceptions in the market, right, of what people -- when
9 you invest your own money, you want to know who the
10 manager is. Josh was the day-to-day person. I mean,
11 you know, it could have upset some of the investors. I
12 don't know.

13 Q. Well, Mr. Dondero certainly had enough
14 confidence in the Acis' brands to enter into two
15 different sets of sub-advisory and shared services
16 agreements after Mr. Terry left, correct? We have
17 looked at those.

18 A. Yes.

19 Q. And Mr. Dondero certainly had enough confidence
20 in Acis and the Acis' brand to launch the Acis Seven CLO
21 in the spring of 2017, correct?

22 A. Yes.

23 Q. Okay. So is it fair to say that
24 notwithstanding Mr. Terry's termination -- oh, one more
25 thing. Mr. -- Highland sued Mr. Terry in the fall of

1 2016, correct?

2 A. I don't remember the dates, so...

3 Q. It was a public litigation, right? And then
4 Mr. Terry forced it into arbitration. Do you remember
5 that?

6 A. Vaguely.

7 Q. So notwithstanding Mr. Terry's departure and
8 the public litigation that Highland itself commenced,
9 Mr. Dondero was still confident enough in the Acis'
10 brand to both enter into new restated and amended shared
11 services agreements and sub-advisory agreements and
12 launch a new CLO under the Acis' brand, correct?

13 A. Yes.

14 Q. So is it anything other than the arbitration
15 award that caused the entry into this assignment and
16 transfer disagreement?

17 A. Yeah, I don't know. What I generally remember
18 was that the Acis' brand at that time was -- the award
19 was not a positive for the Acis' brand. And the
20 decision was made to therefore, you know, kind of shift
21 things to a new manager.

22 Q. Okay. Do you know who on behalf of Highland
23 provided the notification referred to in the third
24 whereas clause?

25 A. I don't know who did that.

1 Q. Do you know who received the notification on
2 behalf of Acis?

3 A. I don't.

4 Q. But you would agree that Mr. Dondero was the
5 control person for both entities at this time, correct?

6 A. Yes.

7 Q. At the time, do you recall whether Acis was in
8 default under the shared services agreement?

9 A. I don't remember.

10 Q. At the time, do you recall if Acis was in
11 default under the sub-advisory agreement?

12 A. I don't remember.

13 Q. At the time, do you recall if Acis was in
14 default under any agreement with anybody in the world?

15 A. I don't remember.

16 Q. Did Highland ever send a notice of default to
17 Acis for failure to pay for services rendered under any
18 agreement that it had with Acis?

19 A. I don't know. You would have to ask the
20 attorneys.

21 Q. Okay. As the accountant, are you aware --
22 withdrawn.

23 As the chief financial officer of Highland,
24 are you aware as you sit here right now of Acis failing
25 to pay Highland any monies due and owing, other than the

1 participation fees?

2 A. I don't -- I don't know -- this was seven years
3 ago. I don't remember. There could have been some
4 outstanding bills. I don't remember.

5 Q. All right. But your speculation aside, you
6 have no recollection of that, correct?

7 A. Yeah. Without documents, it's like -- I don't
8 know.

9 Q. The next whereas clause says that, quote, "Acis
10 has determined that the effect of the notification is
11 that it cannot fulfill its duties as the portfolio
12 manager of the CLOs."

13 Do you see that?

14 A. Yes.

15 Q. So Highland is the one who gave the
16 notification and as a result of Highland's notification,
17 Acis determined that it couldn't fulfill its duties,
18 correct?

19 A. Yeah. I guess, if Highland notified Acis that
20 it's not going to provide support and then -- then turn
21 around and says, yeah, Acis has determined the effect of
22 the notification is that it cannot fulfill its duties as
23 portfolio manager of the CLOs.

24 Q. Okay. And Mr. Dondero is the person on behalf
25 of Highland who made the decision not to continue to

1 provide support to Acis, correct?

2 A. Yes.

3 Q. And was Mr. Dondero also the person who made
4 the decision on behalf of Acis that Acis could no longer
5 fulfill its duties as portfolio manager as a direct
6 consequence of the decision he made on behalf of
7 Highland not to provide support?

8 A. Yeah. Yes. It was the portfolio manager and
9 also I think the fees it was going to incur and, like I
10 said, the brand was damaged at that point.

11 Q. Okay. Was there any damage to the brand other
12 than the issuance of the arbitration award?

13 A. I generally recall that as being, you know,
14 again, as kind of -- that was pretty much it. I'm
15 trying to remember if there was any other -- I'm not --
16 I mean, I just --

17 Q. So as you sit here today, you can't remember
18 any cause of the alleged damage to the Acis' brand other
19 than the issuance of the arbitration award, correct?

20 A. Yeah. I can't -- there may have been other
21 factors. Again, I'm not talking to the investors.
22 Where I sit, that's my general understanding.

23 Q. Okay. There are other entities that provide
24 similar shared services and sub-advisory services other
25 than Highland, correct?

1 A. Are you saying there's this other third-party
2 servicing entities?

3 Q. Yeah.

4 A. Yes.

5 Q. In fact, Brigade is one, right? Brigade wound
6 up providing the same services to Acis that Highland
7 used to provide to Acis, correct?

8 A. Yes. Yes. I mean, there are other CLO
9 servicers.

10 Q. Is it fair to say Mr. Dondero made a
11 determination on behalf of Acis that the Acis CLOs would
12 not be managed -- withdrawn.

13 Do you know if Acis ever considered finding
14 a service provider other than Highland before it
15 determined that it couldn't fulfill its duties?

16 A. No.

17 Q. Are you aware that under the shared services
18 agreement and the sub-advisory agreement, unless Acis
19 consented, then Highland could not terminate their
20 provision of services unless and until a replacement was
21 found?

22 A. I don't remember that.

23 Q. But that's actually what happened, right?

24 A. Yeah. I mean, it's in this document. It says
25 Highland is not going to provide services. Right.

1 Q. But Highland did continue to provide services,
2 notwithstanding Mr. Dondero's statement to the contrary,
3 correct?

4 A. Yes.

5 Q. Okay. Did Acis ever consider suing Highland
6 for breach of contract?

7 A. I don't know.

8 Q. Is it fair to say that Acis simply accepted
9 Highland's notification and said, okay, we're done?

10 A. Yeah.

11 Q. Again, notwithstanding the notification,
12 Highland continued to provide services to Acis and Acis
13 continued to perform until Mr. Phalen was appointed the
14 Chapter 11 Trustee, correct?

15 A. Yes. I mean, if you are -- if a successor
16 manager is going to take over the existing Acis deals,
17 you still have to continue to provide support.
18 Otherwise, those deals are going to fall apart.

19 Even if you telegraphed your intent to not
20 provide support, you are still going to provide support
21 until the transfer is effectuated.

22 Q. Can you turn to paragraph four of this
23 agreement? Do you know that -- what paragraph four
24 relates to?

25 A. The expense support paragraph?

1 Q. Yes.

2 A. It looks like when -- you are transferring from
3 one manager to another manager, right? And I think this
4 agreement is contemplating that there were some expenses
5 that will still be in Acis' name, right?

6 But then HCLOM, I think the intent was
7 going to receive fees, right? So then you are saying
8 HCLOM shall promptly pay to Acis or Acis with a request
9 to Acis' creditors the amount of such shortfall.

10 Right in the middle of that, HCLOM's
11 obligations -- this paragraph two -- exceed greater than
12 2 million of Acis' legal expenses --

13 THE COURT REPORTER: You are going to have
14 to either slow down for me or read in your head.

15 THE WITNESS: Okay.

16 A. Or greater than 1 million of Acis'
17 administrative expenses in the aggregate. I guess these
18 are all defined.

19 I think that's -- I think what the attorney
20 is trying to -- you know, you are moving from Acis to
21 HCLOM, HCLOM was going to receive fees. There may not
22 be anything in Acis to pay some of these expenses.

23 I think that HCLOM owes to Acis for
24 whatever reason. And so that's what this -- that's what
25 this pair is trying to do.

1 Q. Did you have any involvement in the drafting of
2 this section?

3 A. I don't remember, really.

4 Q. Do you remember participating in any
5 discussions concerning expense support?

6 A. No.

7 Q. As the HCLOM corporate representative today, is
8 it your understanding that HCLOM owed Highland any
9 obligations or had any duties under this agreement?

10 MR. AIGEN: Objection; form.

11 Q. (BY MR. MORRIS) I'm not asking for a legal
12 conclusion. As a matter of fact, is it, you know, did
13 HCLOM have any responsibilities to Highland after this
14 agreement?

15 A. Responsibilities to Highland?

16 Q. Yes.

17 A. I'm not aware of any.

18 Q. Okay. So it's your testimony as HCLOM's
19 representative, that you're not aware of any obligation
20 that HCLOM undertook to Highland under this agreement?

21 A. Yeah. I mean, HCLOM, the purpose of this
22 agreement is to assign and transfer the note and assume
23 our participation interest.

24 I mean, those are -- the note would then be
25 owed from Highland to HCLOM and the Acis fees from the

1 Acis CLOs to HCLOM. I just don't see how HCLOM, you're
2 asking, would have an obligation to Highland.

3 Q. Well, the expectation was that HCLOM would
4 succeed Acis, including the right to receive the
5 servicing fees, right?

6 A. Right. And then HCLOM would then remit the
7 fees to Highland, right? And that -- that's -- because
8 they're going to step into Acis' shoes, under this --
9 that agreement, right?

10 So then HCLOM will have the obligation
11 under the CLO participation interest agreement to remit,
12 you know, that 20 bases points over to Highland.

13 Q. And is it fair to say that the reason Highland
14 agreed to transfer the note to HCLOM is because HCLOM
15 was agreeing to become the new portfolio manager for the
16 Acis CLOs and would share in the servicing fees after
17 that happened?

18 A. Yeah. My general recollection is to preserve
19 the planning and -- and you change the collateral
20 manager. So you just assign over all the agreements to
21 preserve the planning.

22 Q. Okay. So --

23 A. Yeah, that's my general recollection.

24 Q. Okay. The reason Highland agreed to transfer
25 the note to HCLOM is because the parties intended and

1 expected HCLOM to succeed Acis as the portfolio manager
2 of the Acis CLO and reap the benefits in the form of the
3 servicing fees, which it would share with Highland,
4 correct?

5 A. I mean, it -- I just view it as there's a note
6 between Acis and Highland and there's a CLO
7 participation agreement. And that each agreement is
8 moving to HCLOM as successor manager to preserve the tax
9 planning that was effectuated Acis, you would preserve
10 that at HCLOM.

11 So I guess, my view isn't, well, you moved
12 the note because you're getting a new manager. It's
13 just you had the planning set up at Acis. Now you have
14 the planning set up at HCLOM.

15 Q. So you move the two of them in tandem, right?

16 MR. AIGEN: Objection; form.

17 Q. (BY MR. MORRIS) That's what this agreement
18 does, isn't it?

19 A. Yeah. I mean, yeah. I mean, both -- both
20 agreements were -- yeah, I mean, both -- they were --
21 both of them were moved over, just like they were --

22 Q. Could you think of any reason why Highland
23 would give HCLOM the note, assign the -- I mean,
24 Highland isn't even the one signing the note, right?
25 It's Acis.

1 Can you think of why Acis would assign the
2 note to HCLOM if it wasn't also assigning the obligation
3 to become the portfolio manager?

4 A. I mean, if you are saying would the Acis that
5 are -- be -- if HCLOM got the CLO participation interest
6 and then the Acis note wouldn't move over, again, that
7 wasn't part of the planning. So I just don't see that
8 as the tax planning.

9 To me, they are -- you know, the planning
10 contemplated the sale of the CLO participation interest
11 and a note to the CLO manager. So if HCLOM is the
12 successor manager, it just -- those -- those agreements
13 move as well.

14 Q. All right. But under the note, Highland agreed
15 originally to pay Acis money, correct?

16 A. Yes.

17 Q. What did Highland receive in consideration of
18 the agreement to pay money?

19 A. Again, we talked about there was tax benefits
20 of this transaction. There was cash management benefits
21 of this transaction. So that's what Highland is --

22 Q. Did it not also agree to issue the note because
23 it was going to obtain its participation interest in the
24 servicing fees? Was that not a reason to give the note?

25 A. So we're saying when Highland initially entered

1 into the note with Acis, it entered into the -- again,
2 it entered into the note with Acis as part of the
3 deferral.

4 You know, it's -- the tax planning would
5 have been, hey, pay participation interest and Highland
6 just keep that, right? So the tax planning was you pay
7 a portion of your CLO fees, Highland, right?

8 But those -- that transaction, that --
9 like I said earlier, that note irrespective of what fees
10 you would receive -- let's say the fees went to zero.
11 That note between Highland and Acis was a real bona fide
12 note subject to risk, subject to -- you know, again,
13 subject to the payment streams that Highland agreed to
14 pay Acis, the fixed payment stream.

15 Q. Again, notwithstanding that transfer agreement,
16 Highland continued to provide services to Acis under
17 both the sub-advisory agreement and the shared services
18 agreement, correct?

19 A. Yes.

20 Q. Okay. In fact, Highland wound up filing proofs
21 of claim in the Acis bankruptcy case, correct?

22 A. Highland filed proofs of claim for -- are you
23 asking me the question of -- I'm sorry. I don't
24 understand what --

25 Q. Are you aware that Highland filed proofs of

1 claim against Acis in the Acis bankruptcy case for
2 unpaid fees under the shared services and sub-advisory
3 agreement?

4 A. Obviously, I was involved. I don't -- there
5 was so much going on at the time, John, I don't recall.

6 Q. Okay.

7 MR. MORRIS: Let's mark as the next
8 exhibit, which is 14, a proof of claim from the Highland
9 bankruptcy case that was marked as Claim Number 27.

10 (Exhibit 14 marked.)

11 MR. MORRIS: Good stapler you have there.

12 MR. AIGEN: Right. I can't believe it is
13 still going.

14 MR. MORRIS: Okay. Very good.

15 Q. (BY MR. MORRIS) All right. Mr. Waterhouse, do
16 you see this is a proof of claim that was filed by
17 Highland in the Acis bankruptcy?

18 A. In the Acis bankruptcy, yes. I see this. This
19 is the Acis bankruptcy.

20 Q. Right.

21 A. Okay.

22 Q. And if you look at the second page, the bases
23 for the claim is the sub-advisory services and the
24 shared services agreements in Number 8 there.

25 A. Yes.

1 Q. And the claim is for over \$4.6 million. Do you
2 see that?

3 A. I do.

4 Q. And it was signed by Mr. Ellington on August 1,
5 2018. Do you see that?

6 A. I do.

7 Q. Okay. And so does that refresh your
8 recollection that Highland filed an unsecured proof of
9 claim against Acis in the Acis bankruptcy for unpaid
10 fees under the shared services agreement and the
11 sub-advisory agreement?

12 A. I don't recall even -- as I was saying, I'm not
13 aware that this happened but obviously it did. I was --
14 I had pretty much zero involvement in the Acis
15 bankruptcy.

16 Q. Well, as the Highland CFO, were you aware in
17 2018 that Highland was carrying a receivable from Acis
18 in excess of four and a half million dollars?

19 A. I don't recall, but if it's on the books, it's
20 on the books.

21 Q. Are you aware that Highland also filed an
22 administrative claim in the Acis bankruptcy?

23 A. I had zero involvement in the Acis bankruptcy.

24 Q. All right. So you are not aware of it?

25 A. I just...

1 MR. MORRIS: Let's mark as the next exhibit
2 which is --

3 THE COURT REPORTER: 15.

4 MR. MORRIS: -- 15.

5 (Exhibit 15 marked.)

6 Q. (BY MR. MORRIS) HCLOM's Combined Discovery
7 Responses and Objections. I need a copy of that. We'll
8 come back to it. Instead, let's go back to -- let's see
9 if we can get side-by-side Exhibit 4, which is the
10 acknowledgment and waiver and the assignment and
11 transfer agreement, which is Exhibit 13.

12 Okay. So the assignment and transfer
13 agreement is signed as of November 3rd, 2017, right?

14 A. Yes.

15 Q. And if you look at Section 1 and 2 of that
16 agreement, Acis was required to promptly provide notice
17 to the controlling class of each CLO and subsequent to
18 the delivery of the notices each of Acis and HCLOM was
19 required to promptly pursue an appointment for each CLO,
20 correct?

21 A. Yes.

22 Q. Okay. And those things never happened,
23 correct?

24 A. No. I mean, we talked about the resets, right?
25 They were working with the existing investors in the

1 Acis CLOs about a successor manager. There was a reset
2 on the table, as we discussed, Acis 2013-3, that got
3 nixed because of the bankruptcy.

4 There were subsequent reset attempts,
5 right? But it was all stopped because of the
6 bankruptcy. As there was a TRO from what I --

7 Q. Well, so look at Exhibit 4. That's the
8 acknowledgment and waiver. That's where HCLOM agreed
9 that those things never happened and never would happen
10 and it's dated January 19, 2018, before the Acis
11 bankruptcy is even filed. Isn't that correct?

12 A. Well, I think this acknowledgment and waiver
13 just says we have to promptly provide notice. But
14 again, we talked about this. I think this is just
15 waiving the notice provision, but they're talking to
16 the investors of the CLO in definitely January 2018,
17 Acis 2013-3.

18 So my interpretation is that they --
19 whoever drafted this is saying we don't have to
20 provide you the notice -- yeah. There's a notice
21 provision and we're just waiving that.

22 Q. But that's because HCLOM, Limited will never
23 become the successor manager, correct? That's what this
24 is saying?

25 A. I don't think they -- the Acis 2013 reset, what

1 I remember, was that at the end of January. Right?

2 This is January 19th. So again, I think that CLO went
3 to market and -- at the end of January.

4 Q. And who was marketing that reset? Was that
5 Mizuho?

6 A. Our CLO team was working with a third -- you
7 know, a counterparty. I don't remember the counterparty
8 but Hunter Covitz, the CLO team, was working on that
9 reset as --

10 Q. And if the reset was successful, do you know
11 who the portfolio manager was going to be?

12 A. It's my understanding, HCLOM.

13 Q. HCLOM, LLC or HCLOM, Ltd.?

14 A. My understanding is HCLOM, Ltd.

15 Q. And what's the bases for that understanding?

16 A. Yeah, just kind of -- just general knowledge of
17 being in there.

18 Q. Even though this agreement, this very agreement
19 that HCLOM signed says that each applicable CLO issuer
20 will appoint Highland CLO Management, LLC?

21 A. Yeah. I mean, that's what this document says.
22 It was just my general understanding that HCLOM was
23 going to be the successor management.

24 I don't recall the interface between how
25 Highland CLO Management, LLC or maybe -- again, I wasn't

1 involved in drafting these documents. I'm not -- or
2 notice provisions under the attorneys.

3 I mean, the attorneys could be
4 contemplating it goes to, you know, again to HCLOM.
5 Maybe there's a subsidiary of HCLOM. I don't know.

6 Q. But you have said multiple times today that
7 seven or eight years ago is a long time and that you
8 don't remember, correct?

9 A. Yeah. I mean, you are --

10 Q. Just let me finish.

11 Is that correct?

12 A. Yes.

13 Q. And you did not look at one single document to
14 prepare for the topic on resets, correct?

15 A. That's correct.

16 Q. And so all you are doing here today is going on
17 your memory of what you think happened seven or eight
18 years ago, correct?

19 A. Yes. I'm doing that for a lot of things.

20 Q. Okay. And do you think -- how do you explain
21 the fact that Mr. Dondero and HCLOM signed an agreement
22 that says that CLO Management, LLC will be appointed as
23 the new collateral manager of the CLOs and not HCLOM,
24 Limited? How do you explain that?

25 A. No. I think I said earlier, I mean, it could

1 be just an oversight. It could be a typo. Could be
2 when we went through expense report in para four. When
3 we read the -- parsed this. Did you see HCLOM is
4 referred to as HCOLM, H-C-O-L-M, instead of H-C-L-O-M?

5 These things are very close to each other.
6 Just as an attorney messed this up, it could have easily
7 messed this up too.

8 Q. So that's your testimony, that that's the
9 speculation, that this is a typo? Is that HCLOM's
10 explanation for this document is that it's a typo?

11 A. What I'm saying is, I don't know for sure and I
12 have testified to that.

13 Q. Do you understand that indeed the reason, you
14 know, C follows -- D follows C, correct?

15 A. Yes.

16 Q. And C says that "In order to comply with the
17 U.S. Risk Retention Rules, in connection with each such
18 reset transaction, each applicable CLO issuer will
19 appoint Highland CLO Management, LLC as the collateral
20 manager of such CLO."

21 Have I read that accurately?

22 A. Yes.

23 Q. Okay. And the very next sentence says,
24 "Therefore."

25 And what does therefore mean to you?

1 That's a consequence, right? Is that a fair way to read
2 therefore?

3 A. Yes.

4 Q. As a consequence of the decision to appoint
5 Highland CLO Management, LLC, quote, "None of the
6 notices have been, nor will be delivered pursuant to the
7 transfer agreement and none of the appointments have
8 been, nor will be made pursuant to the transfer
9 agreement."

10 Have I read that in substance correctly?

11 A. Yes.

12 Q. So is it fair as HCLOM's corporate
13 representative today to say that D is the effect of C?
14 There's a cause and effect there?

15 MR. AIGEN: Objection; form.

16 A. I mean, it's saying that in order to comply
17 with each -- you know, each reset transaction, it's
18 saying none of the notices have been nor will be
19 delivered. I mean, it's --

20 Q. (BY MR. MORRIS) It's because -- the reason the
21 notices have not and will not be delivered is because a
22 different entity has been designated to be the portfolio
23 manager or the collateral manager, correct?

24 A. I don't know that, but...

25 Q. Okay. You're HCLOM's corporate representative

1 today, right? And this is one of the ancillary
2 agreements, right?

3 A. I mean.

4 Q. Is that correct?

5 A. Correct.

6 Q. You understood that before you walked in the
7 room today, that I would be asking you questions about
8 this document in your capacity as HCLOM's corporate
9 representative, correct?

10 A. Correct.

11 Q. And you didn't talk to anybody who signed this
12 document about whether or not there was a typo or what
13 it meant, correct?

14 A. Correct.

15 Q. And you don't have any -- and you weren't
16 involved in the drafting of this document, correct?

17 A. I was not.

18 Q. You didn't have any input into the terms of the
19 document, correct?

20 A. Not that I recall.

21 Q. And you didn't look at any of the reset
22 documents, correct?

23 A. I did not.

24 Q. So you don't know whether HCLOM, Ltd. or HCLOM,
25 LLC is identified as the prospective portfolio manager

1 of the reset Acis CLOs, correct?

2 A. I don't. I don't know.

3 Q. We talked earlier that Highland owed a payment
4 under the note as of May 31, 2018. Do you remember
5 that?

6 A. Yes.

7 Q. Okay. And I think you acknowledged at the time
8 that Highland didn't make that payment, right?

9 A. Yes.

10 Q. And instead of making the payment, a
11 forbearance agreement was entered into; is that right?

12 A. Yes.

13 Q. Let's mark as the next exhibit which is 15, the
14 forbearance agreement dated as of May 31, 2018.

15 (Exhibit 15 marked.)

16 Q. (BY MR. MORRIS) Now, you signed this document,
17 right?

18 A. I did.

19 Q. Is that your electronic signature or is that
20 your wet signature, if you know?

21 A. I really don't know.

22 Q. Do you remember the circumstances surrounding
23 your execution of this document?

24 A. Not really.

25 Q. Do you know why Highland didn't make the

1 payment that was due on May 18 -- withdrawn.

2 Do you know why Highland didn't make the
3 payment that was due on May 31, 2018?

4 A. I don't recall.

5 Q. Do you know if Mr. Dondero made the
6 determination not to make the payment at that time?

7 A. I don't remember.

8 Q. Did you discuss with anyone whether Highland
9 should make the payment that was due on May 31, 2018?

10 A. I don't recall.

11 Q. Did HCLOM ever demand the payment?

12 A. Not that I recall.

13 Q. Do you know if HCLOM ever declared a default
14 under the note for failure to make the payment that was
15 due on May 31, 2018?

16 A. I don't believe it did.

17 Q. Do you know if HCLOM ever exercised any
18 remedies arising from Highland's failure to make the
19 payment that was due on May 31, 2018?

20 A. I'm not aware of any.

21 Q. Instead, the forbearance agreement was entered,
22 correct?

23 A. A forbearance agreement was entered into.

24 Q. Okay. And did you review this document before
25 you signed it?

1 A. I don't remember signing this document. So I
2 don't even -- I may have. I may not have.

3 Q. This is another one of the ancillary agreements
4 that was identified in the 30(b)(6) notice, correct?

5 A. Yes.

6 Q. What did you do to prepare yourself to answer
7 questions about this agreement?

8 A. Just read through the agreement.

9 Q. You never spoke with Mr. Cullinane about this
10 agreement, right, because you never spoke to him at any
11 time, correct?

12 A. Correct.

13 Q. Do you recall discussing this document with
14 anybody before you signed it?

15 A. I don't recall.

16 Q. Do you recall who asked you to sign it?

17 A. I don't.

18 Q. Do you recall where the idea of a forbearance
19 agreement originated?

20 A. I don't.

21 Q. What was the benefit to HCLOM from entering
22 into this forbearance agreement -- withdrawn.

23 Do you know why HCLOM entered into this
24 forbearance agreement?

25 A. It's my general understanding that everything

1 that was going on with the Acis bankruptcy and the
2 litigation there, the forbearance agreement was entered
3 into to kind of let things settle in the Acis
4 bankruptcy.

5 Q. Is it HCLOM's position that Highland had an
6 obligation to pay on the note regardless of whether or
7 not it received any benefits in connection with the
8 transfer agreement?

9 A. Yes.

10 Q. Okay. So then what does the Acis bankruptcy
11 have to do with anything? You mentioned the Acis
12 bankruptcy and wanting to let things, you know, settle
13 down. How does the Acis bankruptcy have any impact on
14 Highland's obligation to pay HCLOM under the note?

15 A. I don't know. That's what I generally
16 remember.

17 Q. HCLOM was relieved of the obligation to make
18 the HCM stabilization fees, correct?

19 A. HCLOM was, yes.

20 Q. But HCLOM -- everybody knew that HCLOM wasn't
21 receiving any fees under the portfolio management
22 agreement, correct?

23 A. Yes.

24 Q. So there's no benefit to HCLOM from being
25 relieved of an obligation it didn't have, fair?

1 A. There's no benefit to HCLOM -- I mean, yeah.

2 HCLOM didn't have any assets.

3 Q. Right. And it didn't have any -- it wasn't
4 receiving anything which would be defined as the HCM
5 stabilization fees, correct?

6 A. Correct. Yeah. I mean, HCLOM never
7 received -- it didn't have any assets; it wasn't getting
8 any.

9 Q. And everybody knew that, right, at this time?

10 A. I mean, yes. There were people at HCLOM or
11 Highland that knew about this.

12 Q. What was the benefit to HCLOM from entering
13 into this forbearance agreement?

14 A. I mean, it's working with the investors. It's
15 working with Highland to preserve that relationship with
16 Highland. It's working to -- the CLO fees I think were
17 still, you know, trying to be reset or moved over at
18 some point. So I mean it's HCLOM's benefit to, you
19 said, hasn't received anything, to work with Highland
20 and kind of preserve that relationship.

21 Q. What investors are you referring to?

22 A. The investors in the CLOs.

23 Q. Why do the investors in the CLO care if
24 Highland pays HCLOM under the note?

25 A. I mean, the investors care about entering into

1 new agreements with HCLOM as manager of the CLO. What
2 I'm referring to is HCLOM entered into forbearance while
3 all that's going to be worked out with Highland to
4 preserve its relationship with Highland.

5 Q. So HCLOM did this as a solid to Highland;
6 that's the benefit that it got?

7 MR. AIGEN: Objection; form.

8 A. I mean, you know, there's -- people work things
9 out. There are work-outs. There are things that happen
10 like that. I mean, it's -- if you get in a loan
11 work-out situation, yeah, things like that happen.

12 Q. (BY MR. MORRIS) But usually the lender gets
13 something in return, right? I'm not familiar with
14 lenders agreeing to forebear and getting nothing in
15 return and I'm still struggling to identify what -- I'm
16 still struggling to hear from you if you can identify,
17 as HCLOM's corporate representative today, what exactly
18 HCLOM got in exchange for not getting paid.

19 A. Again, it's preservation of relationship,
20 things like that.

21 Q. Okay. Any other things like that?

22 A. No.

23 Q. Did Mr. Dondero ever tell Mr. Cullinane that if
24 HCLOM pressed for the payment under the notes, HCLOM can
25 forget about being a CLO manager in the future?

1 A. You would have to ask Mr. Dondero.

2 Q. Did you ever hear that?

3 A. I didn't.

4 Q. Do you think the relationship would have been
5 damaged if HCLOM asked for what it now contends it was
6 entitled to under the note?

7 A. I mean, that's my understanding.

8 Q. Who did you get that understanding from?

9 A. Just being in the environment, being in --
10 it's -- if you are going to forebear something, right,
11 with Highland -- what is HCLOM getting? HCLOM didn't
12 receive cash. So, again, you are looking at this saying
13 to enter into the forbearance agreement, right, what is
14 it getting? It is getting a promise to pay in another
15 year. And so it's preserving that relationship and kind
16 of kicking the timetable out. So that's just kind of my
17 bases just reading the document.

18 Q. Is it fair to say that there's a quid pro quo
19 in this document that Highland won't ask for the HCM
20 stabilization fees and HCLOM won't ask for the
21 stabilization payments?

22 A. I mean, it's saying in one, HCM agrees it will
23 not demand payment. Right? And then it says HCLOM
24 agrees it will not demand payment of the stabilization
25 payments for a period of one year.

1 So it's saying Highland agrees it will not
2 demand payment of stabilization fees for a year, kicks
3 it a year, and then HCLOM is saying that they won't
4 demand payment for a year as well.

5 Q. Let's look at the next document which is the
6 other forbearance agreement dated a year later.

7 (Exhibit 16 marked.)

8 Q. (BY MR. MORRIS) And you have seen this
9 document before, sir?

10 A. Yes.

11 Q. And you signed it now on behalf of both HCLOM
12 and Highland, correct?

13 A. Yes.

14 Q. By this time, the Acis's plan had been
15 confirmed, correct?

16 A. I don't remember when it was confirmed, but...

17 Q. Do you remember it was in the summer of 2018?

18 A. Okay. So, yeah.

19 Q. So there's no more Acis resets going on in May
20 of 2019, correct?

21 A. Yeah, I don't think there are.

22 Q. And you signed this document on behalf of
23 HCLOM, correct?

24 A. Yes.

25 Q. Do you remember the circumstances that led you

1 to sign this document in May of 2019 on behalf of both
2 Highland and HCLOM?

3 A. I don't I mean absolutely. I think HCLOM --
4 when I reviewed this document, I looked at it and said,
5 oh, wow, I signed on behalf of both entities.

6 Q. Yeah.

7 A. But, no, I don't recall.

8 Q. Is it fair to say that as of May 2019, there's
9 no chance that HCLOM is ever going to be the portfolio
10 manager for Acis, any Acis CLO?

11 A. The Acis bankruptcy was confirmed. If all that
12 went to Brigade, then yeah. None of the Acis deals
13 would have been able to go to HCLOM.

14 Q. Was there any business being contemplated with
15 HCLOM in the first half of 2019?

16 A. The CLO group is always trying to want CLOs and
17 do deals. I don't remember specifically.

18 Q. Do you remember generally? Do you remember
19 HCLOM ever being identified -- let me finish -- do you
20 remember HCLOM, Ltd. ever being identified as a
21 portfolio manager in 2019?

22 A. I don't recall. Again, I don't recall, but
23 there's a CLO team at Highland and it's responsible for
24 that, but I don't recall.

25 Q. What benefit was there to HCLOM from entering

1 into this amended-and-restated forbearance agreement?

2 A. The only thing I can think of is for -- again,
3 to preserve that relationship as well.

4 Q. To preserve it for what?

5 A. For future fees or things like that.

6 Q. But you are not aware of any attempt being made
7 by anybody in 2019 to install HCLOM, Ltd. as a portfolio
8 manager that would generate fees, correct?

9 A. I don't recall, but I'm not saying there
10 weren't efforts that were ongoing.

11 Q. But you have no reason to believe that there
12 were any efforts ongoing; it's pure speculation,
13 correct?

14 A. There is a team at Highland that is responsible
15 for managing the CLOs. They routinely were, again,
16 coming up with new CLOs, talking to investors. Just
17 because I'm not aware of it doesn't mean that it wasn't
18 going on in the background.

19 Q. Okay. You weren't a member of the team, right?

20 A. I wasn't.

21 Q. You had no personal knowledge of anything you
22 are speculating about, correct?

23 A. I wasn't -- I wasn't a member of the Highland
24 CLO team. I typically never engaged in any type of
25 marketing or I never talked to CLO investors, anything

1 like that. So that's part of that team and that's the
2 unique thing about Highland is it was a CLO manager and
3 there was a team of folks and that's how it grew up.

4 Q. And in fact, you have no personal knowledge of
5 any discussion or attempt by anybody in the world after
6 January 19, 2018, to install HCLOM, Ltd. as the
7 portfolio manager of the CLO, correct?

8 A. I'm not aware of any, but that doesn't mean
9 they weren't going on in the background.

10 MR. MORRIS: I'm going to move to strike
11 everything after "I'm not aware of any."

12 Q. (BY MR. MORRIS) Do you recall anybody
13 explaining to you why the amended-and-restated
14 forbearance agreement was needed?

15 A. I don't remember.

16 Q. Do you know why Mr. Cullinane didn't sign this
17 document?

18 A. No.

19 Q. Do you know who's handwriting it is that put
20 your name and your titles on this document?

21 A. I do.

22 Q. Who is that?

23 A. Kristin.

24 Q. Kristin Hendrix?

25 A. Uh-huh.

1 Q. Did she explain to you what this document was?

2 A. I can speculate, but I don't remember.

3 Q. I appreciate the lack of speculation.

4 MR. MORRIS: Let's take a short break. I'm
5 really near the end. I have one or two documents left
6 maybe.

7 THE VIDEOGRAPHER: Off the record. The
8 time is 4:12.

9 (Break taken from 4:12 p.m. to 4:25 p.m.)

10 THE VIDEOGRAPHER: Back on the record. The
11 time is 4:25.

12 Q. (BY MR. MORRIS) I have just a few more
13 minutes, Mr. Waterhouse. Thank you for your patience.
14 Let's go to what we'll mark as Exhibit 17, which is
15 HCLOM, Limited's response to Highland's objection.

16 (Exhibit 17 marked.)

17 Q. (BY MR. MORRIS) Do you see this document, sir?

18 A. Yes.

19 Q. And have you read it before?

20 A. Yes.

21 Q. And do you see that it was prepared in April
22 of 2023?

23 A. Uh-huh.

24 Q. As HCLOM's corporate representative today, are
25 you aware of any mistakes in this document?

1 A. I'm not aware.

2 Q. Are you aware of any amendments needed to fully
3 and accurately set forth HCLOM's factual and legal bases
4 for responding to the claimed objection?

5 A. I'm not aware.

6 Q. So HCLOM doesn't intend to amend this in any
7 way; is that correct?

8 MR. AIGEN: Objection; form.

9 A. Not that I'm aware of.

10 Q. (BY MR. MORRIS) There's a section in here
11 starting on page eight concerning the Debtor's position
12 taken in this case in the Acis bankruptcy case. Do you
13 see that?

14 A. Which paragraph?

15 Q. It's the heading that's above 33.

16 A. Yeah.

17 Q. Do you see that section of this brief?

18 A. Uh-huh.

19 Q. As HCLOM's corporate representative, are you
20 aware of any factors that are relevant to the position
21 described in Heading C that are not described in this
22 document?

23 MR. AIGEN: Objection; form.

24 A. I'm not aware.

25 Q. (BY MR. MORRIS) Let's mark as the next

1 Exhibit 18, a document that is labeled HCLOM's Combined
2 Discovery Responses and Objections.

3 (Exhibit 18 marked.)

4 Q. (BY MR. MORRIS) Do you know what this document
5 is, sir?

6 A. Yes.

7 Q. What is this document?

8 A. It's Highland's Combined Discovery Responses
9 and Objections.

10 Q. If you look at page ten, you will see it's
11 dated August 23, 2024. Do you see that?

12 A. August 23, 2024, yes.

13 Q. Did you personally review this document at any
14 time before August 23, 2024?

15 A. I did not.

16 Q. So is it fair to say that this document doesn't
17 reflect any comments or -- withdrawn.

18 Is it fair to say, then, that you did not
19 have an opportunity to amend this document before it was
20 served on me?

21 A. Yes. I mean, I didn't review it as of -- I
22 read it later.

23 Q. Okay. You read it in accordance with the last
24 page, the verification on or about September 11, 2024,
25 correct?

1 A. Yes.

2 Q. In looking at the verification, it says that --
3 towards the bottom, quote, "Based on my personal
4 knowledge and/or knowledge obtained from other persons
5 believed to have personal knowledge, HCLOM's answers to
6 the Debtor's interrogatories are true."

7 Have I read that correctly?

8 A. Yes.

9 Q. Can you identify what other persons you are
10 referring to there with personal knowledge?

11 A. I didn't talk to anybody.

12 Q. Well, but it says that you did.

13 MR. AIGEN: Objection; form.

14 Q. (BY MR. MORRIS) It says, quote, you obtained
15 knowledge from, quote, "From other persons believed to
16 have personal knowledge."

17 Is that just not accurate?

18 A. Yeah. I mean, I prepped with Deborah and
19 Michael.

20 Q. And in verifying these interrogatories answers,
21 you did not obtain any knowledge from other persons
22 believed to have personal knowledge, correct?

23 A. Yeah. I just read through this document.

24 Q. Okay. So would it be more accurate to amend
25 that statement to say, "Based on my personal knowledge

1 and/or discussions with counsel, Highland's answers to
2 the Debtor's interrogatories are true"?

3 MR. AIGEN: Objection; form.

4 A. Sure.

5 Q. (BY MR. MORRIS) That would be more accurate
6 because you did not, in fact, speak with anybody that
7 you believed had personal knowledge, correct?

8 A. True.

9 Q. And you have no reason to believe that the
10 lawyers you spoke with have personal knowledge regarding
11 any of the facts of these interrogatory responses,
12 correct?

13 A. Correct.

14 Q. Are the responses set forth in this document
15 accurate today to the best of your knowledge?

16 A. Yes.

17 Q. Are you aware of any responses that need to be
18 amended or modified in any way to make them more
19 accurate?

20 A. I'm not aware.

21 Q. Can you turn to Response Interrogatory
22 Number 1, which is on the second page of the document.

23 Do you understand that HCLOM was asked to
24 identify each thing of value that HCLOM provided for
25 Highland's benefit in exchange for the transfer of the

1 note? That's what the interrogatory asked, right?

2 A. Correct. Yeah.

3 Q. Does the answer to Interrogatory Number 1
4 accurately describe what HCLOM contends is, quote, "each
5 thing of value" that HCLOM provided for Highland's
6 benefit in exchange for the transfer of the note?

7 A. Yes. I mean, this seems fine.

8 Q. I'm looking at Interrogatory Number 2. That
9 asks HCLOM to identify the person who negotiated the
10 assignment on behalf of each party thereto. Do you see
11 that?

12 A. Yes.

13 Q. HCLOM states that Mr. Surgent and Mr. Cournoyer
14 drafted the terms of the assignment. Do you see that?

15 A. Uh-huh.

16 Q. Do you know if anybody instructed them to do
17 so?

18 A. I'm not aware.

19 Q. Do you have any reason to believe that
20 Mr. Surgent and Mr. Cournoyer drafted the terms of the
21 assignment without instruction or direction?

22 A. I wasn't -- I don't know.

23 Q. Did you make any effort to ascertain the
24 voracity of the statement concerning Mr. Surgent and
25 Mr. Cournoyer before signing the verification?

1 A. No. I took what counsel provided as correct.

2 Q. Then it says that Mr. Dondero executed the
3 assignment on behalf of Acis and Highland. Do you see
4 that?

5 A. Uh-huh.

6 Q. And you can see that from the document,
7 correct?

8 A. (Moving head up and down.)

9 Q. And you can also --

10 A. Yes.

11 Q. And you can also see that Mr. Cullinane
12 executed on behalf of HCLOM, correct?

13 A. Uh-huh.

14 Q. Okay. But this interrogatory response doesn't
15 identify the person who negotiated the assignment on
16 behalf of each party thereto, correct?

17 A. Correct.

18 Q. Is that because the assignment wasn't the
19 subject of any negotiations?

20 A. I don't know.

21 Q. You don't know if it was the subject of
22 negotiations?

23 A. I don't know, yeah.

24 Q. And you didn't speak with anybody who might
25 have personal knowledge as to whether or not the

1 document is the subject of negotiations, correct?

2 A. Yes.

3 Q. Interrogatory Number 8 asks when HCLOM first
4 disclosed the existence of the agreement to Mr. Terry or
5 his counsel. Do you see that?

6 A. Uh-huh.

7 Q. And the answer is that -- there's an objection
8 because Highland was actually the party that made the
9 disclosure. Do you see that?

10 A. Yes.

11 Q. Do you know who on behalf of Highland made the
12 disclosure?

13 A. I don't.

14 Q. Did you ever ask anybody who made that
15 disclosure?

16 A. No.

17 Q. Do you know when the disclosure was made?

18 A. I don't.

19 Q. Do you know if it was before or after Acis
20 filed for bankruptcy?

21 A. I don't know.

22 Q. Do you know anything about Highland's
23 disclosure of the assignment to Acis or Mr. Terry?

24 A. I don't.

25 Q. If you flip a few pages there are Request for

1 Admission. Do you see that?

2 A. Uh-huh.

3 Q. The first Request for Admission says, "Admit
4 that HCLOM did not provide anything of value for
5 Highland's benefit in exchange for the transfer of the
6 note."

7 Do you see that? And HCLOM has denied it?

8 A. I'm sorry. What page are you --

9 Q. It's page seven. Take your time. I know we're
10 all anxious to finish.

11 A. Yes, I see that.

12 Q. Okay. Do you see that Acis denied --
13 withdrawn.

14 Do you see that HCLOM denied the first
15 Request for Admission?

16 A. Yes.

17 Q. Do you know the bases for the denial?

18 A. I don't.

19 Q. Can you identify anything that HCLOM provided
20 for Highland's benefit in exchange for the transfer of
21 the note?

22 MR. AIGEN: Objection; form.

23 A. It kind of goes along with the forbearance.
24 You are preserving -- as a successor manager you are
25 preserving that relationship. You are trying to reset

1 the CLOs at the time, so...

2 Q. (BY MR. MORRIS) But HCLOM is receiving the
3 note?

4 A. Yeah.

5 Q. So I'm asking you what, if anything, HCLOM gave
6 to -- withdrawn.

7 The request to admit had asked HCLOM to
8 identify -- withdrawn.

9 The request to admit asks HCLOM to admit
10 that it didn't give anything of value to Highland in
11 exchange for the note, correct? And it was denied?

12 A. Correct.

13 Q. So does that mean that HCLOM contends that it
14 gave something of value for Highland's benefit in
15 exchange for the transfer of the note?

16 MR. AIGEN: Objection; form.

17 A. Based on the denial, it's saying it did not
18 provide -- sorry.

19 Q. (BY MR. MORRIS) Take your time. It's late and
20 it's a double-negative.

21 A. Admit that HCLOM did not provide. So we're
22 denying. So HCLOM did provide value for Highland's
23 benefit in exchange for transfer of the note.

24 Q. Exactly. And now I'm asking you what it
25 actually provided of value to Highland's benefit.

1 Is it just what's in response to

2 Interrogatory Number 1?

3 A. I --

4 Q. Because Interrogatory Number 1 asks HCLOM to
5 identify anything of value. So can we just incorporate
6 by reference? Can we say the denial is based on
7 response to Interrogatory Number 1?

8 A. I -- I view -- my view is that HCLOM, again, is
9 working -- again, working with Highland, become
10 successor manager. As part of that, it's preserving
11 that relationship. It's preserving the tax planning.
12 You know, to me that's the benefit HCLOM is providing to
13 Highland.

14 Q. The relationship is between and among the same
15 people; isn't that right?

16 A. They are the same people, but as we
17 established, they're different entities.

18 Q. But the same people are making the same
19 decisions on behalf of both entities, correct?

20 A. Yeah. I mean the same individuals are
21 involved, yes.

22 Q. And we looked at the roster of HCLOM's officers
23 earlier, right?

24 A. Right.

25 Q. And it's you and Mr. Dondero and Mr. Ellington,

1 correct?

2 A. Yes.

3 Q. Who were the same leadership at Highland,
4 correct?

5 A. Yes.

6 Q. And are you worried about preserving the
7 relationship with yourself?

8 A. I view this more as the -- you have a separate
9 entity. This is just my view and then there are -- you
10 are trying to respect the formalities. Right? So, yes,
11 I understand that they're same players here but -- or
12 the same individuals but, you know -- that's it.

13 Q. Just try and summarize here. HCLOM and
14 Highland were at all times controlled by the same
15 people, correct?

16 A. Yes.

17 Q. And at all times the owners of HCLOM --
18 withdrawn.

19 And at all times the beneficial owners of
20 HCLOM and Highland were the same, correct?

21 A. Yes. Up until 2022.

22 Q. Up until 2022.

23 MR. MORRIS: All right. I have no further
24 questions. Thank you very much.

25 MR. AIGEN: Okay.

1 THE COURT REPORTER: Before we go off the
2 record, do you want a copy of the transcript?

3 MR. AIGEN: Yeah. Can you get us a rough
4 quickly?

5 THE COURT REPORTER: Yes. I'll send rough
6 drafts out today. The final is being rushed for
7 tomorrow. Do you need a rush?

8 MR. AIGEN: I don't need the final that
9 quickly. Thursday is fine for me.

10 THE VIDEOGRAPHER: This deposition is off
11 the record at 4:44 p.m.

12 (Proceedings concluded at 4:44 p.m. CST)

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
)
Reorganized Debtor.)

REPORTER'S CERTIFICATION
DEPOSITION OF FRANK WATERHOUSE
SEPTEMBER 24, 2024

I, Christy Cortopassi, Certified Shorthand Reporter
in and for the State of Texas, hereby certify to the
following:

That the witness, FRANK WATERHOUSE, was duly sworn
by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered to
Mr. John Morris;

That the amount of time used by each party at the
deposition is as follows:

Mr. John Morris.....05:11
Mr. Michael P. Aigen.....00:00

I further certify that pursuant to FRCP No.
30(f)(i) that the signature of the deponent:

_____ was requested by the deponent or a party

1 before the completion of the deposition and that the
2 signature is to be returned within 30 days from date of
3 receipt of the transcript. If returned, the attached
4 Changes and Signature Page contains any changes and the
5 reasons therefor;

6 X was not requested by the deponent or a party
7 before the completion of the deposition.

8 I further certify that I am neither counsel for,
9 related to, nor employed by any of the parties or
10 attorneys in the action in which this proceeding was
11 taken, and further that I am not financially or
12 otherwise interested in the outcome of the action.

13 Certified to by me this 25th of September,
14 2024.

15
16
17 *Christy Cortopassi*

18 Christy Cortopassi, Texas CSR 6222
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<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <hr/> <p>5 IN RE: Chapter 11</p> <p>6 HIGHLAND CAPITAL MANAGEMENT, L.P., Case No.:</p> <p>7 Reorganized Debtor. 19-34054-sgj11</p> <hr/> <p>10 VIDEOTAPED DEPOSITION</p> <hr/> <p>13 WITNESS: JAMES DONDERO</p> <p>14 DATE: Monday, November 4, 2024</p> <p>15 START TIME: 11:04 a.m., CT</p> <p>16 END TIME: 3:31 p.m., CT</p> <p>17 REMOTE LOCATION: Remote Legal</p> <p>18 PROCEEDINGS OFFICER: Kindel McDermott, CDR-3527</p> <p>19 JOB NO.: 30439</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 PACHULSKI STANG ZIEHL & JONES LLP</p> <p>4 One Sansome Street</p> <p>5 Suite 3430</p> <p>6 San Francisco, California 94104</p> <p>7 By: JOHN A. MORRIS, ESQUIRE (PRO HAC VICE)</p> <p>8 JEFF POMERANTZ, ESQUIRE (PRO HAC VICE)</p> <p>9 jmorris@pszjlaw.com</p> <p>10 jpomerantz@pszjlaw.com</p> <p>11 Appearing for the Reorganized Debtor</p> <p>12</p> <p>13 STINSON LLP</p> <p>14 2200 Ross Avenue</p> <p>15 Suite 2900</p> <p>16 Dallas, Texas 75201</p> <p>17 By: DEBORAH DEITSCH-PEREZ, ESQUIRE</p> <p>18 deborah.deitschperez@stinson.com</p> <p>19 BY: MICHAEL AIGEN, ESQUIRE</p> <p>20 michael.aigen@stinson.com</p> <p>21 Appearing for HCLM, LLC, and the Witness</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 Andrea Bates, Legal Assistant to Mr. Morris</p> <p>25</p>
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<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS</p> <p>2 THE PROCEEDINGS OFFICER: Good morning.</p> <p>3 We are now on the record. Today's date is November 4th,</p> <p>4 2024, and the time is approximately 11:04 a.m., Central</p> <p>5 Time.</p> <p>6 My name is Kindel McDermott. I'm the --</p> <p>7 I am the officer designated by Remote Legal, 11</p> <p>8 Broadway, Suite 468, New York, New York, to take the</p> <p>9 record of this proceeding.</p> <p>10 This is the deposition of James Dondero,</p> <p>11 taken in the matter of In Re: Highland Capital</p> <p>12 Management, L.P., Case Number 19-34054-SGJ11, filed in</p> <p>13 the United States Bankruptcy Court for the Northern</p> <p>14 District of Texas, Dallas Division.</p> <p>15 Would all counsel please identify</p> <p>16 themselves for the record and state who they represent,</p> <p>17 starting with the noticing attorney.</p> <p>18 MR. MORRIS: Good morning. This is John</p> <p>19 Morris, Pachulski Stang Ziehl & Jones, for the</p> <p>20 reorganized Highland Capital Management, L.P. I'm here</p> <p>21 with my partner, Jeff Pomerantz, and my legal assistant,</p> <p>22 Andrea Bates.</p> <p>23 MS. DEITSCH-PEREZ: Hi. This is Deborah</p> <p>24 Deitsch-Perez from Stinson, representing HCLOM and the</p> <p>25 witness. I'm here with my partner, Mike Aigen.</p>	<p style="text-align: right;">Page 6</p> <p>1 THE PROCEEDINGS OFFICER: Thank you.</p> <p>2 This deposition is being taken remotely</p> <p>3 on behalf of the reorganized debtor and is being</p> <p>4 conducted pursuant to the procedural rules and laws</p> <p>5 governing this matter.</p> <p>6 As such, all parties agree to this means</p> <p>7 of capturing the official record, which may include</p> <p>8 recording by audio, audiovisual, and/or stenographic</p> <p>9 means, and agree not to oppose admissibility of the</p> <p>10 testimony in this proceeding on the basis of the</p> <p>11 personnel or method by which the testimony was captured.</p> <p>12 Further, all parties agree that the</p> <p>13 deposition officer or person administering the oath may</p> <p>14 be authorized to administer the oath under the rules</p> <p>15 where they reside.</p> <p>16 Do the parties all stipulate?</p> <p>17 MS. DEITSCH-PEREZ: Yes.</p> <p>18 MR. MORRIS: On behalf of Highland, yes.</p> <p>19 THE PROCEEDINGS OFFICER: Thank you. I</p> <p>20 will now swear in the witness.</p> <p>21 Mr. Dondero, please raise your right</p> <p>22 hand. Please state and spell your name for the record.</p> <p>23 THE WITNESS: James Dondero, J-A-M-E-S,</p> <p>24 D-O-N-D-E-R-O.</p> <p>25 THE PROCEEDINGS OFFICER: Do you swear or</p>
<p style="text-align: right;">Page 7</p> <p>1 affirm that the testimony you are about to give will be</p> <p>2 the truth, the whole truth, and nothing but the truth?</p> <p>3 MR. DONDERO: I do.</p> <p>4 WHEREUPON,</p> <p>5 J A M E S D O N D E R O,</p> <p>6 having been called as a witness, being duly sworn by the</p> <p>7 notary public present, testified as follows:</p> <p>8 THE PROCEEDINGS OFFICER: Thank you, sir.</p> <p>9 You may put your hand down.</p> <p>10 And, Counsel, we're ready to begin.</p> <p>11 MR. MORRIS: Okay.</p> <p>12 EXAMINATION</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Good morning, Mr. Dondero.</p> <p>15 A Morning.</p> <p>16 Q Nice to see you again. I hope you're well.</p> <p>17 Where are you located right now, physically?</p> <p>18 A Dallas.</p> <p>19 Q Are you in a -- whose office are you in?</p> <p>20 A I'm in a conference room.</p> <p>21 Q And is there anybody in the conference room</p> <p>22 with you?</p> <p>23 A Just Deborah and I.</p> <p>24 Q Okay. Do you have a telephone that's on at</p> <p>25 the moment?</p>	<p style="text-align: right;">Page 8</p> <p>1 A No.</p> <p>2 Q Okay. Do you have a computer in front of you?</p> <p>3 A Just the one I'm talking into.</p> <p>4 Q Thank you for the clarification. Do you have</p> <p>5 any notes of any kind?</p> <p>6 A No.</p> <p>7 Q Do you understand that you're here today to</p> <p>8 give testimony in connection with the claim objection</p> <p>9 relating to Highland Capital Management, LTD?</p> <p>10 A Not the specific entity, but I -- I know it's</p> <p>11 regarding a note, the \$10 million note.</p> <p>12 Q Do you know who holds the \$10 million note</p> <p>13 today?</p> <p>14 A No.</p> <p>15 Q Did you do anything to prepare for today's</p> <p>16 deposition?</p> <p>17 A Not other than meeting with Deborah.</p> <p>18 Q And when did you meet with Deborah?</p> <p>19 A For half an hour on Friday -- or an hour on</p> <p>20 Friday and 15 minutes today.</p> <p>21 Q So was Mr. Aigen present for either of those</p> <p>22 meetings?</p> <p>23 A No.</p> <p>24 Q Okay. So you met -- to prepare for today's</p> <p>25 deposition, you met with Deborah on Friday for 30 to 60</p>

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1 minutes and today for up to 15 minutes? Do I have that
2 right?
3 **A Yeah.**
4 **Q** Okay. Did you review any documents to prepare
5 for today's deposition?
6 **A No.**
7 **Q** Did you speak with anybody other than Deborah
8 for today's deposition?
9 **A No, I did not.**
10 **Q** Did you speak with anybody concerning the
11 events that are the subject of this litigation in
12 connection with today's deposition at any time in the
13 past 60 days?
14 **A No.**
15 **Q** Are you aware that Frank Waterhouse was
16 deposed in connection with this particular litigation?
17 **A No.**
18 **Q** So is it fair to say that you didn't speak
19 with Mr. Waterhouse about his testimony?
20 **A I did not.**
21 **Q** Have you reviewed any transcripts of Mr.
22 Waterhouse's testimony?
23 **A No.**
24 **Q** Okay. Are you familiar with an entity named
25 Highland CLO Management Limited?

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1 **Q** Can I refer to that entity going forward as
2 HCLOM? Just the acronym, H-C-L-O-M?
3 **A HCLOM, you want to use for the limited entity?**
4 **Q** Yes, sir.
5 **A Okay.**
6 **Q** Do you know where HCLOM was formed?
7 **A And -- other than that Limited, generally, is**
8 **a payment entity, other than that, no.**
9 **Q** Do you know who directed the formation of
10 HCLOM?
11 **A I -- I believe it would have been the lawyers,**
12 **the internal --**
13 **Q** Do you know -- I appreciate that. Do you know
14 -- can you identify any specific lawyer, or are you just
15 saying, generally, you believe it would have been the
16 lawyers?
17 **A I believe it, excuse me, generally would have**
18 **been our legal staff or internal lawyers.**
19 **Q** Okay. Are you aware that there is a similarly
20 named entity called Highland CLO Management, LLC?
21 **A Yes.**
22 **Q** Do you know when that entity was formed?
23 **A No.**
24 **Q** Do you know why that entity was formed?
25 **A I -- not specifically, but it's -- it sounds**

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1 **A I -- I just know it was one of the entities**
2 **involved with the resolution of Acis after Josh Terry**
3 **left.**
4 **Q** And do you know what role that entity played
5 in connection with the resolution of the issues that you
6 just referred to?
7 **A Not specifically.**
8 **Q** Do you have any knowledge at all as to what
9 role Highland CLO Management Limited played in
10 connection with the post-Josh-Terry issues surrounding
11 Acis?
12 **A Just generally.**
13 **Q** And what's your general understanding?
14 **A That it was one of the entities involved in --**
15 **on the note, and it was one of the entities that was**
16 **going to be involved in refinancing or resetting of the**
17 **CLOs.**
18 **Q** What does it mean -- what -- when you use the
19 term "involved," do you have any -- can you elaborate at
20 all on what that term means in connection with this
21 particular entity?
22 **A Not specifically.**
23 **Q** Do you know when Highland CLO Management
24 Limited was formed?
25 **A No.**

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1 **like it's an onshore entity involved in the same process**
2 **that we're talking about.**
3 **Q** Do you know who decided to form -- I'm going
4 to -- withdrawn.
5 I'm going to refer to that entity as HCLOM,
6 LLC. So we've got HCLOM, LLC, and then just HCLOM,
7 which refers to HCLOM Limited; is that okay?
8 **A Okay.**
9 **Q** Okay. So do you know who decided to form
10 HCLOM, LLC?
11 **A Same answer. I believe it would have been our**
12 **internal legal staff.**
13 **Q** Do you know if HCLOM, LLC, and HCLOM ever had
14 common ownership?
15 **A I don't know.**
16 **Q** Do you know if they ever had a contractual
17 relationship?
18 **A I -- I believe they had to have some**
19 **contractual relationship because ultimately, the assets**
20 **have to be managed by an RIA and managed with people or**
21 **some -- some sub-advisory agreement that gives it**
22 **people. And I -- and I believe that was all at the LLC**
23 **level, not at the LTD level.**
24 **Q** Are you aware -- have you ever seen a contract
25 between HCLOM, LLC, and HCLOM?

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1 **A Not that I'm -- not that I remember.**
2 **Q** Do you recall if anybody ever told you that
3 there was a contract that existed between HCLOM, LLC,
4 and HCLOM?
5 **A Not that I recall.**
6 **Q** When did you first become aware that there was
7 two different entities that were similarly named, one
8 that was HCLOM, LLC, and one that was HCLOM?
9 **A Excuse me. I don't know. Year -- years ago.**
10 **Q** Did you ever ask anybody why there were two
11 similarly named entities?
12 **A No. I -- I wasn't specifically involved in**
13 **any of the details on a transaction of this size. I was**
14 **aware of the creation of the note and the moving away**
15 **from Acis as a -- as a manager in the resets. But the**
16 **specifics, the -- the specifics -- my -- my awareness is**
17 **just general.**
18 **Q** So is it fair to say that you never asked
19 anybody why there were two entities created, one named
20 HCLOM Limited, and one named HCLOM, LLC; is that fair?
21 **A I never asked specifically, and I gave my best**
22 **speculation as to why there would be.**
23 **Q** Okay. Did anybody ever explain to you why
24 there were two HCLOM entities that were formed, one
25 HCLOM Limited and one HCLOM, LLC?

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1 **A Yes. I -- I believe it's generally --**
2 **generally, it's monies that are due to -- that are owed**
3 **to us.**
4 **Q** But you can't identify any specific entity
5 that has a direct or indirect ownership interest in
6 HCLOM Limited today, correct?
7 **A Correct.**
8 **Q** Okay. Do you know who the ultimate beneficial
9 owners of HCLOM Limited were at the time of formation?
10 **A No.**
11 **Q** Do you know if there was ever a change in the
12 beneficial ownership of HCLOM Limited?
13 **A I -- I would need to be refreshed on that. I**
14 **-- I don't specifically remember.**
15 **Q** Okay. Did you ever direct anybody to change
16 the ultimate beneficial ownership for HCLOM Limited?
17 **A No. Not that I recall.**
18 **Q** Do you know who controls HCLOM Limited today?
19 **A I do not.**
20 **Q** Did you ever know? Do you know who --
21 withdrawn.
22 Do you know who controlled HCLOM Limited at
23 any time?
24 **A I -- I do not. I do not -- I do not recall.**
25 **This is a small transaction. I wasn't involved in**

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1 **A Not that I recall.**
2 **Q** I apologize if I'm repeating here, but you
3 don't know today who holds the note in question; is that
4 fair?
5 MS. DEITSCH-PEREZ: Can you -- can you
6 say that again? Because I apologize. My phone rang
7 while you were talking.
8 MR. MORRIS: No problem.
9 BY MR. MORRIS:
10 **Q** Mr. Dondero, do you know who holds the note
11 that is the subject of this litigation?
12 **A Not specifically.**
13 **Q** Do you know generally?
14 **A I don't -- I don't know generally.**
15 **Q** Okay. Can you identify the ultimate
16 beneficial owners of HCLOM Limited today?
17 **A Not specifically.**
18 **Q** Do you know generally who the ultimate
19 beneficial owners of HCLOM Limited are today?
20 **A Just generally, it's our side of the table,**
21 **but I don't know -- I -- I don't know the ownership of**
22 **the entities.**
23 **Q** And when you refer to your side of the table,
24 are you referring to you or entities in which you have a
25 direct or indirect ownership interest?

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1 **details.**
2 **Q** Okay. Do you control HCLOM today?
3 **A I don't know. I'm -- I'm willing to be**
4 **refreshed, but I don't know.**
5 **Q** Yeah. Did you ever ask anybody who controlled
6 HCLOM Limited?
7 **A No.**
8 **Q** Do you know who's authorized to act on behalf
9 of HCLOM Limited today?
10 **A I do not specifically know, no.**
11 **Q** Do you know if you're authorized to act on
12 behalf of HCLOM Limited?
13 **A I -- I don't know.**
14 **Q** Are you aware that HCLOM Limited filed a
15 response to Highland's objection to the scheduled claims
16 that are at issue in this litigation?
17 **A I'm aware we're pursuing or trying to get the**
18 **note paid. I don't -- I -- I don't know the specific**
19 **motions.**
20 **Q** Have you ever seen any written response that
21 was filed on behalf of HCLOM Limited in connection with
22 this litigation?
23 **A Not that I recall.**
24 MR. MORRIS: Okay. Andrea, can you
25 please put up on the screen tab 15, which we'll mark as

<p style="text-align: right;">Page 17</p> <p>1 Dondero Exhibit 1? 2 (Exhibit 1 marked for identification.) 3 BY MR. MORRIS: 4 Q All right. Mr. Dondero, we've done this a few 5 times, so the last thing I want to do here is try to 6 trick you. If there's anything about a document that 7 you think you need to read for full context, let me 8 know. 9 I don't expect to ask substantive questions 10 about this document. But if we could just scroll down a 11 little bit on this first page, this is a document that 12 we've marked as Exhibit 1. You can see it was filed in 13 the bankruptcy court in Docket 3715 on April 3rd, 2023. 14 MR. MORRIS: And if we could just scroll 15 to the title of the document, please? 16 MS. DEITSCH-PEREZ: Yeah. You're aware 17 that very little of the document is visible on the 18 screen because of the size, right? 19 MR. MORRIS: Yeah. 20 THE PROCEEDINGS OFFICER: So I also 21 wanted -- sorry to interject here. I just wanted to 22 bring to your attention -- you can also control the 23 document on your end if you would like. There's a plus 24 or minus at the top of the document that you can zoom in 25 or out. There's a hand icon for panning around on the</p>	<p style="text-align: right;">Page 18</p> <p>1 document if you end up zooming in far enough. 2 MR. MORRIS: Oh, I see. Okay. Great. 3 Enough said. Okay. 4 BY MR. MORRIS: 5 Q Mr. Dondero, do you see -- 6 MR. MORRIS: I really do appreciate that. 7 BY MR. MORRIS: 8 Q Mr. Dondero, do you see this document is 9 called Response of Highland CLO Management, Ltd. to -- 10 and I'll just paraphrase here, to Highland's objection 11 to the schedule claims? 12 Do you see that that's the title of the 13 document, sir? 14 A Hold on. I can't -- that's all I got. I got 15 -- 16 MR. MORRIS: Deborah, scroll down on the 17 document. 18 MS. DEITSCH-PEREZ: Yeah, we're trying. 19 MR. MORRIS: It's just trying to -- 20 THE PROCEEDINGS OFFICER: Sorry. My 21 screen froze for a moment, and I had to refresh. 22 MS. DEITSCH-PEREZ: All right. You can 23 hit the down arrow. 24 THE WITNESS: All right. 25 MS. DEITSCH-PEREZ: And wait --</p>
<p style="text-align: right;">Page 19</p> <p>1 THE WITNESS: Response to -- okay. 2 BY MR. MORRIS: 3 Q Okay. I invite you to scroll down. Are you 4 able to scroll down on the document? 5 A Yes. Yeah. 6 Q So take your time. You can read as much of 7 the document or as little of the document as you want. 8 My only question for the moment is whether you've ever 9 seen it before, so take your time. 10 A Not that I recall. 11 Q So is it fair to say that you don't recall 12 reviewing this before it was filed? 13 A Correct. 14 Q And because you don't recall ever seeing it 15 before, is it fair to say that you have no basis to say 16 whether it's true or accurate today? 17 A Well, I -- I believe in the capabilities of my 18 internal legal and accounting and my external legal to 19 vet the pleadings. So I believe it's accurate, but it's 20 not -- I don't -- it -- it's not a document that I 21 created or reviewed. 22 Q Okay. Is there somebody within your 23 organization who is responsible for handling this 24 litigation on behalf of HCLOM Limited? 25 A I do not know. I mean, yes. There would be</p>	<p style="text-align: right;">Page 20</p> <p>1 internal legal involved, but I -- I don't know who. 2 Q Did you ever designate somebody to be 3 responsible for handling this litigation? 4 A I did not. 5 Q And nobody ever informed you as to the 6 identity of an in-house professional who was charged 7 with the responsibility of overseeing this litigation on 8 behalf of HCLOM Limited, correct? 9 A Correct. I don't know who specifically 10 internally was responsible or interfacing with 11 externals. 12 Q Did you ever speak with anybody internally 13 concerning the litigation that is the subject of this 14 response, that is, Highland's claims? 15 A I do not. 16 MR. MORRIS: Okay. Let's shift gears. 17 You can take that down. 18 MS. DEITSCH-PEREZ: John, you're frozen 19 on the screen. I don't know if that matters, but -- 20 THE PROCEEDINGS OFFICER: So one thing we 21 can try and do, Mr. Morris, if you move your mouse over 22 your -- over where your image is supposed to be, it will 23 bring up a little blue box at the top right corner of 24 your image. If you click on that, you can say, refresh 25 video.</p>

<p style="text-align: right;">Page 21</p> <p>1 MR. MORRIS: Appear to -- you see me, 2 Deb? 3 MS. DEITSCH-PEREZ: No. Now you're gone 4 entirely. 5 MR. MORRIS: You're probably better off. 6 THE WITNESS: I don't see him on my 7 screen, either. 8 MS. DEITSCH-PEREZ: Yeah. 9 THE WITNESS: I mean, he's not -- he's 10 not anywhere on my screen. 11 MR. AIGEN: Scroll down. You can see 12 John's window, but there's no image. Looks like his 13 video is turned off right now. If you scroll down, you 14 can see his box. I think he moved down when -- 15 MS. DEITSCH-PEREZ: I give up. 16 THE PROCEEDINGS OFFICER: I'm not sure 17 why you're not showing back up. Would you like me to 18 take us off the record while we figure this out? 19 MR. MORRIS: Yes, please. Apologies, 20 folks. 21 THE PROCEEDINGS OFFICER: Taking us off 22 the record. 23 (Off the record.) 24 THE PROCEEDINGS OFFICER: We are now back 25 on the record, 11:32 a.m., Central Time.</p>	<p style="text-align: right;">Page 22</p> <p>1 BY MR. MORRIS: 2 Q Mr. Dondero, can you hear me okay? 3 A Yes. 4 Q Okay. You're familiar with an entity called 5 Acis Capital Management, L.P., correct? 6 A Yes. 7 Q And we're going to refer to that entity as 8 Acis for purposes of this deposition; is that okay? 9 A Okay. 10 Q Acis was formed by Mark Okada, Josh Terry, and 11 you back in around 2011, correct? 12 A Yes. 13 Q And it was formed to be a registered advisor 14 to manage and invest in certain collateralized loan 15 obligations, correct? 16 A Yes. 17 Q Okay. And we're going to refer to 18 collateralized loan obligations as CLOs, okay? 19 A Okay. 20 Q And Acis managed those CLOs through certain 21 management agreements with the issuers of the CLOs, 22 correct? 23 A I -- yes, in -- in conjunction with a shared 24 services agreement with Highland. 25 Q I appreciate that. But just focusing on the</p>
<p style="text-align: right;">Page 23</p> <p>1 relationship between Acis and the issuers, Acis obtained 2 its role as the manager of the CLOs pursuant to 3 management agreements with the issuers; is that fair? 4 A Yes. 5 Q Okay. And pursuant to those CLO management 6 agreements, Acis would receive fees for its services, 7 correct? 8 A Yes. 9 Q And is it okay with you if, going forward, I - 10 I refer to the fees that are due under the CLO 11 management agreements as servicing fees? 12 A Let's call them management fees because that's 13 what they are. 14 Q Okay. In early 2018, Josh Terry commenced an 15 involuntary bankruptcy case against Acis and its general 16 partner, correct? 17 A Yes. 18 Q At all times prior to the commencement of the 19 Acis bankruptcy case, your family owned a majority of 20 Acis's limited partnership interest, correct? 21 A At all times prior, I -- I don't remember what 22 the original percentages were, if they were a majority 23 or not. I -- I believe, after Josh Terry left, it was a 24 majority, but I -- I don't know. I don't know if it was 25 before that.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q Do you recall that at some point during the 2 Acis bankruptcy, a gentleman named Robin Phelan was 3 appointed as the Chapter 11 trustee, and in that 4 capacity, he took control of Acis? 5 A I do remember that. 6 Q Okay. From the time of formation until Mr. 7 Phelan's taking of control during the Acis bankruptcy 8 case, you served as the president of Acis, correct? 9 A I -- yeah. I don't specifically remember it, 10 but it's logical. 11 Q Is it fair to say, until Mr. Phelan took 12 control of Acis as part of the Acis bankruptcy, that you 13 personally controlled Acis? 14 MS. DEITSCH-PEREZ: Object to the form. 15 BY MR. MORRIS: 16 Q In your capacity as -- 17 MR. MORRIS: I appreciate the objection. 18 Withdrawn. 19 BY MR. MORRIS: 20 Q Mr. Dondero, as an office -- withdrawn. 21 You were an officer of Acis at all times prior 22 to Mr. Phelan's appointment Chapter 11 trustee, right? 23 A I -- same answer. I -- I don't remember. 24 It's logical that I would've been, but I don't remember. 25 Q Do you know if there was any time prior to Mr.</p>

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1 Phelan's appointment when you did not control Acis?

2 **A I -- I don't -- I don't remember. And it's --**

3 **what is -- I -- I don't remember. And I -- I don't**

4 **remember if I was an officer. I'm willing to be**

5 **refreshed, you know? And I don't remember if I had**

6 **majority ownership prior to Josh leaving.**

7 **Q Okay. Josh left in or around June 2016,**

8 **right?**

9 **A Yes. I remember -- yeah, mid-16. I remember.**

10 **Yes.**

11 **Q And he left because you terminated him,**

12 **correct?**

13 **A I -- that's -- I think that's been subject to**

14 **litigation, and I -- I don't want to opine on that.**

15 **Q I'm not asking you to opine. I'm just asking**

16 **about facts. It's a fact that you terminated Mr. Terry**

17 **from his position at Acis in or around June 2016,**

18 **correct?**

19 **A There were issues of aberrant behavior on his**

20 **part, and I remember there were issues on whether or not**

21 **it was for cause. And I don't remember, ultimately, how**

22 **it was characterized or decided.**

23 **Q Okay. I want to assure you, Mr. Dondero, I'm**

24 **not here to re mitigate the circumstances surrounding**

25 **his departure. I'm just looking to establish some**

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1 Terry's departure?

2 **A I don't know. I don't know who was**

3 **specifically assigned to it.**

4 **Q Do you recall if Mr. Ellington was the person**

5 **ultimately responsible among the in-house team**

6 **addressing the issues following Mr. Terry's departure?**

7 **A He was -- he was the overall senior general**

8 **counsel, but I -- I don't believe he handled the nuts**

9 **and bolts. I believe he delegated it.**

10 **Q Did you delegate to a particular person the**

11 **responsibility for addressing issues arising from Mr.**

12 **Terry's departure?**

13 **A No.**

14 **Q Following Mr. Terry's departure, do you know**

15 **who controlled Acis?**

16 **A I -- I believe the reconfigured partnership**

17 **agreement outlined that.**

18 **Q And the only partners of Acis following Mr.**

19 **Terry's departure were entities owned and/or controlled**

20 **by you and Mr. Okada; is that fair?**

21 **A Yes, as far as ownership is concerned. But --**

22 **but again, control is a -- subject to various**

23 **descriptions, and there -- there would've -- again,**

24 **there was a shared services agreement which would've**

25 **given control, so to speak, of the asset management**

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1 foundation. But if you don't remember specifically the

2 circumstances of Terry's departure, that's fine.

3 **We can agree, though, that he left Acis in or**

4 **around June 2016, right?**

5 **A Yes. That's how I'd like to leave it.**

6 **Q That's fine. And following his departure, Mr.**

7 **Terry's ownership interest in Acis was allocated between**

8 **and among entities owned or controlled by you and Mr.**

9 **Okada, fair?**

10 **A Yes. I believe that's the case.**

11 **Q Okay. And who decided to allocate Mr. Terry's**

12 **ownership interest in Acis between and among entities**

13 **owned or controlled by you and Mister --**

14 **A I -- I believe that came from internal counsel**

15 **as the appropriate way to handle the reconfiguring of a**

16 **partnership when the primary operating partner left.**

17 **Q Okay. Can you identify any particular lawyer,**

18 **or do you think it was just in-house counsel? Is that**

19 **the best you can do today?**

20 **A That's the best I can do today.**

21 **Q Was there anybody at Highland's internal --**

22 **withdrawn.**

23 **Was there any in-house counsel that was**

24 **specifically tasked with the responsibility of**

25 **addressing Acis and the issues that arose following Mr.**

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1 **and/or the accounting and other services. I think back**

2 **to Highland. I think describing the ownership as**

3 **reconfigured with Mark and I is correct, but I -- I**

4 **don't want to -- I -- I don't want to broadly agree to**

5 **control over all aspects just because we were the**

6 **owners.**

7 **Q Okay. So following Mr. Terry's departure, his**

8 **ownership interest gets allocated to you and Mr. Okada**

9 **or entities owned directly or indirectly by the two of**

10 **you, fair?**

11 **A I believe that's the case.**

12 **Q And as part of that process, your recollection**

13 **is that Dugaboy or other entities owned or controlled by**

14 **you held a majority of the limited partnership interest**

15 **in Acis, correct?**

16 **A I believe so.**

17 **Q Okay. As the person who owned, directly or**

18 **indirectly, a majority of the limited partnership**

19 **interests of Acis, are you willing to tell me who, at**

20 **any time following Mr. Terry's departure, actually**

21 **controlled Acis?**

22 **A I'll say it one more time. Again, you know,**

23 **the -- how to handle the document properly with the exit**

24 **of the operating partner would've been done by internal**

25 **and external legal, with the assistance of accounting**

<p style="text-align: right;">Page 29</p> <p>1 where relevant. And I believe the portfolio management 2 and the accounting and regulatory stuff was governed by 3 shared services, as -- as it typically is when we have a 4 -- offshoot RNAs. 5 Q Was there any particular person who was 6 authorized -- personally authorized to act on behalf of 7 Acis following Mr. Terry's departure other than its 8 owners? 9 A I don't recall specifically delegating or 10 specifically designating anybody. 11 Q Do you know if Mister -- withdrawn. 12 Do you -- can you identify any officers of 13 Acis following Mr. Terry's departure? 14 A I don't remember, but I'm willing to be 15 refreshed. 16 Q Do you know if you ever controlled Acis at any 17 time after Mr. Terry's departure? 18 A I -- I think I've asked and answered that 19 several times. 20 Q No. I'm now -- I'm not -- I'm now asking 21 specifically about you. Do you know if you ever 22 controlled Acis after Mr. Terry's departure? 23 MS. DEITSCH-PEREZ: Object to the form. 24 THE WITNESS: Not -- not beyond what I've 25 answered already.</p>	<p style="text-align: right;">Page 30</p> <p>1 BY MR. MORRIS: 2 Q Did you ever take any action following Mr. 3 Terry's departure that bound Acis that you can recall? 4 A I -- I would've signed the documents, as put 5 forward by internal and external legal staff often. 6 Usually, I'm the signatory and stuff. 7 Q And when you signed things, is it fair to say 8 that when you signed documents, you understood that you 9 were binding Acis? 10 MS. DEITSCH-PEREZ: Object to the form. 11 MR. MORRIS: Withdrawn. 12 BY MR. MORRIS: 13 Q You understood, when you signed documents in 14 your capacity as an officer of Acis, that you were 15 binding that entity, correct? 16 A I -- I just understood I was the appropriate 17 signatory on appropriate legal documents, as put forward 18 by internal/external counsel. 19 Q And what was the basis for your understanding 20 that you were the appropriate person to do those tasks? 21 A Trust in the legal department and trust in the 22 external legal counsel. 23 Q Okay. Is there anybody who you can identify 24 that specifically informed you that you were the 25 appropriate person to sign documents on behalf of Acis?</p>
<p style="text-align: right;">Page 31</p> <p>1 A Not that I recall. 2 Q Okay. At some point in the fall of 2016, 3 Highland sued Mr. Terry in Texas State Court; do you 4 recall that? 5 A Not specifically. 6 Q Okay. I'm going to refer to Highland Capital 7 Management L.P. as Highland; is that okay? 8 A Sure. 9 Q And you controlled Highland at all times until 10 the independent board was appointed in January of 2020, 11 correct? 12 A Yes. 13 Q And you authorized Highland to file for 14 bankruptcy, correct? 15 A That turned out to be a mistake. I -- 16 Q But you did authorize it, right? 17 A I believe so. 18 Q Okay. So going back to the fall of 2016, did 19 you also authorize Highland to commence the action 20 against Mr. Terry? 21 A Did I -- yes, I was aware of it. I would've 22 ultimately had to authorize it, yes. 23 Q Okay. And a few weeks later, Mr. Terry, do 24 you recall, he made his Motion to Compel Arbitration, 25 and the dispute got submitted to arbitration? Do you</p>	<p style="text-align: right;">Page 32</p> <p>1 recall that? 2 A Yes. 3 Q Okay. 4 MR. MORRIS: Can we put tab up -- tab 1 5 up on the screen, just so we can have a point of 6 reference? 7 BY MR. MORRIS: 8 Q So this, Mr. Dondero, I'll represent to you is 9 Mr. Terry's Motion to Compel Arbitration. You'll see 10 that it's got the Highland versus Mr. Terry caption, and 11 you'll see in the upper right-hand corner that it was 12 filed in Dallas on September 12th, 2016. 13 Do you see that? 14 A Yes. 15 Q Okay. So just as a point of reference, Mr. 16 Terry gets -- Mr. Terry departs from Acis in June 2016. 17 Highland, based on your authority, commences a lawsuit 18 against Mr. Terry in the fall of 2016. And Mr. Terry 19 responds on September 12th with this Motion to Compel 20 Arbitration. 21 Does that generally conform with your 22 recollection of events? 23 A Generally. 24 Q Okay. And then short -- a short time later, 25 Acis and Highland enter into what some of us have been</p>

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1 referring to as a participation agreement.
2 Do you have any recollection of that?
3 A No. I'll need to be refreshed on that.
4 MR. MORRIS: Okay. Can we put up tab 2?
5 Which we will - I guess, let's -- before you take this
6 down, let's mark this Motion to Compel Arbitration, I
7 think, as Exhibit 2.
8 THE PROCEEDINGS OFFICER: Yes, it would
9 be Exhibit 2.
10 I didn't get a chance to mark that,
11 though, ma'am -- Ms. Bates.
12 MR. MORRIS: Can we take care of that at
13 a break?
14 MS. BATES: I'm sorry. I'm bringing it
15 up now. There you go.
16 MR. MORRIS: All right. Go ahead.
17 (Exhibit 2 marked for identification.)
18 THE PROCEEDINGS OFFICER: Okay. We're
19 good there. Sorry.
20 MR. MORRIS: That's okay. I'm learning
21 to process myself.
22 So let's take that down and put up what
23 we'll mark as Exhibit 3, which is tab number 2.
24 THE PROCEEDINGS OFFICER: Great. Thank
25 you.

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1 BY MR. MORRIS:
2 Q Okay. And if you go down to page -- I think
3 it's 15 of 22, can you just confirm for me that you
4 signed this agreement on behalf of both Highland and
5 Acis?
6 A Yes.
7 Q Okay. Do you recall if you read this document
8 before you signed it?
9 A I did not.
10 Q Do you have an understanding today of what
11 this document was intended to accomplish?
12 A Yes.
13 Q What is your recollection of what this
14 document was intended to accomplish? And again, you
15 know, to Deborah's point, if you'd like to scroll, I
16 don't mean to rush you.
17 A No, that's okay. My -- my general
18 understanding, and we've done several of these over the
19 years, is a -- a purchase of -- of fees, expected fees
20 for a note -- note -- note in cash or sometimes cash,
21 sometimes note, whatever, that has some tax advantages
22 to it, generally, in terms of deferring taxes and in
23 some cases, recharacterizing short-term income as
24 capital gains.
25 Q So is it fair to say that your understanding

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1 (Exhibit 3 marked for identification.)
2 BY MR. MORRIS:
3 Q And Mr. Dondero, again, feel free to scroll
4 through this document as you see fit. But do you see
5 that this is an Agreement for Purchase and Sale of CLO
6 Participation Interest between Acis and Highland, dated
7 as of October 7, 2016?
8 MS. DEITSCH-PEREZ: And I'll just note
9 for the record it's 22 pages. And he's -- this is the
10 most (indiscernible) reviewed.
11 MR. MORRIS: Yeah.
12 BY MR. MORRIS:
13 Q Do you see that that is what the document is
14 called, sir?
15 A Yeah. That -- that's all I got. I'm trying
16 to scroll. It's not taking the button, so it's a little
17 -- it's not taking this.
18 THE PROCEEDINGS OFFICER: So when you try
19 and scroll, go down.
20 MS. DEITSCH-PEREZ: So what -- hang on.
21 We got it. If you push down when it's in there, then it
22 will go. Otherwise, it will move this screen over here.
23 THE WITNESS: Yep. I got it.
24 MS. DEITSCH-PEREZ: All right.
25 THE WITNESS: Yes, I see the document.

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1 of -- is that the purpose of this document was to
2 capture tax benefits, either through the deferral of
3 income or through the recharacterization of income from
4 ordinary income to capital gains income?
5 A I -- I believe that's the structure and my
6 general purpose.
7 Q Okay. And do you understand that Acis is what
8 was known as -- what is known as a pass-through entity?
9 Are you familiar with that term?
10 A Yes.
11 Q Okay. What's your understanding of what a
12 pass-through entity is?
13 A A pass-through entity is typically a
14 partnership or an LLC that passes through the tax
15 liability directly to the owners and does -- isn't a
16 tax-paying entity in and of itself.
17 Q And so the benefits that you've described from
18 this agreement, it was your understanding -- withdrawn.
19 It was your understanding, at the time you
20 signed this agreement, that the intended beneficiaries
21 of this transaction were the ultimate beneficial owners
22 of Acis; is that fair?
23 A Well, the deferral and recharacterization
24 benefits all parties. And then it's reflected, usually,
25 in the price and timing and interest rate on the note.

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1 But it's -- yeah. It -- it's -- the accountants weigh
2 the benefits to all parties and then determine the
3 appropriate variables.
4 Q Highland was also a pass-through entity,
5 correct?
6 A Yes.
7 Q So that neither Highland nor Acis were the
8 tax-paying entities for the income and losses that
9 Highland and Acis experienced, right?
10 A Yeah. I don't understand why that's relevant,
11 but -- yes.
12 Q Right. So that -- so that whether it's income
13 or losses, those -- and that income and those losses
14 would pass through Highland or Acis, respectively, to
15 the beneficial owners of each entity, correct?
16 A Correct. And the ownership interest was
17 similar in both entities. And the transaction, again,
18 has a benefit to all parties in terms of deferral and
19 some recharacterization.
20 Q Would you need -- would you need -- withdrawn.
21 I'll get to it.
22 Was it your understanding that under this
23 agreement, Acis agreed to pay Highland a portion of the
24 management fees that we discussed earlier?
25 A I -- I don't know exactly how the mechanism

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1 A Yes.
2 Q Can we take a look at Schedule A? I think
3 it's the last page of the document. It's not the --
4 it's not the last page of the document. It's the page
5 right after the signature page. It's 16 of 22, ending
6 in Bates Number 8912.
7 A Yes.
8 Q So let me see if I understand this. This is
9 the Schedule A that's referred to Section 1 in the
10 agreement that we just looked at, right?
11 A Yes.
12 Q And these are the -- there's a list of CLO
13 issuers in the left-hand column, and then there's a
14 column called Total Servicer Fee; do you see that?
15 A Yes.
16 Q And the total servicer fee are the fees that
17 Acis was going to receive from the issuer in exchange
18 for managing the CLOs, correct?
19 A Yes.
20 Q And the next two columns show how that fee
21 would be divided between Acis and Highland, fair?
22 A Yes.
23 Q So that servicer fee retention amount is the
24 amount that Acis was going to retain as its portion of
25 the total servicer fee that it expected to receive from

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1 works, whether it's --
2 Q Let's try and go through it. I'm sorry. We
3 can -- if you can go to Section 1 of the document, which
4 --
5 A What page?
6 Q It's right under "Agreement." It's page 2.
7 It's got Bates Number 8900 in the lower right-hand
8 corner. So it's page 4 of the screen --
9 A Okay.
10 Q -- as you go through the document. And if you
11 could just take a moment to read paragraph 1 to
12 yourself? And just -- does --
13 A Yes. I -- I read it. This is why you're
14 using -- you wanted to use the word "servicer fee"
15 versus "management fee."
16 Q Yes.
17 A Okay. I -- I read it.
18 Q Okay. So when you signed this agreement, did
19 you understand that Acis was agreeing to pay to Highland
20 a portion of the servicing fees that it was going to
21 receive from serving as the portfolio manager of the
22 CLOs?
23 A Yes.
24 Q And do you see at the end of Section 1, there
25 is a reference to Schedule A?

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1 the issuer, correct?
2 A Just, I don't want to get tripped up in the
3 exact words, so I'm going back to page 4.
4 Q Take your time.
5 A It looks like the gross amount minus the
6 retention is the servicer fee payment amount, which is -
7 -
8 Q Right. Okay.
9 A -- which is that second column, I guess.
10 Q Right. So the last column, the Acis
11 Participation Interest, that is the amount of the total
12 servicer fee that Acis was agreeing to pay to Highland,
13 fair?
14 A I thought it was -- I thought it was saying
15 the opposite of that. Hold on. Servicer fee payment is
16 the aggregate minus the retention amount. The aggregate
17 minus the retention amount, so --
18 Q Try this just one more time and say that --
19 A In the aggregate minus, so it's one -- Column
20 1 minus Column 3 equals Column 2.
21 Q Correct. Or Column 1 minus Column 2 equals
22 Column 3. You could go either way, right?
23 A Yeah. Yes.
24 Q Okay. And the last column, the Acis
25 Participation Interest, that's the portion of the total

<p style="text-align: right;">Page 41</p> <p>1 servicing fee that was supposed to go to Highland, 2 correct? Under this agreement? 3 A Sorry. That -- but one -- one goes to 4 Highland, and one goes to Acis, right? 5 Q That's right. And it's servicer fee retention 6 amount that goes to Acis, and it's the Acis 7 participation interest that go to Highland, right? 8 A Let's make sure we get that right. Yes. It's 9 the Acis participation amount that goes to Highland. 10 Q Okay. So in exchange for the Acis 11 participation interests, as set forth in Schedule A, 12 Highland agreed to give some cash and a note; is that 13 right? 14 A Yes. 15 Q Okay. And that's set forth in Section 1.1, if 16 you go to that. 17 A Okay. 18 Q Okay. So am I correct that when you signed 19 this document, you understood that Acis would give to 20 Highland the participation interest set forth in the 21 last column of Schedule A, and in exchange, Highland 22 would give to Acis the cash purchase price and the note 23 described in Section 1.1? 24 A I -- I believe that was the -- the economics, 25 yeah.</p>	<p style="text-align: right;">Page 42</p> <p>1 Q Okay. Is it your understanding that nobody 2 could get any of the tax benefits that you described 3 earlier unless you had this exchange of cash in the form 4 of the Acis participation interests on the one hand, and 5 the payments that were required under Section 1.1 on the 6 other hand? 7 MS. DEITSCH-PEREZ: Object to the form. 8 THE WITNESS: Yeah. I -- I don't -- I 9 don't have an awareness of the nuts and bolts that it -- 10 it takes to be bona fide for tax purposes. But it -- 11 it's something that our internal lawyers and accountants 12 would've always vetted and gotten an opinion with 13 outside tax counsel, too. 14 MR. MORRIS: Okay. Let's take this down, 15 and let's put up -- actually, hold on one second. The 16 mote may be attached to this document. Oh, it's 17 unsigned. Let's take this down. And let's put up and 18 mark as the next exhibit -- thin. 19 k it's Exhibit 4, tab number 3? 20 THE PROCEEDINGS OFFICER: Yes, sir. 21 Exhibit 4. 22 (Exhibit 4 marked for identification.) 23 BY MR. MORRIS: 24 Q Okay. So you'll see up on the screen, what's 25 been marked as Exhibit 4 is a promissory note dated</p>
<p style="text-align: right;">Page 43</p> <p>1 October 7th, 2016, in the principal amount of 2 \$12,666,446. 3 Do you see that? 4 A Yes. 5 Q And if you scroll down, you signed this 6 promissory note, right? 7 A There we go again. There's the whole thing. 8 Q The next-to-the-last page. It's page 5 of 6. 9 A Yes. 10 Q Okay. And then what you did when you signed 11 this document is, you obligated Highland to make the 12 payment forth on Exhibit A, correct? 13 MS. DEITSCH-PEREZ: I think he's talking 14 about the next page. 15 MR. MORRIS: Yeah. 16 MS. DEITSCH-PEREZ: Exhibit -- after the 17 signature page, there's another. There's one more page. 18 THE WITNESS: Yes. 19 BY MR. MORRIS: 20 Q Okay. And this note and that cash payment 21 that we just looked at in Section 1.1, those were given 22 to Acis in exchange for the promise of the future stream 23 of servicing fees that we just looked at in the last 24 column of the participation agreement, right? 25 A Yes. I believe that was the economics.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Okay. And if we go back to the top of the 2 document, you know, the principal amount of the note is 3 12 -- I'm just going to call it \$12.6-plus million. 4 Do you know how that amount -- when combined 5 with the cash payment that was due under Section 1.1, do 6 you know how that amount was calculated? 7 A No. I wouldn't have been involved with that. 8 But again, that's where there's a give and take on the 9 variables and to be compliant with the tax code and to 10 provide some cushion and IRR, relative to the fee stream 11 on the other side. But -- but how that note -- how that 12 number is calculated, I -- I have no specific awareness 13 or no specific involvement at all. 14 Q Do you know, if you added the cash payment 15 with the principal amount of the note, whether that 16 would've equaled the servicing fees that Acis was to 17 give Highland under the participation agreement? Were 18 they supposed to be equal? 19 A I don't know. But my memory of other 20 transactions in the past is that typically, it's not 21 equal. There's, you know, again, some kind of cushion 22 or present value or interest component to it, also. But 23 -- but I -- I don't know. Let me just leave it at, I 24 don't know. 25 Q Okay. Do you know if the cash flow between</p>

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1 the two entities -- subject to the participation
2 agreement, were they supposed to at least approximate
3 each other?
4 **A Can you guys hear me? You guys kind of zapped**
5 **in and out there for a second.**
6 Q I can hear you.
7 **A Okay. Was the question approximately? Was**
8 **that the question?**
9 Q Yep.
10 **A I -- I'll say, in the ballpark. I -- I don't**
11 **want to use the word "approximately," implying that it's**
12 **close, because I don't think it's necessarily close.**
13 Q Do you know if there's any relationship
14 between the cash payment and the principal amount of the
15 note and the cash flow that Highland expected to receive
16 from Acis under the participation agreement? Is there
17 any relationship between those two numbers at all?
18 **A Yeah. Well, the same answer I've been giving.**
19 **I mean, subject to time, value of money, a cushion, an**
20 **interest rate, IRS tax code, there -- there's a bunch of**
21 **variables that go into setting it. And I -- I don't --**
22 **I -- I don't know the -- I don't know the tax laws, but**
23 **again, it's something that is done with the internal**
24 **accountants and outside opinions and et cetera. But I'm**
25 **not the person involved in any of those details.**

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1 Q And have -- can you quantify the benefit?
2 **A No.**
3 Q Did you ask anybody, before signing this
4 document, what the monetary benefit would be to Highland
5 from entering into this transaction?
6 **A I did not.**
7 Q Do you know what Highland's expected rate of
8 return was from entering into this transaction?
9 **A I do not.**
10 Q Did you -- do you recall if you asked anybody
11 what Highland's expected rate of return would be from
12 entering into this transaction?
13 **A I did not.**
14 Q Do you recall if anybody ever told you what
15 Highland's expected internal rate of return would be
16 from entering into this transaction?
17 **A I do not.**
18 Q Have you ever entered into a transaction with
19 a third party without knowing what the projected rate of
20 return was?
21 **A When I'm saying I did not know, I'm not saying**
22 **that the organization didn't know, or accounting didn't**
23 **know, or the tax department didn't know. I'm just**
24 **saying I didn't know. And yes, organizationally, there**
25 **are transactions that occur that I do not know the**

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1 MR. MORRIS: Okay. I'm just going to
2 move to strike.
3 BY MR. MORRIS:
4 Q And I'm just -- it's a really simple question.
5 Do you know if there's a relationship between the cash
6 flow that was expected to go from Acis to Highland and
7 the cash flow that was supposed to go from Highland to
8 Acis?
9 MS. DEITSCH-PEREZ: Object to the form.
10 THE WITNESS: Wow. Okay. You want to
11 strike my last answer? I'll just give you a short one.
12 No.
13 BY MR. MORRIS:
14 Q Thank you very much. What was the benefit to
15 Highland from entering into the participation agreement
16 and signing the promissory note?
17 **A Benefit? Again, my understanding is, these**
18 **are structured to provide tax benefits to both sides**
19 **that are reflected either in the tax benefits themselves**
20 **or the present value of the note being higher than**
21 **otherwise. There -- there's a tax benefit to all**
22 **parties, as I understand it.**
23 Q Okay. Can you describe the tax benefit to
24 Highland from this transaction?
25 **A Tax deferral and recharacterization.**

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1 **present value of, but other people in the organization**
2 **do.**
3 Q Could you -- would you -- would you have
4 authorized Highland to enter into the same participation
5 agreement on the same terms with a third party?
6 **A Boy. I -- I believe part of the process with**
7 **the external accounting firm and our internal compliance**
8 **department checks and verifies those things.**
9 Q I'm just asking you if you could envision
10 doing a similar transaction with a third party?
11 **A Yes.**
12 Q Can you identify a third party with whom
13 Highland did a similar transaction?
14 **A Well, you asked me, could I envision it? The**
15 **answer was yes. I -- I don't have a specific example,**
16 **though.**
17 Q Based on your understanding of the tax
18 benefits that were to inure to both Highland and Acis,
19 as well as their ultimate beneficial owners, would those
20 tax benefits have existed if they weren't affiliated
21 parties? If they didn't have common ownership?
22 **A Yes. And -- and these kind of transactions**
23 **happen in the market quite often.**
24 Q Okay.
25 **A Because it's a -- it's a way for a startup**

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1 money management firm that has a -- a promise of fees,
2 but needs capital for its next deal, to monetize those
3 fees so it can do a subsequent deal. It -- it -- these
4 kinds of structures are common among CLO managers. And
5 these kinds of structures are common in real estate and
6 other businesses, too.

7 Q Would Highland have entered into this
8 agreement, and would you have signed this promissory
9 note, if Acis wasn't on the other side of the
10 transaction?

11 MS. DEITSCH-PEREZ: Object to the form.

12 THE WITNESS: Sure, if there was a
13 business relationship or a business reason.

14 BY MR. MORRIS:

15 Q Whose idea was it to enter into this
16 transaction?

17 A I believe it came from the tax accountants.

18 Q And who were the tax accountants?

19 A I -- I don't know which. It's a group. I
20 don't know which one.

21 Q Is it Mark Patrick?

22 A I don't know.

23 Q What other tax accountants were there in the
24 fall of 2016?

25 A There is a department of four or five. There

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1 promise to give the cash payment and the note, correct?

2 A I believe, yes, that was the promises on the
3 Highland side.

4 Q Okay. And taking it in reverse, you were also
5 acting on behalf of Highland. And you would not have
6 agreed to give to Acis the promissory note and that cash
7 payment without Acis promising to give to Highland the
8 share of the participation agreements that we saw in
9 Schedule A, fair?

10 MS. DEITSCH-PEREZ: Object to the form.

11 THE WITNESS: I mean, yes. Those were
12 promises on the other side, correct.

13 BY MR. MORRIS:

14 Q Okay. Can we -- if you scroll down to the
15 bottom of the note -- I think it's the bottom. Yeah,
16 the last -- the amortization schedule on page 6. Tell
17 me when you're there, Mr. Dondero.

18 A I'm having a hard time getting it. I'm on
19 page 5.

20 MS. DEITSCH-PEREZ: That's weird. Okay.

21 Something is -- it's not you. It shows up on mine.

22 Okay. That's really weird. On mine, you can see
23 Exhibit A. On Jim's, you can't. There it is. Okay.

24 Got it.

25 MR. MORRIS: Thanks, Deborah.

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1 was another senior tax accountant named Rick Swadley,
2 and then there were two or three other tax accountants.

3 Q Do you recall, when we looked at paragraph 1.1
4 of the participation agreement, there was a cash
5 component and the note component, right?

6 A Yes.

7 Q Okay. And the note -- so the note was an
8 integral part of the participation agreement, fair?

9 MS. DEITSCH-PEREZ: Object to the form.

10 BY MR. MORRIS:

11 Q You can answer.

12 A It -- it was.

13 Q Right. You would never have signed this
14 promissory note on behalf of Highland if you didn't
15 receive the promise to receive the servicing fees from
16 Acis under the participation agreement, right?

17 MS. DEITSCH-PEREZ: Object to the form.

18 THE WITNESS: I mean, it was essentially
19 a trade of promises, and one side wouldn't have signed
20 it if they didn't get the promises of the other side,
21 and vice versa.

22 BY MR. MORRIS:

23 Q Exactly. So just to be really clear, as the
24 person who signed the participation on behalf of Acis,
25 you would not have done that for Acis if Highland didn't

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1 MS. DEITSCH-PEREZ: That was weird.

2 THE WITNESS: Okay. I see the
3 amortization schedule.

4 BY MR. MORRIS:

5 Q Okay. So under this agreement, Highland was
6 supposed to make a principal and interest payment of
7 approximately \$3.37 million on May 31st, 2017.

8 Do you see that?

9 A Yep.

10 Q Do you know if Highland made that payment?

11 A I don't know.

12 Q Do you know if Highland made any of the
13 payments on this amortization schedule?

14 A I don't know.

15 Q Did you ever direct anybody to make any
16 payments on this -- that are set forth on this
17 amortization schedule?

18 A I was not involved.

19 Q Did you ever direct someone not to make any of
20 the payments that were due under this note?

21 A I did not.

22 Q Do you know if Acis ever paid to Highland any
23 of the servicing fees that were described on Exhibit A
24 to the participation agreement?

25 A Just based on the timeline before the

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1 **injunctions, the state injunctions, the threats of the**
2 **injunctions, the bankruptcy, there probably were some.**
3 **But I -- I don't have an awareness of how many or what**
4 **amounts.**
5 Q Did you ever direct anybody on behalf of Acis
6 to make any of the payments that were due under the
7 participation agreement?
8 **A No. I wouldn't have been responsible for**
9 **administering the agreement.**
10 Q Do you know -- did -- do you recall if you
11 ever directed anybody not to make any of the payments on
12 behalf of Acis under the participation agreement?
13 **A I did not.**
14 Q Did you ever delegate to anybody the
15 responsibility for making the payments that were due
16 under the participation agreement and the promissory
17 note that we're looking at?
18 MS. DEITSCH-PEREZ: Object to the form.
19 THE WITNESS: Not specifically.
20 BY MR. MORRIS:
21 Q Would it have been Frank Waterhouse's --
22 withdrawn.
23 Are you aware that Frank Waterhouse was the
24 chief financial officer at Highland at the time?
25 **A Yes.**

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1 **bankruptcy and injunction stuff. I don't know.**
2 Q Well, before the bankruptcy, do you recall
3 that you signed Amended Shared Services and Sub-Advisory
4 Agreements on behalf of Highland and Acis?
5 **A You're testing my memory. I -- I believe that**
6 **was part of the Acis case. I -- I think there were some**
7 **adjustments post-Josh leaving.**
8 Q Okay.
9 MR. MORRIS: Can we put up on the screen
10 -- let's mark, as Exhibit 5, tab Number 12.
11 (Exhibit 5 marked for identification.)
12 BY MR. MORRIS:
13 Q And, Mr. Dondero, you'll see that this is the
14 Fourth Amended and Restated Shared Services agreement
15 between Acis and Highland. It is dated March 17th,
16 2017, and if you went to the page towards the back --
17 hopefully you're able to get there.
18 Can you confirm for me that the page ending in
19 Bates Number 9092 has your signatures on it?
20 **A 22. Page 22, yes.**
21 Q Yes. Those are your signatures, right?
22 **A Yes.**
23 Q And so in March 2017, you personally
24 authorized both Highland and Acis to enter into the
25 Fourth Amended and Restated Shared Services Agreement,

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1 Q Were you aware that Mr. Waterhouse was also
2 the treasurer of Acis at the time?
3 **A I was not aware.**
4 Q Can you think of anybody other than Mr.
5 Waterhouse who would have been responsible for
6 overseeing the administration of the participation
7 agreement?
8 **A I -- I even think he would have delegated that**
9 **to somebody below his level.**
10 Q Do you know who he delegated it to?
11 MS. DEITSCH-PEREZ: Object to the form.
12 THE WITNESS: I have no idea.
13 BY MR. MORRIS:
14 Q Acis had no employees of its own, correct?
15 **A Post Josh leaving, I believe that's correct.**
16 Q Okay. And Acis was able to fulfill its
17 obligations as the CLO portfolio manager by entering
18 into shared services and sub-advisory agreements with
19 Highland, correct?
20 **A Correct.**
21 Q And Highland received a fee from Acis in
22 exchange for those sub-advisory and shared services,
23 correct?
24 **A I don't know. I -- I don't know where -- when**
25 **those began and ended, you know, subject to the same**

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1 correct?
2 **A Yes.**
3 Q And you did that because at the time, you
4 expected Acis to continue on as the CLO manager,
5 correct?
6 **A I don't recall the reason.**
7 Q You don't know why you signed this document?
8 **A Correct.**
9 Q Is it fair to say that you wouldn't have
10 signed this document if you didn't believe that Acis was
11 going to continue to serve as the portfolio manager for
12 the CLOs?
13 **A That's not fair.**
14 Q I've heard and seen some allegations that the
15 Acis brand was toxic. Have you heard that phrase
16 before?
17 **A Yes.**
18 Q Now, Josh Terry had left Highland in June of
19 2016, correct?
20 **A Yes.**
21 Q And the litigation was started in the fall of
22 2016, correct?
23 **A Yes.**
24 Q And this agreement is entered into in March
25 2017, correct?

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1 **A** **Yeah. Is that the date on it? If -- if it**
2 **is, I'll agree to it.**
3 **Q** **Yes. It's on the first page.**
4 **A** **Okay.**
5 **Q** **If you want to just -- did you have any reason**
6 **to believe that the Acis brand was toxic at the -- at**
7 **the time you signed this agreement?**
8 **A** **It was -- it was pretty --**
9 **Q** **Withdrawn. Withdrawn. I need to lay a**
10 **foundation.**
11 **Did you ever believe that the Acis brand was**
12 **toxic?**
13 **A** **Yes.**
14 **Q** **Did you -- when did you form that belief?**
15 **A** **The -- at -- on the onset of the litigation.**
16 **The -- the litigation was -- you know, it was -- it was,**
17 **like, Petrofsky litigation. It was sensationalized with**
18 **a lot of claims and, you know, et cetera. But no -- no**
19 **investor would want to get involved with an entity that**
20 **was a shell entity that no longer had employees, but was**
21 **wrapped in that kind of litigation.**
22 **Q** **When did -- when did the shell entity lose its**
23 **employees?**
24 **A** **The day Josh Terry left.**
25 **Q** **Was he the only employee that Acis had?**

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1 **A** **That's essentially what I got from the**
2 **business people who were trying to do it.**
3 **Q** **Which business people are you're referring to?**
4 **A** **I can't recall who was heading up investments**
5 **at that point.**
6 **Q** **Can you identify any person who ever told you**
7 **that they had been informed by Goldman Sachs that it**
8 **would not participate in the reset of the Acis CLOs**
9 **because Goldman Sachs had concluded that the Acis brand**
10 **was toxic?**
11 **A** **I can't remember. I can't remember**
12 **specifically. But it would have been whoever was**
13 **heading up investments, the credit team, at that point**
14 **in time.**
15 **Q** **Did you ever -- did you -- do you recall the**
16 **communication? Did you ask any questions?**
17 **A** **I -- I took it at face value. It made sense.**
18 **Q** **Did anybody explain to you why Goldman Sachs**
19 **believed that the Acis brand was toxic?**
20 **A** **Again, I think it all hearkens back to the**
21 **litigation.**
22 **Q** **And do you know if Goldman Sachs actually**
23 **expressed the concern that the resets might constitute a**
24 **fraud joint transfer?**
25 **A** **I've never heard that.**

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1 **A** **I believe so.**
2 **Q** **And how did you learn that the Acis brand was**
3 **toxic?**
4 **A** **I -- I believe the firm that first coined that**
5 **adjective was Goldman, when they were approached to**
6 **reset or refinance the deals.**
7 **Q** **And when you refer to Goldman, you're**
8 **referring to Goldman Sachs?**
9 **A** **Goldman Sachs CLO Group, yes.**
10 **Q** **And when did Goldman Sachs CLO Group get**
11 **involved in a potential reset; do you recall?**
12 **A** **I -- I don't. But it would have been -- I --**
13 **I don't. It -- roughly early on after Josh left.**
14 **Q** **Are you aware that Goldman was negotiating**
15 **with Highland concerning a potential reset of the Acis**
16 **CLOs as late as October 2017?**
17 **A** **I -- I believe there were ongoing discussions**
18 **for an extended period of time. I -- I don't know when**
19 **it began and ended.**
20 **Q** **Were you involved in those discussions?**
21 **A** **I was not.**
22 **Q** **Do you have any personal knowledge as to**
23 **whether Goldman Sachs stated that it would decline the**
24 **opportunity to participate in the reset of the Acis CLOs**
25 **because the Acis CLO brand was toxic?**

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1 **Q** **Have you ever been told that Goldman Sachs**
2 **expressed the concern that transferring the CLO**
3 **management agreements in the midst of the litigation**
4 **might constitute a fraud joint transfer?**
5 **A** **I never heard that.**
6 **Q** **Okay. When did anybody acting on behalf of**
7 **Highland or Acis ever suggest to Goldman Sachs that the**
8 **resets be done with an entity other than Acis?**
9 **A** **My recollection is, that was the**
10 **recommendation of Goldman Sachs and our internal people.**
11 **Q** **Did you ever see that in writing, sir?**
12 **A** **I don't -- I don't know. I don't recall. We**
13 **don't have -- we don't have access to that stuff.**
14 **Q** **Well, do you recall signing a number of**
15 **different agreements with a couple of different entities**
16 **concerning potential resets of Acis CLOs?**
17 **A** **I -- I don't recall. But if we engaged**
18 **investment banks to perform a service, it's logical I**
19 **would've been the signatory.**
20 **Q** **And in fact, following Mr. Terry's**
21 **arbitration, the issuance of the arbitration award in**
22 **Mr. Terry -- in Mr. Terry's favor, steps were taken to**
23 **replace Acis with HCLM, LLC, correct?**
24 **A** **I don't recall.**
25 **Q** **Okay.**

<p style="text-align: right;">Page 61</p> <p>1 THE PROCEEDINGS OFFICER: I'm sorry to 2 interject, but can we take a short break pretty soon, 3 sir?</p> <p>4 MR. MORRIS: Yeah, sure. We can take a 5 break. It's 12:40 Central, I think. Why don't we just 6 take a 10-minute break and come back at 12:50 Central?</p> <p>7 THE PROCEEDINGS OFFICER: Great. Thank 8 you, sir. I'm taking us off the record. 9 (Off the record.)</p> <p>10 THE PROCEEDINGS OFFICER: Back on the 11 record at 12:57 p.m., Central Time.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q All right. Mr. Dondero, are you ready to 14 proceed?</p> <p>15 A I am.</p> <p>16 Q Can you hear me okay?</p> <p>17 A Yep.</p> <p>18 Q Okay. Going back to Goldman Sachs for a 19 moment, did you ever see anything in writing from 20 Goldman Sachs on the topic of Acis's alleged toxicity?</p> <p>21 A Not that I recall.</p> <p>22 Q And as you sit here right now, you can't 23 recall the person who told you that Goldman Sachs stated 24 that the Acis brand was toxic; is that fair?</p> <p>25 A I -- it was either -- it was either -- I -- I</p>	<p style="text-align: right;">Page 62</p> <p>1 just don't remember. It would've been whoever was 2 running credit. It would've been, you know, Trey Parker 3 or Jon Poglitsch. It would've been one of those two 4 people, I believe.</p> <p>5 Q Okay. Other than Goldman Sachs, did you ever 6 hear of any other person or any entity using the phrase 7 "toxic" to describe Acis following Mr. Terry's 8 departure?</p> <p>9 A I -- I'm trying to -- I -- I think we -- it 10 was generally accepted as -- as true on its face by 11 everybody. And I -- I believe it was the opinion of 12 every other investment banker we talked to, also. But I 13 -- I don't -- I don't have a specific recollection. 14 That is my general -- my general memories.</p> <p>15 Q Did you personally ever hear an investment 16 banker describe Acis as toxic?</p> <p>17 A I didn't have the conversations with the 18 investment banks.</p> <p>19 Q Okay. Did you ever see anything in writing 20 from any investment bank that suggested Acis was toxic?</p> <p>21 A I wasn't involved in those communications.</p> <p>22 Q Can I ask a question? Can you identify any 23 investment bank other than Goldman Sachs that you recall 24 learning had described Acis as toxic?</p> <p>25 A Again, consistent with what I just said,</p>
<p style="text-align: right;">Page 63</p> <p>1 whoever else we would've been talking to besides 2 Goldman.</p> <p>3 Q Okay. So this is Exhibit 5. This was the 4 shared services agreement. Do you recall that at the 5 same time, you also signed an Amended and Restated Sub- 6 Advisory Agreement between Highland and Acis?</p> <p>7 A I -- I don't -- I don't recall specifically, 8 but I do remember the shared services agreement was 9 amended.</p> <p>10 Q Okay.</p> <p>11 MR. MORRIS: Let's take this down. And 12 let's mark tab 13 as Exhibit 6.</p> <p>13 MS. DEITSCH-PEREZ: Hang on. I don't see 14 -- is there supposed to be a little yellow sticker on 15 that, electronically? There wasn't one.</p> <p>16 MR. MORRIS: Yeah. There was one on the 17 upper left corner, the first page.</p> <p>18 THE WITNESS: On the front page.</p> <p>19 MS. DEITSCH-PEREZ: Oh, okay. It's just 20 not on my screen.</p> <p>21 THE WITNESS: Okay. We're just not on 22 the last page. Only on the front page. So it was --</p> <p>23 MS. DEITSCH-PEREZ: Okay. The last.</p> <p>24 THE PROCEEDINGS OFFICER: See what it 25 was. Thank you.</p>	<p style="text-align: right;">Page 64</p> <p>1 (Exhibit 6 marked for identification.)</p> <p>2 BY MR. MORRIS:</p> <p>3 Q Okay. So up on the screen, you have the Third 4 Amended and Restated Sub-Advisory Agreement between Acis 5 and Highland, which is also dated March 17, 2017.</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q And if we scroll down, I think to the -- let's 9 see. The page with -- it's 15 of 21, ending in Bates 10 Number 7798.</p> <p>11 Can you just confirm those are your 12 signatures?</p> <p>13 A Yes.</p> <p>14 Q Okay. So do you recall that from the day you 15 signed these two agreements on March 17th, 2017, 16 beginning on that date, Highland provided shared 17 services and sub-advisory services in accordance with 18 those agreements until some point in the Acis 19 bankruptcy?</p> <p>20 A I -- I believe so. I have no reason to think 21 it didn't.</p> <p>22 Q Okay. And as we discussed earlier, at some 23 point during the Acis bankruptcy, Mr. Phelan gets 24 appointed as the Chapter 11 trustee for Acis, correct?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 65</p> <p>1 Q And do you recall that sometime after that, 2 Highland is replaced by Brigade as the service provider 3 to Acis? 4 A Yeah. I -- I believe that's true. 5 Q And to the best of your recollection, did 6 Highland provide to Acis shared services and sub- 7 advisory services from the date of this agreement until 8 the date that Brigade took over? 9 A I really want to -- I want to be careful here 10 not to just say yes to that. Brigade did the portfolio 11 management, I believe, or provided the RIA for Josh to 12 be involved in the portfolio management, I guess. Or -- 13 or anyway -- but I'm not -- I'm not sure if they took 14 over the other services and the shared services or if 15 Highland kept doing those or not. I -- I just want to 16 be careful, but I -- but the asset management or 17 portfolio management by Highland did cease when Brigade 18 took over. But I -- I don't know if -- the shared 19 services agreement in its entirety. 20 Q Let me -- I appreciate the distinction, and 21 never trying to trick you. Let me try and ask it in a 22 more palatable way. From the time that the shared -- 23 withdrawn. 24 From the time you signed the Amended and 25 Restated Shared Services and Sub-Advisory Agreements,</p>	<p style="text-align: right;">Page 66</p> <p>1 Highland provided services (indiscernible - audio 2 disruption) until an orderly transition was effectuated, 3 by which those services were provided to Acis by some 4 third party; is that fair? 5 A I -- it -- yeah. It's my belief we -- we 6 adhered to and honored the contract. 7 Q Okay. I want to go back in time. So the -- 8 these agreements are signed in March of 2017. And while 9 these agreements are being prepared and signed and 10 executed and administered, Mr. Terry's arbitration is 11 going forward. 12 Do you remember that in the early part of 13 2017? 14 A I -- I don't recall. 15 Q Did you testify in the arbitration? 16 A I believe so. 17 Q Okay. And do you remember who else testified 18 on the Highland side in connection with the arbitration? 19 A Thomas Surgent. Mark Okada. I -- I don't 20 recall who else. 21 Q Do you remember if Isaac did? 22 A I -- I wasn't there for every day. I -- I 23 don't have a specific recollection. 24 Q Okay. Do you recall, at some point in 25 October, the panel issued the award in favor of Mr.</p>
<p style="text-align: right;">Page 67</p> <p>1 Terry? 2 A I -- I remember it, but it was against a very 3 limited number of entities. 4 Q Right. Highland was one of them, right? 5 A No. I thought it was just Acis. 6 Q Okay. 7 MR. MORRIS: Let's take that document 8 down. Let's mark, as Exhibit 7, tab Number 4. 9 (Exhibit 7 marked for identification.) 10 BY MR. MORRIS: 11 Q Yeah. You could be right about that. And do 12 you see, up on the screen, there's a document that's 13 been marked as Exhibit 7? It's dated October 20th, 14 2017, and the cover page discloses that it has attached 15 the final award executed by the arbitrator. 16 Do you see that? 17 A Yes. 18 Q Okay. Did you ever read the final award that 19 was issued by the panel in the Josh Terry arbitration? 20 A I did not. 21 Q To this day, you've never read it? 22 A Correct. 23 Q Can we go to the third page of the document, 24 which is -- no, I apologize. It's page 3 of the 25 document, which is page 4 of 28.</p>	<p style="text-align: right;">Page 68</p> <p>1 A Yes. 2 Q No. Apologies. Page 3 of 28. The panel was 3 -- it was a panel of three that administered the 4 arbitration; is that right? 5 A Yes. 6 Q And they were all retired, at least to the 7 best of your knowledge, correct? 8 A Yes. 9 Q Do you know how they were selected? 10 A I do not. 11 Q Do you know if Highland had any role in the 12 selection of the three arbitrators in the Josh Terry 13 arbitration panel? 14 A I have no idea. 15 Q Is it fair to say that Highland had a fair 16 opportunity to present its case? 17 MS. DEITSCH-PEREZ: Object to the form. 18 THE WITNESS: I -- I don't want to -- I 19 don't know. I don't want to comment on that. 20 BY MR. MORRIS: 21 Q Was Highland precluded from offering into 22 evidence any evidence that it wanted to offer? 23 MS. DEITSCH-PEREZ: Object to the form. 24 THE WITNESS: I don't know. 25 BY MR. MORRIS:</p>

<p style="text-align: right;">Page 69</p> <p>1 Q Did anybody ever contend that all or any 2 member of the panel was biased in favor of Mr. Terry? 3 MS. DEITSCH-PEREZ: Object to the form. 4 THE WITNESS: I -- I don't have any 5 awareness. 6 BY MR. MORRIS: 7 Q Did anybody ever suggest that any member of 8 the panel was biased against you or Highland? 9 MS. DEITSCH-PEREZ: Object to the form. 10 THE WITNESS: I don't have any awareness. 11 BY MR. MORRIS: 12 Q Okay. It was a pretty lengthy hearing, wasn't 13 it? 14 MS. DEITSCH-PEREZ: Object to the form. 15 THE WITNESS: I -- I don't know. I don't 16 know what lengthy is in an arbitration or arbitration 17 panels. 18 BY MR. MORRIS: 19 Q All right. If we go to the next page, you'll 20 see that at the top, it refers to hearing dates in 21 September. It's listed there. It's 10 hearing days. 22 Do you see that? 23 A Yes. 24 Q And so were you aware that, you know, for a 25 number of days in September 2017, this arbitration with</p>	<p style="text-align: right;">Page 70</p> <p>1 Mr. Terry was being litigated in Dallas? 2 A Yes, I was aware. 3 Q Okay. Are you aware of any of the findings of 4 the panel? 5 A The -- my -- my recollection is that it was -- 6 that the entities with any balance sheet or -- or any 7 substance were all struck and that the only entity that 8 it was awarded against was Acis. 9 Q What do you mean when you refer to the balance 10 sheet? 11 A No. I'm just saying all the -- let me say it 12 differently. Myself, Okada, Highland were all removed 13 from the culpability list, and it was just Acis that 14 received the negative award or -- or just -- it -- it 15 was just a finding against Acis. That's my 16 recollection. 17 Q And are you familiar with the findings? 18 A No. That was my recollection. That's how it 19 was -- that -- my recollection of how it was explained 20 to me. 21 Q Okay. Let's go down to page 21 of the 22 document. Let's see. This is the -- it's page 22 of 28 23 on the PDF. 24 A Yes. 25 Q All right. So this is the panel's findings</p>
<p style="text-align: right;">Page 71</p> <p>1 and conclusions. Do you see that? 2 A Yes. 3 Q And it states, among other things in that 4 first paragraph, quote, "To the extent the findings and 5 conclusions differ from any of the party's position, 6 that is the result of these arbitrators' determinations 7 as to the credibility, relevance, burden of proof, 8 consideration, and the weighing of the evidence, both 9 oral and written." 10 Do you see that? 11 A Yes. 12 Q I just want to cover a few of these. Looking 13 down at Number 5, were you aware that the panel found 14 and determined, quote, "Highland's termination of 15 Terry's employment was not, in fact," quote, "for 16 cause"? Highland's stated, quote, "for cause 17 termination of Terry's employment was, in fact, 18 pretextual and for the purpose of denying Terry benefits 19 of employment, payable at his termination and as a basis 20 for the forfeiture of the value of Terry's limited 21 partnership interest in Acis"? 22 Have I read that fairly? 23 MS. DEITSCH-PEREZ: Object to the form. 24 THE WITNESS: That's what it says. It 25 says what it says.</p>	<p style="text-align: right;">Page 72</p> <p>1 BY MR. MORRIS: 2 Q And is this the first time that you're 3 learning that the panel made that finding? 4 A No. I -- I knew -- I knew that. We didn't 5 agree with that, but I knew that's what they had found. 6 Q Okay. And is it fair to say that you don't 7 agree with any of the panel's findings here in this 8 section of the document? 9 A I didn't say that. 10 Q All right. Let's just go through a few more. 11 Number 6 on the next page says, quote, "Acis and Acis GP 12 knowingly and willingly invoked Highland's false 13 pretense of," quote, "for cause termination to deny 14 Terry the value of his 25 percent limited partnership 15 interest." 16 Did you know of that finding before I read it 17 just now? 18 A No. I -- I - 6 kind of dovetails into 5. 19 They're one and the same, really. 20 Q Okay. And were you aware that that finding 21 had been made back in 2017? 22 A Yes. 23 Q I know you said that you didn't read the 24 award. Did anybody describe the award for you at the 25 time it was rendered?</p>

<p style="text-align: right;">Page 73</p> <p>1 A I mean, just -- just what I've really said so 2 far, that they -- I know they gave him an award against 3 Acis, but it wasn't against other related entities. And 4 they knew Acis was a partnership without assets. 5 Q Who knew Acis was a partnership without 6 assets? 7 A The -- the arbitration panel. 8 Q What did -- what's your understanding of how 9 the arbitration panel learned that Acis was without 10 assets? 11 A That was part of the presentation. I -- my 12 recollection is, the reason why Josh Terry tried to tie 13 in a bunch of other entities was because he knew Acis 14 had no assets, and Acis was allowed -- permitted bona 15 fide, reconstituted after he left. So he sought to add 16 Highland, myself, Okada, and other entities in, which 17 were ultimately all stricken. 18 And again, my recollection -- you know, 19 arbitration is supposed to be for all purposes, 20 including, the way my lawyers described it, including 21 collections, you know? So you know, the -- the lawyers 22 thought it was highly inappropriate to file Acis for 23 involuntary, and my lawyers thought it was highly 24 inappropriate for Jernigan to remove it from 25 arbitration.</p>	<p style="text-align: right;">Page 74</p> <p>1 Q And your lawyers had an opportunity to appeal 2 her decision to the District Court, correct? 3 A I believe, yes. And I believe they -- I -- I 4 believe they sought all remedies that they felt were 5 possible. 6 Q And the District Court agreed with Judge 7 Jernigan that it was appropriate to file the involuntary 8 petition under the circumstances, correct? 9 A I -- I don't -- I don't remember. 10 MS. DEITSCH-PEREZ: I don't think we've 11 run into a problem yet, but as we go forward, if Mr. 12 Morris asks you questions that relate to Highland's 13 privilege, Highland has waived it. If he ever tries to 14 ask you about communications between you and your lawyer 15 personally, those are not waived. But just -- 16 THE WITNESS: Okay. 17 MS. DEITSCH-PEREZ: -- as he asks the 18 questions, think about whether he is asking you 19 Highland, or you, Mr. Dondero. 20 THE WITNESS: Sure. 21 BY MR. MORRIS: 22 Q Did Acis ever have any assets? 23 A Nothing meaningful. I -- I don't believe ever 24 more than working capital or a million bucks or 25 something.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q Was the promissory note that you signed on 2 behalf of Highland pursuant, to which you paid -- you 3 agreed to pay Acis over \$13 million when you had the 4 cash component, was that an asset of Acis's? 5 A Yeah. You know what? Let me -- let me not -- 6 other than the promises both ways regarding the 7 promissory note, there weren't significant other assets 8 at Acis. And -- and how exactly the note or promises to 9 pay were accounted for, I -- I don't know. 10 Q Well, you made a statement that the panel 11 knew, and Josh knew, and everybody knew that Acis had no 12 assets. And I'm just asking you what I think is a 13 fairly simple question. 14 From your perspective, was the note an asset 15 of Acis's? 16 MS. DEITSCH-PEREZ: Asked and answered. 17 THE WITNESS: Yeah. You know, let me 18 answer that by setting a context for a second. I think 19 his judgment was only \$8 million, but I think the amount 20 that he sought in arbitration was hundreds of millions 21 of dollars. And relative to hundreds of millions of 22 dollars, there was no meaningful assets, even if you 23 include the notes and a million dollars of other stuff. 24 And so in that context, he was trying to include a whole 25 bunch of other defendants, who were ultimately dropped</p>	<p style="text-align: right;">Page 76</p> <p>1 or ultimately found to be not involved. That -- that's 2 my recollection. 3 BY MR. MORRIS: 4 Q Okay. I'm just asking you -- 5 MR. MORRIS: I'm going to move to strike 6 -- 7 BY MR. MORRIS: 8 Q And just ask, simply from your perspective as 9 Highlands president and as the majority owner of Acis, 10 did you understand, prior to the issuance of the 11 arbitration award, that the note that we looked at 12 earlier was an asset of Acis? 13 MS. DEITSCH-PEREZ: Object to form. 14 THE WITNESS: I believe the note would 15 have been properly accounted for on both parties books. 16 I -- I don't know how it was accounted for. 17 BY MR. MORRIS: 18 Q You're a CPA, sir, right? 19 A Yes. 20 Q And wouldn't it -- wouldn't you have expected, 21 as a CPA, that the note would have been carried as an 22 asset on Acis's balance sheet, with a corresponding 23 liability for the amounts that were due under the 24 participation agreement? 25 MS. DEITSCH-PEREZ: Object to the form.</p>

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1 THE WITNESS: Again, they're -- they're
2 promises to pay, and this was -- was a -- a tax-driven
3 structure. You know, the -- the note itself stands on
4 its own, and promises to pay stand on their own.
5 They're -- they're not -- if -- if they were directly
6 tied, it wouldn't pass muster as a tax transaction.
7 BY MR. MORRIS:
8 Q So on behalf of Highland -- so I just want to
9 make sure I understand your testimony correctly. On
10 behalf of Highland, you knowingly signed a promissory
11 note for the benefit of Acis.
12 And it's your understanding that Highland
13 would have the absolute obligation to pay whether or not
14 Acis performed under the participation agreement? Do I
15 have that right?
16 A Yeah. I mean, absolutely. That's the basis
17 for the -- the transaction. And when you were asking me
18 all the questions of why the amounts don't equal
19 exactly, et cetera, it -- it's for a present value,
20 handicapping the value at risk, handicapping the
21 likelihood, et cetera. And that's why the numbers don't
22 match. But -- but the -- the notes very much -- the
23 note very much stands on its own, regardless of the
24 promises to pay.
25 Q So even if even if Acis breaches and doesn't

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1 an Assignment and Transfer Agreement? Do you recall
2 that?
3 A Yes.
4 MR. MORRIS: Okay. So let's put up on
5 the screen Exhibit 8, which is tab Number 5.
6 (Exhibit 8 marked for identification.)
7 BY MR. MORRIS:
8 Q All right. Do you see this is a document
9 that's called Assignment and Transfer Agreement? It's
10 dated as of November 3rd, 2017?
11 A Yes.
12 Q And it's between and among three entities. Do
13 you see, it's Acis, Highland, and HCLOM? HCLOM Limited?
14 A Yep.
15 Q Okay. And if we could go down to, I think,
16 the last page, can you confirm that you signed this
17 document on behalf of both Highland and Acis?
18 A Yes.
19 Q Okay. And do you recognize the signature
20 under HCLOM Limited?
21 A No.
22 Q Have you ever heard the name John Cullinane?
23 MS. DEITSCH-PEREZ: Is that how you --
24 are you sure that's how you pronounce it, John?
25 THE WITNESS: Are you talking about

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1 pay Highland a penny, Highland still must pay the face
2 amount of the note? That's your --
3 A Yeah. I mean, absolutely. I mean, I'm sure
4 there's legal consequences for the failure to pay, as
5 promised, the fees. But the note says what it says, and
6 it stands on its own.
7 Q Are you at all familiar with the concept that
8 if one party materially breaches their obligation, the
9 other party to the contract is relieved of performing?
10 Is that news to you?
11 A Yeah. I'm -- I'm not a lawyer. It's -- the
12 right to offset directly or indirectly is -- we deal
13 with it at the bank sometimes. But that's not a -- that
14 -- that's not an ironclad or only remedy under a certain
15 -- again, I'm not a lawyer, but it -- I -- I don't -- I
16 don't believe that it works like that.
17 Q Okay. About two weeks after the panel entered
18 this award that we're looking at, you signed an
19 Assignment and Transfer Agreement on behalf of both
20 Highland and Acis, correct?
21 A You asking me to agree with the dates? Or I -
22 -
23 Q Do you recall that? Do you recall that just
24 after the Terry arbitration award was issued, you signed
25 an agreement on behalf of Highland and Acis called a --

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1 Kinoyer (phonetic) that still works at Highland? No.
2 BY MR. MORRIS:
3 Q No.
4 A Okay.
5 Q It's spelled C-U-L-L-I-N-A-N-E. I'm told it's
6 pronounced Cullinane, but it could certainly be
7 pronounced some other way.
8 A I -- I don't have a -- a recollection at this
9 point.
10 Q Did you ever hear of Summit Management
11 Limited?
12 A I -- I can't recall as I sit here right now.
13 Q Do you know why an entity called Summit
14 Management Limited is signing this agreement on behalf
15 of HCLOM?
16 A I do not.
17 Q Did you ever -- so you don't recall anybody by
18 the name of John Cullinane, do you?
19 A I -- I do not, at this moment.
20 MR. MORRIS: Deborah, if you're familiar
21 with another pronunciation, can you share that with me?
22 MS. DEITSCH-PEREZ: I've heard it as
23 Cullinane.
24 BY MR. MORRIS:
25 Q Does that cause you to change your answer, Mr.

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1 Dondero?

2 A No. It doesn't jar my memory.

3 Q Okay. I'm just going to ask you a few

4 questions. Given what you've just said, I take it that

5 you have no recollection of ever meeting John Cullinane

6 or anybody acting on behalf of Summit Management or

7 HCLOM Limited, correct?

8 A Not today.

9 Q Okay. And you don't recall, as you sit here

10 today, ever speaking with Mr. Cullinane, the person who

11 signed this document on behalf of Summit Management and

12 HCLOM Limited, correct?

13 A Not today, no.

14 Q And as you sit here today, you don't recall

15 ever exchanging any e-mails with that person, correct?

16 A I do not.

17 Q Do you have any recollection of ever

18 communicating with him in any manner prior to today?

19 A I do not.

20 Q Do you know if there was somebody at Highland

21 who was responsible for communicating with Mr. Cullinane

22 or anybody acting on behalf of HCLOM Limited in

23 connection with this particular agreement?

24 A My general recollection is, the vast majority

25 of contact with any Cayman-related entities was handled

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1 act on behalf of HCLOM Limited in connection with this

2 agreement, prior to the time it was executed?

3 A I did not.

4 Q Did anybody ever share with you anything that

5 anybody ever said, who was authorized to act on behalf

6 of HCLOM Limited, with respect to this document before

7 you signed it?

8 A Not that I recall.

9 Q Okay. We can go back to the top of the

10 document and again, you know, to the extent -- we urge

11 you to take your time and do so.

12 Do you recall this document before?

13 A No.

14 Q Do you recall if you read it before you signed

15 it?

16 A No.

17 Q You don't recall if you read it, or you're

18 pretty sure you didn't?

19 A I don't recall if I read it.

20 Q Again, take your time and look at the document

21 to the extent you think it would be helpful, but my

22 question is kind of a simple one.

23 Do you have an understanding of what the

24 purpose of the document was? From Acis's and Highland's

25 perspective, the entities on behalf -- on whose behalf

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1 by the internal lawyers, the setup and administration by

2 the -- the setup and governance by the internal lawyers.

3 The accounting or administration would subsequently get

4 handed off to the accountants. But the -- the setup and

5 the governance, and governance being approvals or

6 actions, would be done by the internal lawyers.

7 Q Can you identify any internal lawyer who was

8 responsible for handling this particular agreement?

9 A It would've been Surgent or somebody on his

10 team. It would've been Surgent or Kinoyer, or there was

11 a woman -- a -- a woman lawyer that worked for us for a

12 number of years who was a big part of that group, too.

13 I can't remember her name. But it was the three of them

14 that typically handled the corporate formation and

15 formation, governance, and stuff.

16 Q Do you know if this agreement was negotiated

17 in any way with HCLOM Limited?

18 A I was not involved.

19 Q Do you know why HCLOM Limited signed this

20 agreement?

21 MS. DEITSCH-PEREZ: Object to the form.

22 BY MR. MORRIS:

23 Q Withdraw the question.

24 Since you've never spoken with Mr. Cullinane,

25 did you ever speak with anybody who was authorized to

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1 you signed it?

2 MS. DEITSCH-PEREZ: Object to the form.

3 THE WITNESS: It's replacing ACIS as

4 portfolio manager. It's, I think, captured in that

5 succession, paragraph Number 1.

6 BY MR. MORRIS:

7 Q So is it your understanding that you signed

8 this document for the purpose of having HCLOM Limited

9 succeed Acis as portfolio manager?

10 A It says what it says, but that's what it

11 appears to say to me.

12 Q Okay. And at the time you signed this, was it

13 your expectation that Highland would continue to receive

14 the servicing fees that were set forth in the

15 participation agreement, in exchange for the payments

16 that were due under the note?

17 MS. DEITSCH-PEREZ: Object to the form.

18 THE WITNESS: I -- I didn't have a

19 particular opinion regarding that at the time of this.

20 Not that I can recall.

21 BY MR. MORRIS:

22 Q When you bound Highland to this agreement,

23 what -- did you expect Highland to receive a benefit?

24 And again, you can take your time to read the document.

25 A I don't recall.

<p style="text-align: right;">Page 85</p> <p>1 Q As you sit here today, can you identify any 2 benefit that Highland was expected to receive when it 3 signed this document? 4 MS. DEITSCH-PEREZ: Object to the form. 5 THE WITNESS: The question was any 6 benefit that Highland receives? 7 BY MR. MORRIS: 8 Q Yeah. Let me restate it. When you signed 9 this document, what benefit, if any, did you expect 10 Highland to receive? 11 MS. DEITSCH-PEREZ: Object to the form. 12 THE WITNESS: I mean, Highland is not a 13 party to this, right? Are you -- are you talking about 14 HCLOM Limited or -- 15 BY MR. MORRIS: 16 Q Highland is a party to this agreement. 17 A Wait a minute. Yeah, there it is. But I'm 18 trying to see where they're referenced in here. Again, 19 I'm not a lawyer, but what it appears to say is the -- 20 the appointment of a HCLOM as portfolio manager, 21 replacing Acis. 22 But then it's reciting that the assignment of 23 the -- and transfer of the promissory note and the 24 obligations of the stabilization payments or promises is 25 part of the transfer. That's -- that's what it looks</p>	<p style="text-align: right;">Page 86</p> <p>1 like it's saying to me. But again, it's -- I'm not a 2 lawyer. I didn't draft it. That's -- I probably even 3 shouldn't be giving my interpretation, but that's -- 4 that's about all I can say about it. 5 Q Okay. But other than reading it right now and 6 sharing your interpretation of it, do you have any 7 recollection as to why you signed this document on 8 behalf of Acis and Highland? 9 A What's the date on this thing? 10 Q November 3rd. That's 10 days or two weeks 11 after the Terry arbitration award? 12 A I don't know. I don't know if it was part of 13 the formal transfer process that -- I -- I don't know. 14 I have -- I have no idea. I don't want to speculate. 15 Q I appreciate that. And you can't, you know, 16 other than reading the document and interpreting it as 17 you sit here right now -- withdrawn. No commentary. 18 Do you have any recollection, at the time you 19 signed the document, of what benefit you expected 20 Highland to receive from entering into this agreement? 21 MS. DEITSCH-PEREZ: Object to the form. 22 THE WITNESS: The extent that the CLO 23 platform were to refinance, reset, or grow in the 24 future, Highland would benefit either directly or 25 indirectly with sub-advisor fees or management fees</p>
<p style="text-align: right;">Page 87</p> <p>1 directly. I -- I mean, that's -- it looks like it's 2 laying the groundwork for that, but -- 3 BY MR. MORRIS: 4 Q And if you look at Sections 3(B) and (C), 5 which I know I have up on my screen, wasn't it intended 6 that Highland would receive the servicer fees regardless 7 of whether Acis or HCLOM Limited served as portfolio 8 manager of the CLOs? 9 MS. DEITSCH-PEREZ: Object to the form. 10 THE WITNESS: I'm sorry. Repeat the 11 question, please? 12 BY MR. MORRIS: 13 Q Sure. If you look at Section 3(B) and 3(C), 14 wasn't those -- wasn't -- aren't those sections intended 15 to give assurance to Highland that it would continue to 16 receive its servicer fees, regardless of whether Acis or 17 HCLOM, Limited, was serving as the CLO portfolio 18 manager? 19 MS. DEITSCH-PEREZ: Object to the form. 20 THE WITNESS: See, I don't -- I don't 21 want to provide an interpretation, but it -- it -- 22 again, I'm not a lawyer. But it looks like it -- it's 23 just trying to make sure the promises and the 24 obligations of Acis transfer to the new entity. 25 BY MR. MORRIS:</p>	<p style="text-align: right;">Page 88</p> <p>1 Q Okay. Do you know if Highland ever actually 2 received any benefit from entering into this agreement? 3 I want to take it out from the theoretical and what was 4 expected to -- what actually happened. 5 As the, you know, co-founder and president of 6 Highland until January 20th -- until January 2020, do 7 you know if Highland ever received any benefit from 8 entering into this agreement? 9 A What I said, the part that perplexes me, I -- 10 I don't know early on what payments were or weren't 11 received. But all payments that Highland got or didn't 12 get, Highland knew 100 percent of when they settled with 13 Josh Terry. The settlement of Josh Terry would've been 14 negligent if it didn't incorporate this. 15 Q Okay. So let me ask another question, then. 16 Can you -- as you sit here today, can you identify any - 17 - anything of value that HCLOM Ltd. ever provided to 18 Highland, pursuant to this agreement? Forget about 19 Acis. 20 A I believe there were shared services fees, if 21 nothing else, away from -- away from the Acis agreement. 22 Q Do you believe that HCLOM Ltd. had a shared 23 services agreement with Highland at any time? 24 A I -- I don't know. Just -- but typically, the 25 asset management agreement comes along with a shared</p>

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1 **services agreement for the accounting and the other**
2 **things.**
3 Q Do you know if HCLOM Ltd., ever signed a
4 management agreement?
5 A I -- I don't know between what typically
6 happens and then what got clogged and derailed or
7 detoured in the Acis parade of state actions,
8 injunctions, bankruptcy, and then halted in the Highland
9 bankruptcy, I don't know what amounts were actually paid
10 or stayed or not.
11 And I wouldn't be in a position to know, but
12 you guys have all the numbers and all the
13 documentations. You guys would know. We were just
14 doing everything when we could and when we were allowed
15 to honor the agreement and the path of getting towards
16 the agreements.
17 Q All right. So this agreement is signed on
18 November 3rd, 2017, and you are in control of Highland
19 until January 2020.
20 And my question is really simple: Do you have
21 any knowledge of anything of value HCLOM Limited gave to
22 Highland during the period, November 3rd, 2017, through
23 the time you relinquished control of Highland in January
24 2020?
25 MS. DEITSCH-PEREZ: Object to the form.

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1 aware of anything of value that HCLOM Limited, ever gave
2 to Highland for any reason?
3 MS. DEITSCH-PEREZ: Object to the form.
4 THE WITNESS: I -- I don't have an
5 awareness.
6 BY MR. MORRIS:
7 Q Okay. I appreciate that. Do you know if
8 HCLOM Limited had any obligations under this agreement?
9 I don't want to go through that same process again.
10 At the time that you signed this agreement,
11 did you have any understanding that HCLOM, Limited, was
12 undertaking any obligations or duties to Highland or
13 Acis?
14 A I think it says, in the beginning there, it's
15 essentially taking on the obligation to the CLOs, right?
16 Q And that's the --
17 A (Indiscernible - simultaneous speech) manager.
18 Q Okay. Do you know -- sorry.
19 A No, that's -- so sorry. So -- but as manager,
20 the CLO, then, there are fees and sub-advisor fees and
21 administrative fees that flow off of that, right?
22 Anyway.
23 Q Okay. Do you know if HCLOM Limited ever had
24 any employees?
25 A No. I -- I believe it wasn't an RIA, either.

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1 THE WITNESS: Yeah. I mean, for --
2 again, just to state it, there were other things going
3 on besides being in control of Highland. There was the
4 Acis injunctions and the Acis things going on. I don't
5 know the particulars regarding what amounts went back
6 and forth. I -- I don't know the answer.
7 BY MR. MORRIS:
8 Q Do you know -- do you have any knowledge that
9 HCLOM Limited, ever paid one penny to Highland in the
10 history of the world?
11 A I -- I wouldn't be in a position to know
12 whether it was a penny or a hundred million.
13 Q Okay. Is it fair to say that you have no
14 personal knowledge that HCLOM Limited ever gave anything
15 to Highland -- anything of value to Highland, pursuant
16 to this agreement?
17 MS. DEITSCH-PEREZ: Object to the form.
18 THE WITNESS: Same answer. I'm not in a
19 position to know whether they received a hundred million
20 or a penny.
21 BY MR. MORRIS:
22 Q Or zero, right?
23 A Or zero. I don't know.
24 Q Thank you. And now I just want to take it
25 beyond this agreement. Same question, though: Are you

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1 And I -- I think that's why there had to be an
2 establishment of the LLC version of the (indiscernible -
3 audio disruption).
4 Q Did you just use the acronym RIA?
5 A Yes.
6 Q And does that stand for? Registered
7 Investment Advisor?
8 A Yes.
9 Q And is it your understanding that HCLOM Ltd.
10 never became a registered investment advisor?
11 A I don't know that for sure, but I'm just
12 saying, typically, it is the domestic entities that we
13 have that are registered. And it's typically domestic
14 entities that have the employees.
15 Q Do you know if a foreign entity is able, under
16 U.S. law, to be a registered investment advisor?
17 A I -- I don't know the answer to that.
18 Q Okay. But you would agree that, to the best
19 of your knowledge, HCLOM Ltd. never became an RIA,
20 correct?
21 MS. DEITSCH-PEREZ: Object to the form.
22 THE WITNESS: I don't know that for sure.
23 BY MR. MORRIS:
24 Q I understand that you don't know it for sure,
25 but you have no knowledge, as you sit here today, that

<p style="text-align: right;">Page 93</p> <p>1 HCLOM Limited ever became a registered investment 2 advisor, correct?</p> <p>3 MS. DEITSCH-PEREZ: Object to the form. 4 THE WITNESS: I -- I do not know.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Thank you. Do you know if HCLOM Limited ever 7 entered into a shared services agreement with Highland?</p> <p>8 A I don't know.</p> <p>9 Q Do you know if HCLOM Limited ever entered a 10 shared services agreement with anybody?</p> <p>11 A I don't know.</p> <p>12 Q Do you know if HCLOM Limited ever entered into 13 a sub-advisory agreement with Highland?</p> <p>14 A I don't know.</p> <p>15 Q Do you know if HCLOM Limited ever entered into 16 a sub-advisory agreement with anybody?</p> <p>17 A I -- I don't know what the relationship was 18 with the LLC domestic version. I don't know whether it 19 was a sub-advisory or a transfer. I don't know.</p> <p>20 Q Okay. If we go back to the first page of the 21 agreement, there's some recitals there.</p> <p>22 A Yes. Yep.</p> <p>23 Q Okay. The third one down says, "HCM -- " and 24 HCM is the defined term for Highland that we've been 25 using. It says, "HCM has notified Acis that HCM is</p>	<p style="text-align: right;">Page 94</p> <p>1 unwilling to continue to provide support personnel and 2 other critical services to Acis with respect to the 3 CLOs." And it's defined -- that's defined as the 4 notification.</p> <p>5 Do you see that?</p> <p>6 A What -- what page is that on? I'm sorry.</p> <p>7 MS. DEITSCH-PEREZ: Yeah. I'm -- 8 MR. MORRIS: It's the first page. It's 9 the very first page.</p> <p>10 MS. DEITSCH-PEREZ: What document are you 11 -- what document are you asking him to look at?</p> <p>12 MR. MORRIS: I'm still on the -- I'm 13 still on Exhibit 8, the Assignment and Transfer 14 Agreement.</p> <p>15 MS. DEITSCH-PEREZ: Okay.</p> <p>16 MR. MORRIS: And I'm looking at the third 17 whereas clause, under the recital of the first page.</p> <p>18 THE WITNESS: Yes. Yep. Yep. Yep. 19 "Whereas Highland is notified." Yep.</p> <p>20 MR. MORRIS: Okay. So you're with me 21 now?</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q Okay. Mr. Dondero, do you have any personal 25 knowledge concerning the notification, as that term is</p>
<p style="text-align: right;">Page 95</p> <p>1 defined in the third whereas clause?</p> <p>2 A Well, do I have any awareness of it, or do I - 3 - what was the --</p> <p>4 Q Personal knowledge. Yeah. Do you know 5 anything about that personally?</p> <p>6 A No. Not -- no.</p> <p>7 Q Okay. Do you know who and -- who notified -- 8 who gave the notification to Acis on behalf of Highland?</p> <p>9 A No, I do not.</p> <p>10 Q Do you know who received the notification from 11 Highland on behalf of Acis?</p> <p>12 A No, I do not.</p> <p>13 Q Do you know why Highland was unwilling to 14 continue to provide support personnel and other critical 15 services to Acis with respect to the CLOs?</p> <p>16 A I don't know. I'm guessing -- no, I don't 17 want to guess. It -- not viable, no employees, toxic. 18 But I don't -- but I don't know.</p> <p>19 Q Did the arbitration award -- did the issuance 20 of the arbitration award have anything to do with the 21 entry into this agreement?</p> <p>22 A Not as far as I know.</p> <p>23 Q Did the issuance of the arbitration award have 24 any impact on the perceived toxicity of Acis?</p> <p>25 A I don't know. I don't remember.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q Did Acis have the financial wherewithal to 2 satisfy the award that was granted to Mr. Terry? 3 Withdrawn. Let me ask a slightly different question. 4 Do you recall whether Acis had the financial 5 wherewithal to satisfy the arbitration award that was 6 issued to Mr. Terry on the day it was rendered? On 7 October 20th, 2017?</p> <p>8 A I don't know.</p> <p>9 Q Do you recall if Acis's inability to satisfy 10 that award was a factor in the decision to enter into 11 this agreement?</p> <p>12 A No, I -- I don't know.</p> <p>13 Q Did you ever consider loaning Acis money so 14 that it could satisfy the award that was rendered in Mr. 15 Terry's favor?</p> <p>16 A No.</p> <p>17 Q You did cause Highland to loan money to 18 affiliates from time to time, correct?</p> <p>19 A Yes.</p> <p>20 Q In fact, you caused Highland to loan money to 21 Acis from time to time, correct?</p> <p>22 A Yes.</p> <p>23 Q Do you know how much money Acis would have 24 needed in order to be able to satisfy Mr. Terry's 25 arbitration award?</p>

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1 **A Roughly. Roughly, but not specifically.**
2 Q Did the entry into this agreement leave Acis -
3 - withdrawn.
4 Did the entry into this agreement have any
5 impact on Ace's ability to satisfy Mr. Terry's
6 arbitration award?
7 **A I don't know.**
8 Q Do you understand that by entering into this
9 agreement, Acis was both losing the benefit of the
10 payments under the note, but being relieved of the
11 obligation to share servicing fees pursuant to the
12 participation agreement?
13 MS. DEITSCH-PEREZ: Object to the form.
14 THE WITNESS: No.
15 BY MR. MORRIS:
16 Q Is it your understanding that this agreement
17 is neutral to Acis?
18 MS. DEITSCH-PEREZ: Object to the form.
19 THE WITNESS: I -- I don't have an
20 opinion.
21 BY MR. MORRIS:
22 Q Now, you have no view as to the impact of this
23 agreement on Acis?
24 **A I do not.**
25 Q You did sign this agreement on behalf of Acis,

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1 **A Yes, but I trusted the legal department.**
2 Q Do you know why you signed this document?
3 **A Yes.**
4 Q Why did you sign this document?
5 **A Because I was an authorized signatory, and**
6 **this was the administration of the agreements**
7 **recommended by the legal department.**
8 Q And who in the legal department recommended
9 that you sign this?
10 **A Going back to -- it would've been Tom Surgent**
11 **and his group.**
12 Q Did Scott Ellington play any role in advising
13 you with respect to this document?
14 **A Not that I recall. Again, he was the overall**
15 **general counsel. The legal, and particularly the Josh**
16 **Terry relationship and litigation, was handled by Thomas**
17 **Surgent and his group. It was Thomas Surgent who**
18 **impressed or didn't impress the -- the JAMS panel.**
19 Q And what's your basis for that?
20 **A He was the lawyer that testified on behalf of**
21 **Highland.**
22 Q You testified, too, didn't you?
23 **A Yeah, but not regarding legal claims and --**
24 **and for cause, not for cause, et cetera. That was all**
25 **Thomas Surgent.**

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1 right?
2 **A Yes.**
3 Q Did you expect Acis to receive a benefit from
4 signing this agreement when you signed it on its behalf?
5 **A Well, it -- it was more driven out of**
6 **necessity.**
7 Q Okay. But did you expect Acis to receive any
8 benefit from signing this agreement?
9 **A It was more out of necessity that Highland**
10 **wasn't providing the service anymore for Acis to**
11 **continue to function.**
12 Q And who made that decision on behalf of
13 Highland?
14 **A I don't know.**
15 Q Was it anybody other than you?
16 **A It wasn't me.**
17 Q Did you ever ask anybody who authorized
18 Highland to notify Acis that Highland was no longer
19 willing to provide services?
20 **A Like I said, this whole -- the whole**
21 **relationship with Josh Terry was being administered by**
22 **legal, so it would've been someone in the legal**
23 **department.**
24 Q Did you have any interest at all as to how
25 these issues were being managed?

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1 Q Okay. So I'd have to ask Mr. Surgent what the
2 purpose of the agreement was; is that fair?
3 **A I -- I would start there.**
4 Q Okay. Can you share with me any advice that
5 Mr. Surgeon gave to you before you signed this document?
6 **A Not that I recall.**
7 Q Can you share with me any advice you received
8 from anybody before you put pen to paper on this
9 document on behalf of Highland and Acis?
10 **A Nope. Not that I recall at this point.**
11 Q Can you tell me who was authorized on behalf
12 of Highland to notify Acis that Highland was no longer
13 willing to perform services?
14 **A I don't know.**
15 Q Was anybody other than you authorized to act
16 on behalf of Highland in terms of giving notice of
17 termination of services?
18 **A Yes.**
19 Q Who was authorized to do that without your
20 authority?
21 **A Again, this was all being administered by**
22 **legal with some support from accounting and some support**
23 **from tax. But it was all administered by the legal**
24 **department.**
25 Q Well, I appreciate that. I'm just asking you

<p style="text-align: right;">Page 101</p> <p>1 if you can recall who you authorized in the fall of 2017</p> <p>2 to terminate shared services agreements without your</p> <p>3 prior knowledge and approval?</p> <p>4 MS. DEITSCH-PEREZ: Object to the form.</p> <p>5 THE WITNESS: Yeah. Again, I -- I point</p> <p>6 you back to Thomas and his group.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q Okay. So Thomas had the authority, without</p> <p>9 obtaining your knowledge or approval -- withdrawn.</p> <p>10 Thomas had the authority, without obtaining</p> <p>11 your prior approval, to terminate intercompany service</p> <p>12 agreements. Is that your testimony?</p> <p>13 A Yeah. I mean, he is administering the -- the</p> <p>14 documents in a way that's permissible, that he believes</p> <p>15 is the best way to effectuate an outcome or strategy.</p> <p>16 It's -- it's well within his realm.</p> <p>17 Q Okay. I'm not talking about the</p> <p>18 administration of a document. I'm talking about the</p> <p>19 termination of a document.</p> <p>20 Is it your testimony --</p> <p>21 A Yes.</p> <p>22 Q -- your --</p> <p>23 A Yeah. That's -- well, that's exactly what I'm</p> <p>24 saying. He is just using -- there's -- there's an</p> <p>25 overall partnership agreement. There's a strategy of</p>	<p style="text-align: right;">Page 102</p> <p>1 replacing a toxic advisor. There's a strategy in terms</p> <p>2 of getting there. That's all within his realm of</p> <p>3 responsibility and authority, including canceling the --</p> <p>4 the service agreement with Acis.</p> <p>5 Q Do you know that he did that?</p> <p>6 A It -- it was him and his team. It wasn't --</p> <p>7 it wasn't me. I wasn't that deeply involved in this.</p> <p>8 Q Did anybody ever tell you anything about the</p> <p>9 notification, as defined in the third whereas clause?</p> <p>10 Did anybody ever tell you before you signed this</p> <p>11 document that the notification had been given?</p> <p>12 A I can't recall specifically at this time. I -</p> <p>13 - I can't -- I'm not -- I'm not saying someone did</p> <p>14 mention it, but I can't remember specifically or</p> <p>15 remember who.</p> <p>16 Q Do you know if anybody ever gave written</p> <p>17 notice of termination of the shared services and sub-</p> <p>18 advisory agreements that we looked at earlier?</p> <p>19 A I don't know, but -- I don't know, but that --</p> <p>20 that stuff tends to move in tandem. But I don't know.</p> <p>21 Q Okay. Let's look at the --</p> <p>22 A I'm -- I'm no longer on the screen. Can you</p> <p>23 guys see me on the screen? I can't see myself anymore.</p> <p>24 THE PROCEEDINGS OFFICER: Yeah, I was</p> <p>25 just about to mention your screen is --</p>
<p style="text-align: right;">Page 103</p> <p>1 MR. MORRIS: Frozen.</p> <p>2 THE PROCEEDINGS OFFICER: Let me take us</p> <p>3 off the record for just a moment, if that's all right.</p> <p>4 MR. MORRIS: Yes, please.</p> <p>5 THE PROCEEDINGS OFFICER: Okay. Taking</p> <p>6 us off the record.</p> <p>7 (Off the record.)</p> <p>8 THE PROCEEDINGS OFFICER: We are now back</p> <p>9 on record. Sorry.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q Okay. Back on the record. Mr. Dondero, would</p> <p>12 you agree with me that the substance of the next whereas</p> <p>13 clause says that, as a result of the notification as</p> <p>14 defined, Acis has to identify a successor portfolio</p> <p>15 manager?</p> <p>16 A I'm sorry. So "Whereas Acis has determined</p> <p>17 the effect of the notification"? Is that the paragraph?</p> <p>18 Q Yes, sir.</p> <p>19 A Yes.</p> <p>20 Q Okay. And in the -- in the next whereas</p> <p>21 clause, it says, "HCLOM, a qualified successor manager."</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Okay. Do you have an understanding of what it</p> <p>25 means to be a qualified successor manager?</p>	<p style="text-align: right;">Page 104</p> <p>1 A No. It's defined, the indenture to CLOs, but</p> <p>2 I -- I don't know it off the top of my head.</p> <p>3 Q Would being a registered investment advisor be</p> <p>4 one of the attributes of a qualified successor manager?</p> <p>5 A Not necessarily.</p> <p>6 Q Do you believe that an entity could serve as</p> <p>7 the portfolio manager of CLOs without being a registered</p> <p>8 investment advisor?</p> <p>9 A I think Siri has been doing it for quite a</p> <p>10 while. Yes.</p> <p>11 Q You do?</p> <p>12 A Yes. Unless it specifically says it in the</p> <p>13 CLO indenture, there are managers out there that aren't</p> <p>14 registered investment advisors.</p> <p>15 Q Do you know -- I'm sorry. I didn't mean --</p> <p>16 A No. I was just saying, at least there used to</p> <p>17 be.</p> <p>18 Q Did you ever check the indenture to see what</p> <p>19 the qualifications were to be a qualified successor</p> <p>20 manager for purposes of the Acis CLOs?</p> <p>21 MS. DEITSCH-PEREZ: Object to the form.</p> <p>22 THE WITNESS: I did not.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q Do you know if HCLOM Limited was, in fact, a</p> <p>25 qualified successor manager?</p>

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1 MS. DEITSCH-PEREZ: Object to the form.
2 THE WITNESS: I do not know.
3 BY MR. MORRIS:
4 Q Did you know, at the time you signed this
5 agreement, whether HCLOM Limited was a qualified
6 successor manager?
7 A I believed, as presented to me by staff that I
8 trusted, everything was accurate when I signed it.
9 Q Okay. But nobody told you that HCLOM Limited
10 was a qualified successor manager, correct? You just
11 believed that?
12 A I -- I didn't focus on it. I didn't have
13 specific knowledge.
14 Q Okay. Would you have signed this agreement on
15 Highland's behalf if you knew that HCLOM Limited was not
16 qualified to be a successor manager?
17 MS. DEITSCH-PEREZ: Object to the form.
18 THE WITNESS: If I had thought anything
19 was inaccurate, I wouldn't have signed it. And I would
20 have asked for it to be corrected.
21 BY MR. MORRIS:
22 Q Do you see, in the same clause, it then says
23 that HCLOM "irrevocably commits to be appointed as
24 successor manager, in consideration of Acis assigning to
25 it the note"?

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1 Q Would you agree with me that HCLOM, LLC, is
2 not a party to this particular agreement?
3 A It doesn't appear to be. It doesn't appear to
4 be.
5 Q When you talk about the steps that were taken
6 to create a successor to Acis, do you know whether those
7 steps involved HCLOM Limited or HCLOM, LLC?
8 MS. DEITSCH-PEREZ: Object to the form.
9 THE WITNESS: Yeah, I don't -- I don't
10 know specifically.
11 BY MR. MORRIS:
12 Q Did either one ever become the successor
13 manager?
14 A I -- I don't -- Jernigan's injunction, I
15 think, prevented a lot of things from happening, but I
16 don't know if -- I thought Acis 6 took a different path.
17 I just remember that vaguely, but I -- I don't know if
18 that was enough to make these different entities
19 applicable. I -- I don't know the answer.
20 Q Do you know if the decision was made prior to
21 the filing of the Acis bankruptcy that HCLOM, LLC, and
22 not HCLOM Limited would be established for the purpose
23 of serving as the successor portfolio manager?
24 A I don't know.
25 Q And I apologize if I asked you this, but you

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1 A Yes.
2 Q And is that your understanding of what the
3 deal was? That HCLOM Limited would become the successor
4 manager, and Acis would transfer the note to HCLOM?
5 MS. DEITSCH-PEREZ: Object to the form.
6 THE WITNESS: I mean, it says what it
7 says. I -- I'm reading it for the first time.
8 BY MR. MORRIS:
9 Q But you don't have a recollection as to -- you
10 don't have a recollection as to whether or not that was
11 the substance of the transaction that's embodied in this
12 document; is that fair?
13 A Other than it says what it says.
14 Q Okay. Do you know if HCLOM Limited was ever
15 appointed as successor manager?
16 A I don't know.
17 Q Do you know if HCLOM Limited ever took any
18 steps to become the successor manager?
19 A I -- I believe we took steps to do everything
20 we said we were going to do and were only -- only
21 stopped or paused or derailed based on injunctions,
22 state actions, threat of injunctions, the Acis
23 bankruptcy, or the Highland bankruptcy. But I -- I
24 believe we moved in good faith on all the documents that
25 we signed.

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1 have no knowledge that HCLOM Limited ever became the
2 successor manager, correct?
3 MS. DEITSCH-PEREZ: Object to the form.
4 THE WITNESS: I -- I don't know.
5 BY MR. MORRIS:
6 Q Okay. You wouldn't have signed this agreement
7 on Highland's behalf if you knew HCLOM Limited was not
8 qualified to become a successor manager, fair?
9 MS. DEITSCH-PEREZ: Object to the form.
10 THE WITNESS: I -- I think I answered
11 that. If there were any errors or anything I thought
12 was erroneous or inconsistent, I would've not signed it
13 and asked it to be corrected and as accurate as
14 possible.
15 BY MR. MORRIS:
16 Q Did you take any affirmative steps to make
17 sure that this agreement reflected the facts that
18 existed at that time?
19 A No. I -- I trusted -- I trusted internal
20 counsel.
21 Q Did you ask internal counsel any questions
22 about this document before you signed it?
23 MS. DEITSCH-PEREZ: Object to the form.
24 I think that's actually the third time.
25 THE WITNESS: Yeah. No. No, I did not.

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1 BY MR. MORRIS:
2 Q You're familiar with the phrase "quid pro
3 quo," fair?
4 A Yes.
5 Q Okay. What is your understanding of that
6 term?
7 A That it was part of a -- an action was part of
8 a -- a trade or a barter.
9 Q When you signed this agreement, did you
10 understand that the quid pro quo was that HCLOM Limited
11 would step into Acis's shoes and share the portion of
12 the servicing fees that was to remit to Highland under
13 the participation agreement, in exchange for the stream
14 of revenue that was contemplated under the Highland
15 note?
16 MS. DEITSCH-PEREZ: Object to the form.
17 THE WITNESS: Yeah. I didn't have an
18 understanding that -- I didn't have an understanding of
19 that, or I didn't have an understanding that this
20 changed the previously negotiated note arrangement.
21 BY MR. MORRIS:
22 Q I didn't mean to suggest that it did. In
23 fact, was it your understanding that this agreement was
24 intended to simply let HCLOM Limited step into the shoes
25 of Acis?

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1 Q Do you have any understanding as to who is
2 authorized to act on behalf of HCLOM Limited today?
3 A No, I do not.
4 MR. MORRIS: Okay. I'm happy to take a
5 break now, if you'd like. If I had to guess, I would
6 say 90 minutes. So it's 3:19.
7 MS. DEITSCH-PEREZ: 90 -- hold on. 90
8 minutes would be four and a half hours. I thought you
9 had committed that this would be no more than four.
10 MR. MORRIS: Deborah, if you want to cut
11 me off, you are free to cut me off. If I take four and
12 a half hours instead of four, you're free to do that. I
13 will note you took a 20-minute break before instead of a
14 10-minute break, but I think that would --
15 MS. DEITSCH-PEREZ: No, no. John, I'm
16 not I'm not talking about actual hours on the clock.
17 I'm looking at the -- on the record. I don't think that
18 counts --
19 MR. MORRIS: Deborah, if you want to cut
20 him off after four hours, you can do that, and I will
21 reserve my rights. That's all. I'm giving you an
22 estimate of --
23 MS. DEITSCH-PEREZ: I'm just reminding
24 you of your promise, John.
25 MR. MORRIS: Okay. And it's not a

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1 A That was my general understanding.
2 Q Do you know who's managing this litigation
3 today on behalf of HCLOM Limited? Who is the person --
4 not counsel, but who other than counsel is managing this
5 on behalf of HCLOM Limited?
6 THE PROCEEDINGS OFFICER: Oh, I think we
7 might have lost --
8 THE WITNESS: Nope.
9 BY MR. MORRIS:
10 Q Do you know, Mr. Dondero?
11 A No. I don't know. Can we take a break soon
12 and have an idea of how much longer you think you got?
13 Q Sure. Just a couple more questions. So
14 today, as you sit here today, you don't know who's
15 managing this litigation on behalf of HCLOM Limited,
16 correct?
17 A I do not.
18 Q Did you ever ask anybody?
19 A No.
20 Q Do you have any understanding who the officers
21 of HCLOM Limited are today?
22 A No.
23 Q Do you have any understanding as to who owns
24 HCLOM Limited today?
25 A No.

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1 promise. It's an estimate, and you should know that
2 better than anybody.
3 MS. DEITSCH-PEREZ: No, no. Actually,
4 this time, because of the schedule --
5 MR. MORRIS: Let's take a break.
6 THE PROCEEDINGS OFFICER: Okay. I'm
7 going to take us off the record.
8 (Off the record.)
9 THE PROCEEDINGS OFFICER: We are back on
10 the record at 2:35 p.m., Central Time.
11 MR. MORRIS: Great.
12 BY MR. MORRIS:
13 Q So, Mr. Dondero, this Assignment and Transfer
14 Agreement that's entered into among HCLOM Limited, Acis,
15 and Highland is signed early November 2017, right?
16 A Yes.
17 Q And at around the same time, work is being
18 done to either reset or refinance the Acis CLOs, right?
19 A I believe so.
20 Q Okay. And you were involved in that process,
21 were you not?
22 A I was not.
23 Q No? What is a reset?
24 A A -- a reset is where you exchange and reprice
25 the liabilities, assuming you still have enough equity

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1 to do so, or you resize the deal accordingly.

2 Q Is that different than refinancing?

3 A I'm sorry. What?

4 Q Is that different than a refinancing for this

5 purpose?

6 A Is that different than a refinancing?

7 Essentially -- essentially, it's one and the same.

8 Q Okay.

9 A A reset -- reset is a slightly easier version.

10 Q Okay. And at this time that the resets and

11 the refinancings are being contemplated, you understood

12 that the -- that one piece of that was that Acis would

13 be replaced as the CLO portfolio manager, correct?

14 A Yes.

15 Q Okay. And if Acis were to be replaced as the

16 CLO portfolio manager, did you understand that Acis

17 would no longer have the right to receive the management

18 fees or the servicing fees that we discussed earlier?

19 A Yes, when the -- when the resets or the refs

20 were complete.

21 Q And the entity that would receive the

22 management or servicing fees that we discussed, that

23 would be the successor to Acis? The successor portfolio

24 manager, right?

25 A Yes.

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1 Do you know?

2 A I -- I think the thing I keep dancing around;

3 I'll say explicitly. It wasn't me. From a top-down

4 basis, it was the business people knowing and realizing

5 it needed to happen as responsible portfolio managers.

6 And then you had the input of and counsel of the legal

7 folks how to do it, and then you had input from the

8 marketplace saying that the Acis name was toxic and non-

9 marketable. It wasn't -- it wasn't top-down genius from

10 my desk. It was obvious, normal course of business for

11 the investment professionals.

12 Q I appreciate that those are the reasons that

13 supported the decision. I'm asking you if you know, and

14 if you don't, that's fine.

15 But do you know who made the decision to do

16 this? Who was -- withdrawn.

17 Do you have any understanding as to who was

18 authorized to make the decision, on behalf of Acis, to

19 reset the Acis CLOs?

20 A In -- in the CLO management agreements, it's

21 the CLO manager who has the ability to reset and

22 refinance the CLOs.

23 Q Do you know, as you sit here today, who the

24 CLO manager was?

25 A It depends on different points in time, right?

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1 Q Okay. Do you know who decided to pursue the

2 resets on behalf of the Acis CLOs in late 2017?

3 A Some combination of the senior investment

4 professionals and the legal staff. The deals themselves

5 had paid down a significant amount, and the Acis brand

6 was toxic. So the effort to refire reset involved, you

7 know, resetting the interest rates, releveraging as much

8 as possible, and moving away from the Acis brand.

9 Q Did you play any role in the decision to reset

10 the Acis CLOs?

11 A I was aware of it. You know, I signed things

12 that were put in front of me, authorized the plan that

13 the lawyers and the investment people had to make it

14 happen, but I -- I wasn't involved in the details.

15 Q But do you know who made the decision? Who

16 gave the instruction to the team to pursue the resetting

17 of the Acis CLOs?

18 A I -- I think, on their own -- on their own,

19 the investment professionals knew that it was necessary

20 and needed to happen. And then, you know, the adjusting

21 and how to operate within the Acis L.P. agreement and

22 the CLO agreement was the counsel of the legal guys on

23 how best to do it.

24 Q But do you know who said, I authorize and

25 instruct you to pursue the resetting of the Acis CLOs?

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1 I mean, there was Acis when Josh Terry was on board.

2 There was Acis when Josh Terry was out. And then

3 there's the intention to move it to the ALCM LTD or LLC

4 that happened or didn't happen or partially happened,

5 you know, along the way.

6 Q Right. I'm talking about a very specific

7 moment in time, November 2017. It's just after Josh

8 Terry obtained his arbitration award. It's at the same

9 time that you signed this Assignment and Transfer

10 Agreement on behalf of HCLOM Limited. You signed it on

11 behalf of Highland and Acis, rather.

12 And the question is really pretty simple: At

13 that moment in time, do you know who was authorized to

14 have Acis reset the CLOs?

15 A I don't know specifically.

16 Q Is there a list of people from whom you

17 believe would have had the authority to cause Acis to

18 reset the CLOs, or you just don't have -- you can't name

19 anybody?

20 A It's the same answer I've been giving, I

21 think, for half an hour now.

22 Q I'm asking for specific names. You haven't

23 given me one name, sir. I apologize. I don't mean to

24 interrupt, and I don't want to be contentious.

25 I'm just asking you if you can identify a

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1 human being who you believe, in November 2017, had the
2 authority to direct Acis to reset the CLOs?

3 **A I -- I've given the names before. I'll give**
4 **them again. On the investment side, it was Trey Parker**
5 **or John Poglitsch. I don't remember who was in charge**
6 **and -- or who was delegated to working on the CLOs, but**
7 **those were the senior investment people. They reported**
8 **to Mark Okada. I don't know if he was involved or not,**
9 **but I've given those names at least once before, if not**
10 **twice.**

11 **On the legal side, it was the people reporting**
12 **to Thomas Surgent. And I've given these names at least**
13 **once or twice before. It was Tim Cornyn (phonetic), and**
14 **then there was a woman that no longer works for us who**
15 **was a very good corporate lawyer, and she handled a lot**
16 **of the document formation, company formation, company**
17 **administration, et cetera. But she was a little bit**
18 **more junior than Tim Cornyn and Thomas Surgeon.**

19 **And they -- they would've been -- they**
20 **would've been among those five people, six people**
21 **orchestrating the resets or the refs of the CLOs,**
22 **which, again, is obvious on its face as they deliver,**
23 **and their cost of debt is too high. It wasn't a**
24 **brilliant -- brilliant observation from the top down of**
25 **me ordering anybody to do anything.**

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1 **A Like I've said, I'm the signator. There**
2 **aren't a lot of signators around here, so I probably**
3 **sign a hundred things a week. And I -- I rely on --**
4 **especially on an administrative or legal side, I -- I**
5 **rely on counsel.**

6 Q Okay. Do you recall that Mizuho was engaged
7 to serve as agent in connection with the resetting and
8 refinancing the Acis CLOs in November 2017?

9 **A I remember their name. I -- I thought they**
10 **were going to be in conjunction with Goldman. I thought**
11 **they were going to be party of the underwriting**
12 **syndicate. That's my recollection. But maybe they were**
13 **looking at it from an administrative agent standpoint.**

14 MR. MORRIS: All right. Let's mark, as
15 Exhibit 9, what we have, Andrea, as tab 14.
16 (Exhibit 9 marked for identification.)
17 BY MR. MORRIS:

18 Q You will see this is a letter agreement
19 between Mizuho and HCLOM, LLC. It's dated November
20 15th. And if we could just scroll down to the end, Mr.
21 Dondero, let me see if I can find the exact page number.
22 12 of 19.
23 Is that your signature, sir?
24 **A Yes.**
25 Q Okay. And again, if we go back to the top --

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1 Q Were any of the people that you just named
2 ever an officer or employee of Acis?

3 **A I don't know.**

4 Q Do you know what the source of authority
5 would've been for them to engage in the conduct we're
6 talking about? And that is directing Acis to reset the
7 CLOs.

8 What would the source of authority have been?

9 **A I mean, there's multiple sources. If it was**
10 **Okada, I think he would've been an officer of Acis**
11 **somewhere. If it was the investment people, the**
12 **investment people on some sub-advisory or -- or sub-**
13 **management agreement would've been responsible for the**
14 **portfolio and administering the structure, which would**
15 **include refinancing, whatever.**

16 **So I believe they would've felt they had**
17 **adequate authority, and then I think the lawyers could**
18 **do what was in the best interest of the investors that**
19 **got materially harmed and damaged by enduring its**
20 **injunction. And the investors who would've benefited**
21 **from a reset, it was their responsibility, if not a**
22 **fiduciary responsibility, to do what was in their best**
23 **interest.**

24 Q But you had absolutely nothing to do with the
25 approval of this, right?

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1 don't want to step on your toes at all. If you could
2 just take a -- maybe a look at the beginning and tell me
3 if you recall ever reading this document before?
4 **A I do not.**

5 Q Okay. Do you recall ever signing an agreement
6 with Mizuho that related to the Acis CLOs?

7 **A Okay. This is refreshing me on an issue that**
8 **was an issue in terms of the refs or the resets. I**
9 **think, on the refs, you needed to be compliant with the**
10 **new --**

11 Q The risk retention rules?

12 **A Yeah, the new risk retention rules. I think,**
13 **on a reset, you didn't need to, but on a refi, you did.**
14 **But it looks like there -- this transaction -- yeah.**
15 **"Engages the Placement Agent to act as sole financial**
16 **arranger." So it looks like Mizuho was in competition**
17 **with Goldman to be placement agent in terms of**
18 **refinancing the restructures.**

19 Q Okay. And you signed this agreement on behalf
20 of HCLOM, LLC, correct?

21 **A I'm getting there. C Level Management, LLC.**
22 **Correct.**

23 Q Okay. And if you go back to the first
24 paragraph, HCLOM, LLC, is defined as the company. You
25 take a look and confirm that for me?

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1 **A LLC is defined as -- I'm sorry, what?**
2 Q As the company. So in the first paragraph,
3 you'll see a reference to HCLOM, LLC, and then there's a
4 definition of the company. And I just want to make sure
5 we're on the same page with that.
6 **A Doesn't -- it -- it's not a defined term in**
7 **that first paragraph. It just says, "the Company,"**
8 **right?**
9 MS. DEITSCH-PEREZ: You have to go on to
10 the next --
11 THE WITNESS: Oh, okay.
12 MS. DEITSCH-PEREZ: Yeah, there.
13 THE WITNESS: Highland C Level -- okay.
14 I got it.
15 All right. So the company in the header
16 is the company in the first paragraph, I guess, is what
17 you're asking, which is LLC?
18 BY MR. MORRIS:
19 Q Right. So HCLOM, LLC, is defined in this
20 agreement as the company, fair?
21 **A Yes.**
22 Q Okay. Now, if you turn the page, we'll go
23 down to the page to Section 2, Engagement of the
24 Placement Agent. Would you agree with me that the first
25 sentence essentially says that the co-issuers and HCLOM,

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1 **engagement.**
2 Q And Acis would no longer be the manager,
3 correct?
4 **A Depending upon how the deals were handled or -**
5 **-**
6 Q And HCLOM Limited was not going to play any
7 role in the transactions and offerings described in this
8 document, correct?
9 MS. DEITSCH-PEREZ: Object to the form.
10 THE WITNESS: I don't know.
11 BY MR. MORRIS:
12 Q Well, you can take your time and review the
13 document if you'd like.
14 **A Well, I don't see their name mentioned here,**
15 **but I -- it would be -- I don't see their name mentioned**
16 **here. I would like to leave it at that. I -- I don't**
17 **know -- I -- it's too much for me to say they would have**
18 **no involvement.**
19 Q Okay. So I'm going to ask two questions,
20 then. As you review this document, you don't see any
21 reference to HCLOM, LTD, correct?
22 **A I do not.**
23 Q And based on your recollection, you have no
24 personal knowledge that HCLOM, LTD was ever going to
25 play a role -- withdrawn.

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1 LLC, engage Mizuho to act as the sole financial arranger
2 and placement agent for the transactions and offerings
3 described in the document?
4 **A Yes.**
5 Q Okay. Do you know where HCLOM, LLC, got the
6 authority to engage Mizuho for this purpose?
7 **A I do not.**
8 Q Do you know why HCLOM Limited wasn't
9 designated as the company for purposes of serving in
10 this capacity in connection with the resets?
11 **A I do not.**
12 Q Does this document -- is it fair to say that
13 under this document, if these transactions had occurred,
14 then HCLOM, LLC would've served as Acis's successor
15 manager?
16 **A I -- I don't want to make a legal**
17 **interpretation.**
18 Q I don't want you to make a legal
19 interpretation, either. I'm asking for facts. Was it
20 your understanding, when you signed this document, that
21 HCLOM, LLC was going to serve as Acis's successor
22 manager of the CLOs?
23 **A I'm struggling with the word "successor." I**
24 **think this engagement letter says that the LLC will be**
25 **the manager of whatever CLOs fall out of this**

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1 Based on your recollection, you have no
2 knowledge that HCLOM, LTD was going to play a role in
3 the transactions that are described in this document,
4 fair?
5 MS. DEITSCH-PEREZ: Object to the form.
6 THE WITNESS: I -- I don't have
7 awareness.
8 BY MR. MORRIS:
9 Q Okay. Do you know why HCLOM, LLC was a
10 signatory to this agreement rather than HCLOM, LTD?
11 **A I do not.**
12 Q Did you ever ask anybody why HCLOM, LTD wasn't
13 signing this document instead of HCLOM, LLC?
14 **A I do not.**
15 Q Do you know if HCLOM, LLC ever succeeded Acis
16 as the portfolio manager of the Acis CLOs?
17 **A I -- like I said, I don't know how much that**
18 **process was interrupted by the various other legal**
19 **things that were going on.**
20 Q But looking at this document, does that
21 refresh your recollection that in November 2017, the
22 expectation was that HCLOM, LLC would serve as the
23 successor portfolio manager to Acis?
24 **A That's what this document says, but I don't**
25 **want to -- I don't want to extrapolate from that.**

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1 Q Okay. But you would agree with me that that's
2 what this document says, fair?
3 MS. DEITSCH-PEREZ: Object to the form.
4 BY MR. MORRIS:
5 Q You can answer.
6 A Again, it says what it says, that the LLC
7 would be the collateral manager.
8 Q Do you have any recollection of ever signing
9 any document, other than the transfer agreement we
10 looked at before, that contemplated that HCLOM, LTD
11 would serve as Acis's successor portfolio manager?
12 A Not as I sit here today.
13 Q Okay. Let's go to page 3 and look at Section
14 3C. Do you see, in 3C, HCLOM, LLC represented,
15 warranted, and agreed that it would, quote, "Act as
16 collateral manager for the co-issuers"?
17 A (No audible response).
18 Q I'm just looking at C. We're only at one.
19 A Yeah. I see that.
20 Q Okay. And did you understand, at the time
21 that you signed this document, that HCLOM, LLC was
22 making this representation?
23 A I -- I don't remember.
24 Q When you signed the document, did you intend
25 that Mizuho would rely on the representations and

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1 Q Okay. And do you recall signing an agreement
2 with U.S. Bank in January 2018 on behalf of HCLOM, LLC?
3 A No.
4 Q Do you know, looking at the document, if this
5 was part of the contemplated reset of the Acis CLOs?
6 A I don't know. Was this ever executed or -- by
7 their side or --
8 Q Yeah. We can go back --
9 A Okay.
10 Q -- to the bottom if you want.
11 A I just -- I saw my signature. I didn't see
12 theirs, but --
13 Q Okay. Take your time.
14 MS. DEITSCH-PEREZ: Following page.
15 THE WITNESS: The following page. Okay.
16 Uh-huh. Okay.
17 BY MR. MORRIS:
18 Q So do you have any recollection of this
19 document?
20 A No.
21 Q Do you have any recollection of entering into
22 an agreement with U.S. Bank in January 2018 on behalf of
23 HCLOM, LLC?
24 A No.
25 Q Do you know what role the custodian would play

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1 warranties in the document?
2 A I -- I didn't focus on them, but I do think
3 people rely on reps and warranties.
4 Q Do you know what happened with respect to the
5 transactions and the resets described in this document
6 after it was executed?
7 A Other than what I've spoken to generally, I
8 mean, I think it was derailed by legal actions. I'm not
9 sure much happened at all.
10 Q Okay. Going to try and speed this up a bit.
11 MR. MORRIS: Let's take that down, and
12 let's put up -- let's mark, as the next exhibit, tab 7.
13 (Exhibit 10 marked for identification.)
14 BY MR. MORRIS:
15 Q Okay. And you'll see, Mr. Dondero, this is a
16 document entitled Standard Custodial Terms for Highland
17 CLO Management, LLC, dated as of January 19th, 2018, by
18 and between HCLOM, LLC and U.S. Bank National
19 Association.
20 Do you see that?
21 A Yes.
22 Q And if we go down towards the bottom, I think
23 we'll find the signature page. And if you can go to 26
24 of 29, that's your signature, correct?
25 A Yes.

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1 in the resetting of the Acis CLOs?
2 A Every deal needs a custodial bank. So on
3 refs -- on resets, you don't typically change, I don't
4 think. But on refinancings, you typically have a new
5 custodial bank.
6 Q And the custodial bank plays a different role
7 than the placement agent that Mizuho was going to play,
8 fair?
9 A Correct.
10 Q Okay. Do you know why you signed this
11 document at this time?
12 A I -- I assumed it was something that was
13 necessary as part of engaging Mizuho or Goldman, that
14 they wanted to know we had a custodial bank on board.
15 Q And is this consistent expectation that HCLOM,
16 LLC was going to serve as Acis's successor as the
17 portfolio manager of the Acis CLOs?
18 A I -- I think this is just setting up a
19 relationship with a custodial bank. I'm not sure it's -
20 - I think it's meant to be consistent with the entities
21 in the agreements with Mizuho or Goldman, but it's not -
22 - in and of itself, it's not a commentary on Acis versus
23 something else.
24 Q Do you recall if there was -- do you recall
25 any discussion in late 2017, early 2018, concerning

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1 whether HCLOM, LTD or HCLOM, LLC could or would serve as
2 the successor portfolio manager to Acis?
3 **A No.**
4 Q Okay.
5 MR. MORRIS: Let's take that document
6 down. Let's put up on the screen the next exhibit,
7 which is tab 8.
8 (Exhibit 11 marked for identification.)
9 BY MR. MORRIS:
10 Q Okay. So this is just a one-page agreement.
11 If we go to the second page, you'll see your signatures
12 on behalf of Highland and Acis.
13 And then if we go to the last page, you'll see
14 Mr. Kulani's (phonetic) name again on behalf of Summit,
15 the director of HCLOM Limited; do you see that?
16 **A Yes.**
17 Q Okay. Have you seen this document before?
18 Withdrawn.
19 Obviously, you did. You signed it, right?
20 That's your signature. Those are your --
21 **A Yes.**
22 Q -- signatures we looked at?
23 **A That is my signature.**
24 Q Okay. Do you remember ever -- do you remember
25 seeing this document before?

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1 **do with the suitability, or lack thereof, of Acis on an**
2 **ongoing basis.**
3 Q Well, the second paragraph refers to the
4 transfer agreement that we looked at earlier, right?
5 **A Yes.**
6 Q Okay. And the third paragraph describes
7 certain obligations on the part of both Acis and HCLOM
8 Limited, fair?
9 **A Yep.**
10 Q Okay. And you have no reason to believe that
11 paragraph 3 is incorrect in any way, right?
12 **A I -- I didn't when I signed it. I don't as**
13 **I'm looking at it now, either.**
14 Q Okay. Great. So the next paragraph says that
15 both Highland and HCLOM acknowledge a number of things.
16 And the first one is that they intend to reset the CLOs,
17 fair?
18 **A Yes.**
19 Q B says that each reset has to comply with the
20 U.S. risk retention rules, fair?
21 **A Yes.**
22 Q C says that to comply with the U.S. risk
23 retention rules in connection with the resets, "Each
24 applicable CLO issuer will appoint Highland CLO
25 Management, LLC, a Delaware limited liability company,

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1 **A No.**
2 Q Do you recall if you signed -- if you read it
3 before you signed it?
4 **A I do not remember reading it.**
5 Q Do you recall discussing it with anybody at
6 any time?
7 **A I do not.**
8 Q Do you know what an -- what the purpose of the
9 document is, now that you're looking at it?
10 **A Again, it appears -- it appears to highlight**
11 **the issue of risk retention rules that I -- I think**
12 **influence how these transactions could be reset or**
13 **refinanced, and I think also probably have something to**
14 **do with the suitability or lack of suitability in -- on**
15 **the part of Acis. I -- I --**
16 Q So could -- I'm sorry?
17 **A No. I was just going to say, I -- I don't**
18 **remember the interplay of the issue. But it's something**
19 **we'll get refreshed on, I guess --**
20 Q Yeah.
21 **A -- before -- before the trial. But there --**
22 **there was something to do with -- there was something to**
23 **do with risk retention, and risk retention requires**
24 **capital and requires new investment. And again, I -- I**
25 **can't remember exactly, but I think it had something to**

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1 as the collateral manager of such CLO"; is that right?
2 **A Yes.**
3 Q Okay. And then it continues, and D,
4 "Therefore, none of the notices have been nor will be
5 delivered pursuant to Section 1 of the transfer
6 agreement, and none of the appointments have been nor
7 will be made pursuant to Section 2 of the transfer
8 agreement."
9 Have I read that?
10 **A Yes.**
11 Q So is it fair to interpret this as saying
12 there's a cause and effect here? That because Highland
13 CLO Management, LLC, is being appointed pursuant to the
14 U.S. risk retention rules, that the notices and
15 appointments set forth in Sections 1 and 2 of the
16 transfer agreement won't occur?
17 MS. DEITSCH-PEREZ: Object to the form.
18 THE WITNESS: Are those notices referring
19 to notices to Limited? Is that what they're referring
20 to?
21 BY MR. MORRIS:
22 Q You can look up above and see, in the third
23 paragraph, what they referred to. You know what? Let's
24 take it in pieces. Let's look at that third paragraph.
25 Did you understand that, pursuant to the

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1 transfer agreement, Acis was required to promptly
2 provide notice to the controlling class of each CLO?
3 **A Yes, I see that.**
4 Q And did you understand that as part of the
5 transfer agreement, that was an obligation on Acis's
6 part?
7 **A I -- I don't specifically have awareness of**
8 **that.**
9 Q Okay. Are you aware of Acis ever promptly
10 providing notice to the controlling class of each CLO,
11 as that phrase is used in this paragraph?
12 MS. DEITSCH-PEREZ: Object to the form.
13 THE WITNESS: I -- I have no awareness
14 whether they did or didn't or had an obligation.
15 BY MR. MORRIS:
16 Q Okay. The next sentence is -- says --
17 sentence that says that, after the delivery of the
18 notices, "Each of Acis and HCLOM was required to
19 promptly pursue an appointment for each CLO."
20 Do you see that?
21 **A Yes.**
22 Q Do you know if that ever happened? Did Acis
23 and HCLOM ever promptly pursue an appointment for each
24 CLO?
25 **A I don't know.**

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1 and HCLOM hereby waive any breach of Sections 1 or 2 of
2 the transfer agreement as applicable"? Do you see that?
3 **A Yes.**
4 Q Did you know when you signed this document
5 that you were waiving breaches of the transfer agreement
6 on behalf of Highland?
7 **A I mean, this looks like document cleanup or**
8 **clarification in the movement towards LLC from LTD. I**
9 **did -- I did not have specific awareness that we were**
10 **waiving a breach, but it -- it also doesn't strike me as**
11 **material.**
12 Q Okay. I'll move -- it's interesting that you
13 don't want to play lawyer unless you do, right? Like,
14 materiality is a legal conclusion; would you agree?
15 **A Well, the materiality is a financial concept,**
16 **you know? That's -- I -- I mean materiality in a**
17 **financial way.**
18 Q Okay. I appreciate that. Do you know what,
19 if anything, Highland received in exchange for the
20 waiver set forth in (indiscernible - audio disruption)?
21 **A I -- I do not specifically.**
22 Q Did you ever ask anybody why Highland was
23 waiving breaches of the transfer agreement?
24 **A I did not.**
25 Q Did anybody ever explain to you what breaches


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1 Q Okay. So now, going back to D, is it fair to
2 say that the word "therefore" signifies that there's an
3 effect that flows from C? And to be specific, is it
4 fair to say that HCLOM, LLC, is going to be appointed as
5 the collateral manager, and as a result, the notices and
6 appointments contemplated by Sections 1 and 2 of the
7 transfer agreement are not going to happen?
8 MS. DEITSCH-PEREZ: Object to the form.
9 THE WITNESS: Yeah. This is a legal
10 document. I don't want to give a legal interpretation.
11 You know, as a layperson, it appears to be a --
12 BY MR. MORRIS:
13 Q All right. So let me try it this way, then,
14 because I'm certainly not looking for a legal
15 conclusion. You signed this document on behalf of both
16 Acis and Highland, correct?
17 **A Right.**
18 Q And you didn't read the document, correct?
19 **A I did not read the document I was signing.**
20 Q And you don't recall discussing the substance
21 of this document with anybody prior to the time you
22 signed it, fair?
23 **A I did not. I do not.**
24 Q Okay. Do you see, in the very last portion,
25 it says, you know, taking the beginning, "Each of HCM

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1 occurred of the transfer agreement?
2 **A No.**
3 Q Did anybody ever explain to you what benefit
4 there would be to Highland by waiving the breaches of
5 the transfer agreement?
6 **A No.**
7 MR. MORRIS: All right. Why don't we
8 take a five-minute break? I'll just have a few minutes
9 more. I just want to look at my notes.
10 THE PROCEEDINGS OFFICER: Sure. Taking
11 us off the record.
12 (Off the record.)
13 THE PROCEEDINGS OFFICER: Back on record
14 at 3:25 p.m., Central Time.
15 BY MR. MORRIS:
16 Q Okay. Just a couple of questions, Mr.
17 Dondero. Do you believe that Highland's objection to
18 the claim -- to the scheduled claim that encompasses the
19 note should be overruled? Do you think the Court should
20 overrule Highland's objection?
21 MS. DEITSCH-PEREZ: Object to the form.
22 THE WITNESS: I think it should be paid.
23 BY MR. MORRIS:
24 Q Okay. And why do you think it should be paid,
25 in your own words?

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<p>1 A It's -- it's a bona fide note. It had a tax 2 angle to it. It's separate and distinct from when -- 3 whether any of the fees are paid or not. In some ways, 4 it's not unlike the note's case, where you guys argued 5 that it was a bona fide note, you know, in and of 6 itself, separate and distinct from anything else. Yeah. 7 I mean, I don't know. That -- that's in a nutshell. I 8 mean, again, it was -- it was done in good faith. It 9 was a bona fide note.</p> <p>10 But again, more importantly, Josh Terry had a 11 \$2 million claim when he left. He wrote me an eight- 12 page heartfelt, handwritten note that he considered me 13 like a father, and even though he only deserved a 14 million or two, he should get paid four for having built 15 the organization. He got awarded eight in the 16 arbitration. He took out 15 initially, as much as 25 17 million out of Acis, all out of the hides of the 18 investors. You guys gave him another 30 from the 19 Highland estate. You know, he's -- he's parlayed a 20 couple million bucks into 60 or 70, and he's suing me 21 separately for another 75 million.</p> <p>22 And when you guys settled with Acis and Josh 23 Terry, you were 100 percent aware of the note, all the 24 details around it, and that it was due, et cetera. And 25 to the extent that Highland didn't get paid fees it</p>	<p>1 might have, or could have, or should have that aren't 2 directly related, but you want to make the argument are 3 directly related, you, in essence, considered those or 4 should have considered those in the Josh Terry, you 5 know, unjust enrichment train.</p> <p>6 Q Anything else?</p> <p>7 A I'm sorry. You asked for my own words. Sorry 8 if I rambled too long. That's it. No, that's all I 9 got.</p> <p>10 Q Okay. When you say that it's separate and 11 distinct, are you saying the obligations under the note 12 are separate and distinct from the obligations under the 13 transfer agreement?</p> <p>14 A That's our -- yes. It's separate and distinct 15 from whether or not a penny of fees got paid or no fees 16 got paid or whatever. Again, it was all something that 17 was well known to Siri and the estate when you threw 18 tens of millions of dollars at Josh Terry.</p> <p>19 Q Okay. Anything else to add?</p> <p>20 A That's it at the moment. Thank you.</p> <p>21 MR. MORRIS: Okay. Thank you very much 22 for your time, Mr. Dondero. Good to see you. Be well.</p> <p>23 THE WITNESS: You, too. See you.</p> <p>24 MR. MORRIS: Take care, folks. Bye now.</p> <p>25 THE PROCEEDINGS OFFICER: There's</p>
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<p>1 actually a couple questions that I need to ask before we 2 go off the record, Mr. Morris.</p> <p>3 MR. MORRIS: Okay.</p> <p>4 THE PROCEEDINGS OFFICER: So the 5 certified transcript is included in your order. I just 6 wanted to confirm you wanted to be getting the 7 transcript.</p> <p>8 MR. MORRIS: Yes, please.</p> <p>9 THE PROCEEDINGS OFFICER: Okay. And I 10 also wanted to confirm there was an expedite date for 11 tomorrow, November 5th, 2024.</p> <p>12 MR. MORRIS: Didn't quite need it that 13 fast. I don't -- if you want to do that, that's fine 14 because I don't mean to take money away from you. If 15 you would be happier waiting until Friday, that would be 16 okay, too. So I'll leave it to you. I'll take it 17 tomorrow and pay for tomorrow if that's, you know, the 18 deal, and that's what you want to do.</p> <p>19 If you'd prefer a slightly more leisurely 20 pace, you know, Thursday or Friday would be fine, too, 21 okay?</p> <p>22 THE PROCEEDINGS OFFICER: Okay. Perfect.</p> <p>23 So --</p> <p>24 MS. DEITSCH-PEREZ: My two sense would 25 be, if you don't need it expedited, John, don't order it</p>	<p>1 expedited. Don't --</p> <p>2 MR. MORRIS: Please --</p> <p>3 MS. DEITSCH-PEREZ: -- take money out of 4 the estate to pay for the expedited.</p> <p>5 MR. MORRIS: Please don't tell me what to 6 do. Thank you.</p> <p>7 THE PROCEEDINGS OFFICER: So would the 8 8th work all right for you, then, sir?</p> <p>9 MR. MORRIS: Yeah, that would be great.</p> <p>10 THE PROCEEDINGS OFFICER: Okay. Perfect.</p> <p>11 Thank you.</p> <p>12 MR. MORRIS: Thank you.</p> <p>13 THE PROCEEDINGS OFFICER: And I'm sorry.</p> <p>14 Oh, and I -- Ms. Deborah, I'm so sorry.</p> <p>15 I don't want to mispronounce your last name. Would you 16 like to purchase a copy of the transcript, ma'am?</p> <p>17 MS. DEITSCH-PEREZ: Don't I get one, 18 representing the witness?</p> <p>19 THE PROCEEDINGS OFFICER: From what --</p> <p>20 MR. MORRIS: You know, that -- that's 21 taking money out of his pocket, but you do what you 22 want. I'll be sending you the transcript, and Mr. 23 Dondero needs to read it.</p> <p>24 MS. DEITSCH-PEREZ: I'll take a -- I 25 mean, I'll take -- I don't need it expedited. I'll take</p>

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<p>1 a condensed.</p> <p>2 THE PROCEEDINGS OFFICER: Okay.</p> <p>3 MS. DEITSCH-PEREZ: But send me whatever</p> <p>4 I'm entitled to as counsel for the witness.</p> <p>5 THE PROCEEDINGS OFFICER: Okay.</p> <p>6 MR. MORRIS: All right, Kindel. Thanks</p> <p>7 so much. Anything else?</p> <p>8 THE PROCEEDINGS OFFICER: Thank you. I</p> <p>9 think that's all that I need.</p> <p>10 Thank you so much, everybody.</p> <p>11 MR. MORRIS: All right.</p> <p>12 (Proceeding concluded at 3:31 p.m., CT)</p> <p>13 (Read and sign waived.)</p> <p>14 *****</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CERTIFICATE OF PROCEEDINGS OFFICER</p> <p>2</p> <p>3 I, Kindel McDermott, CDR-3527, hereby certify:</p> <p>4 That the foregoing proceedings were taken</p> <p>5 before me at the time and place therein set forth;</p> <p>6 That the proceedings were recorded by me and</p> <p>7 thereafter formatted into a full, true, and correct</p> <p>8 transcript of same;</p> <p>9 I further certify that I am neither counsel for</p> <p>10 nor related to any parties to said action, nor in any</p> <p>11 way interested in the outcome thereof.</p> <p>12</p> <p>13 DATED this 8th day of November 2024.</p> <p>14 </p> <p>15</p> <p>16 Kindel McDermott, CDR-3527</p> <p>17 Proceedings Officer</p> <p>18 Commission No.: 20234044059</p> <p>19 Commission Expiration: November 21, 2027</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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EXHIBIT 90

MC-328533

Certificate Of Incorporation

*I, V. DAPHENE WHITELOCKE Assistant Registrar of Companies of the Cayman Islands
DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said
Law in respect of registration were complied with by*

Highland CLO Management Ltd.

*an Exempt Company incorporated in the Cayman Islands with Limited Liability with effect from the
27th day of October Two Thousand Seventeen*

*Given under my hand and Seal at George Town in the
Island of Grand Cayman this 27th day of October
Two Thousand Seventeen*



A handwritten signature in black ink, appearing to read "V. Whitelocke", written over a faint, larger version of the coat of arms of the Cayman Islands.

**Assistant Registrar of Companies,
Cayman Islands.**


Authorisation Code : 841776417880
www.verify.gov.ky
27 October 2017

HCL0M00009427

EXHIBIT 91



EXEMPTED Company Registered and
filed as No. 328533 On 27-Oct-2017


Assistant Registrar


**IN THE MATTER OF SECTION 165 OF THE COMPANIES LAW (2016 REVISION) AND IN THE
MATTER OF HIGHLAND CLO MANAGEMENT LTD. (THE "COMPANY").**

DECLARATION

I, Meghan Wylie, for and on behalf of Maples Corporate Services Limited, do solemnly and sincerely
declare:

- 1 That I am a representative of Maples Corporate Services Limited, the subscriber to the
Memorandum of Association of the Company.
- 2 That the operation of the Company is intended to be conducted mainly outside the Cayman
Islands.

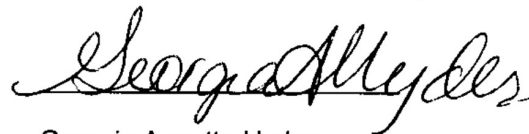
Sworn and Declared to before me this 27th day of October 2017 at George Town, Grand Cayman,
Cayman Islands.



Meghan Wylie

for and on behalf of

Maples Corporate Services Limited



Georgia Annette Hydes

Notary Public

My commission expires on 31 January 2018.

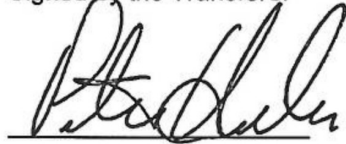


EXHIBIT 92

SHARE TRANSFER

POLLACK, LTD (the "**Transferor**") does hereby transfer to HIGHLAND CLO ASSETS HOLDINGS, LTD., a British Virgin Islands company limited by shares (the "**Transferee**"), one hundred (100) ordinary shares standing in the Transferor's name in the undertaking called NEUTRA, LTD. (an exempted company incorporated in the Cayman Islands), to hold the same unto the Transferee.

Signed by the Transferor



Peter Huber
Authorised Signatory

Dated: 20 December 2017

I hereby certify I have seen the original document, have compared it to the copy, and can confirm that this document is a true and correct copy of the original.



Name of Certifier: Sarah Ashley Bell

Date: August 21, 2018

Company Name: Highland Capital Management, L.P.

Title Position: Executive Administrative Assistant

Email: sbell@highlandcapital.com

Address: 300 Crescent Court, Ste 700, Dallas, TX 75201

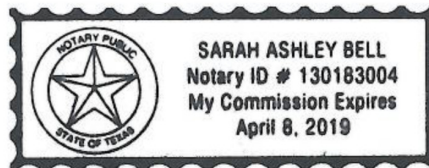


EXHIBIT 93

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:) Case No. 18-30264-Sgj7
ACIS CAPITAL MANAGEMENT, L.P.,) Dallas, Texas
Alleged Debtor.) March 23, 2018
-----) 9:36 a.m.
ACIS CAPITAL MANAGEMENT GP, LLC,) Case No. 18-30265-sgj7
Alleged Debtor.)
TRANSCRIPT PORTION UNDER SEAL)
-----)

TRANSCRIPT OF HEARING ON:

AS TO CASE NO. 18-30264-sgj7:

[#80] EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING
INVOLUNTARY PETITIONS FILED BY CLO HOLDCO, LTD., HIGHLAND CLO
FUNDING, LTD., NEUTRA, LTD.;

[#81] MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #80
MOTION TO INTERVENE) FILED BY CREDITOR HIGHLAND CLO FUNDING,
LTD., CREDITOR CLO HOLDCO, LTD., CREDITOR NEUTRA, LTD.) FILED
BY PETITIONING CREDITOR JOSHUA TERRY

[#87] OBJECTION TO (RELATED DOCUMENT(S): #80 EMERGENCY MOTION
TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS
FILED BY CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO
HOLDCO, LTD., CREDITOR NEUTRA, LTD., #81 MOTION FOR EXPEDITED
HEARING (RELATED DOCUMENTS, #80 MOTION TO INTERVENE) FILED BY
CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO HOLDCO,
LTD., CREDITOR NEUTRA, LTD.) FILED BY PETITIONING CREDITOR
JOSHUA TERRY

(cont'd. next page)

1 AS TO CASE NO. 18-30265-sgj7:
2 [#77] EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING
3 INVOLUNTARY PETITIONS FILED BY CLO FUNDING, LTD., HIGHLAND CLO
4 FUNDING, LTD., NEUTRA, LTD.;

5 [#78] MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #77
6 MOTION TO INTERVENE) FILED BY CLO FUNDING, LTD., HIGHLAND CLO
7 FUNDING, LTD., NEUTRA, LTD.;

8 [#83] OBJECTION TO (RELATED DOCUMENT(S): #77 EMERGENCY MOTION
9 TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS
10 FILED BY CREDITOR NEUTRA, LTD., CREDITOR HIGHLAND CLO FUNDING,
11 LTD., CREDITOR CLO FUNDING, LTD., #78 MOTION FOR EXPEDITED
12 HEARING (RELATED DOCUMENTS #77 MOTION TO INTERVENE) FILED BY
13 CREDITOR NEUTRA, LTD., CREDITOR HIGHLAND CLO FUNDING, LTD.,
14 CREDITOR CLO FUNDING, LTD.) FILED BY PETITIONING CREDITOR
15 JOSHUA TERRY

16 BEFORE THE HONORABLE STACEY G. JERNIGAN

17 UNITED STATES BANKRUPTCY COURT

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27 Transcription Services: eScribers, LLC
28 7227 North 16th Street
29 Suite #207
30 Phoenix, AZ 85020
31 (973) 406-2250

32 PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

33 TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

eScribers, LLC | (973) 406-2250
operations@escribers.net | www.escribers.net

1 APPEARANCES:

2 For the Debtor:

MICHAEL D. WARNER, ESQ.
Cole Schotz P.C.
1700 City Center Tower II
301 Commerce Street
Suite 1700
Fort Worth, TX 76102

WARREN A. USATINE, EQ.
Cole Schotz P.C.
25 Main Street
Hackensack, NJ 07601

GARY CRUCIANI, ESQ.
MICHAEL P. FRITZ, ESQ.
McKool Smith
300 Crescent Court
Suite 1500
Dallas, TX 75201

11 For Joshua N. Terry,
12 Petitioning Creditor:

RAKHEE V. PATEL, ESQ.
ANNMARIE CHIARELLO, ESQ.
Winstead PC
2728 N. Harwood Street
Suite 500
Dallas, TX 75201

BRIAN P. SHAW, ESQ.
Clouse Dunn LLP
1201 Elm Street
Suite 5200
Dallas, TX 75270

18 For Highland CLO Funding, SCOTT RICHARD LARSON, ESQ.
Ltd., CLO Holdco, Ltd., and Bell Nunnally & Martin LLP
19 Neutra Ltd.: 3232 McKinney
Suite 1400
20 Dallas, TX 75204

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22
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James Dondero - Cross (Under Seal)

4

1 BY MR. SHAW:

2 Q. Let me go back to the last question I was asking you
3 about. I know I referenced Exhibit 101. But I want to talk
4 to you about your deposition testimony from Tuesday that was
5 in this particular litigation and the bankruptcy. I'm going
6 to show you your previous deposition. And I want to read the
7 highlighted part to you and let me know if you disagree that
8 I've read this correctly.

9 I said -- this is a question.

10 "Q. Why did you know that it was going to be scrutinized in
11 hindsight?

12 "A. What? I just -- the level of litigation was -- was high
13 and the personalities on both sides were intractable. We'll
14 be here a decade for now."

15 Did I read that accurately?

16 A. Yes.

17 Q. All right. And that's your sworn testimony in this
18 bankruptcy proceeding, correct?

19 A. Yes.

20 Q. All right.

21 MR. SHAW: Now moving on to Exhibit 101, if you can
22 bring that up, Omar, please, at page 261, line 24, please?

23 Q. So if you go -- starting at line 24 and into 262.

24 MR. CRUCIANI: I'm sorry. Is there a pending
25 question? Is this impeachment? Because otherwise, it's not

James Dondero - Cross (Under Seal)

5

1 proper to read from a deposition. And I didn't think there was
2 a pending question for --

3 MR. SHAW: It's been exhibit as -- it's been admitted
4 as an exhibit, so I read from the deposition.

5 MR. CRUCIANI: Not when the witness is here.

6 MR. SHAW: Since --

7 MR. CRUCIANI: The witness is here.

8 MR. SHAW: Well, I can ask. I mean, I don't
9 understand that rule. It's been admitted as an exhibit.

10 THE COURT: I think he's referring to we usually just
11 have deposition testimony when the witness is unavailable.
12 He's referring to that general rule. And he's here so he's
13 not unavailable.

14 MR. SHAW: Right.

15 THE COURT: But you're saying -- okay, but except
16 what we stipulated. Nevertheless, regardless of that rule,
17 they've stipulated to it being --

18 MR. SHAW: Exactly. That rule applies to --

19 THE COURT: -- in the record. So what do you say
20 about that?

21 MR. CRUCIANI: You know, I think you have, sort of, a
22 conflict there of two different rules. I mean, I think it's
23 kind of silly. He's here; he can ask him whatever question he
24 wants to ask about. He'll either get the answer or he'll
25 impeach him if he doesn't get the answer. That seems like the

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1 protocol.

2 THE COURT: Okay. So why don't we proceed that way,
3 Mr. Shaw.

4 MR. SHAW: Okay.

5 THE COURT: That makes more sense.

6 MR. SHAW: I'm just going to turn to my exhibit here.
7 Hold on one second. You know, I was going to read it from
8 here, so if you don't mind, can we have it up so I can read it
9 and ask him the question from it? And if you'll zoom in on
10 the bottom of 261, top of 262?

11 BY MR. SHAW:

12 Q. Okay. Mr. Dondero, do you recall testifying in the
13 arbitration proceeding in a deposition?

14 A. I'm sorry, say again. Did I what?

15 Q. Do you recall testifying, under oath, in a deposition at
16 the Lackey Hershman law firm?

17 A. Yes.

18 Q. All right. Did you say, "The one thing about this case
19 is -- and the way -- the way he's broached it, and especially
20 attacking -- we're kind of used to everybody attacking me, but
21 attacking everybody else -- nobody's going to let out a dime
22 go out of the firm that we don't have to pay ever to -- to
23 Josh, period.

24 "I mean, it's -- it's a worse than Pat Daugherty
25 scenario. And it's -- and I -- it's -- I think it's -- I

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1 think it's personal. I think it's more personal to some of
2 the other people in the office than it is even to me because I
3 think some of the other people, the mudslinging affects them
4 more."

5 Did you testify to that in the arbitration deposition?

6 A. Yes.

7 Q. All right. You're aware that the respondents in the
8 arbitration requested the deposition of Ms. Terry, Josh's
9 wife?

10 A. Yes.

11 Q. Was that your idea to depose Mr. Terry's wife in that
12 employment dispute?

13 MR. CRUCIANI: Your Honor, this isn't relevant
14 (indiscernible).

15 MR. SHAW: Judge --

16 MR. CRUCIANI: Objection. Relevance.

17 MR. SHAW: Here's the relevance. Mr. Cruciani
18 started with his argument in opening statement that abstention
19 was the easiest way to dismiss this case. And the point is --
20 and what the Court has to find that abstention is proper is
21 that it's in the best interests of not only the debtor, but
22 also the creditors.

23 And what I'm establishing is that Mr. Dondero has
24 such an animus and such a personal stake in this, that he
25 cannot act in the best interest of the creditors and of the

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8

1 debtor. So if you turn the keys back over to Mr. Dondero,
2 we're going to be here for a decade, just like he said. So I
3 think it's absolutely relevant. It's their lead argument and
4 that's why I think testimony on that issue is appropriate.

5 MR. CRUCIANI: Your Honor, it's relevant to the
6 issues. It is such a stretch to say that that's somehow
7 relevant to the abstention. These folks don't like each
8 other. We can stipulate to that. We can make the same
9 argument about Mr. Terry. He's inappropriate because it's all
10 about him and he doesn't care about anything about the other
11 creditors. But we're just going off on a tangent on this one.

12 THE COURT: Okay. I'm going to overrule.

13 BY MR. SHAW:

14 Q. All right. So was it your idea to depose Ms. Terry in
15 that employment dispute?

16 A. No.

17 Q. Was it your idea to have your attorney in that lawsuit
18 ask Ms. Terry, as the first question in that deposition, "Ms.
19 Terry, have you considered divorcing your husband after he
20 revealed the allegations of his affair?"

21 Was that your idea?

22 A. I've never seen her deposition. No, I -- I -- I'm not
23 involved in tactics or questions at all.

24 Q. Now, you approved the release of a Highland press release
25 in response to an article written by Matt Wirz of the Wall

James Dondero - Cross (Under Seal)

9

1 street Journal, correct?

2 A. Yes.

3 Q. And that Wall Street Journal article included subject
4 matters, including the Josh Terry arbitration award, correct?

5 A. Yes.

6 Q. All right. What was the title of that article that is
7 listed and as of now, you can find a link on the Highland
8 website?

9 A. I -- I have no idea.

10 Q. All right. I'm going to show you. Hopefully, I can
11 refresh your memory.

12 MR. CRUCIANI: What's the exhibit number?

13 MR. SHAW: It's not an exhibit.

14 MR. CRUCIANI: This is not a refresh your memory.

15 You can't just take out any document that you -- it should be
16 on the exhibit list -- and give it to a witness, and say, let
17 me refresh your memory. What rule allows that?

18 MR. SHAW: 612 and 613 permits me to use a document
19 to refresh somebody's memory and it does not have to be
20 admitted into evidence. It's as clear as day, Federal Rules
21 of Evidence 612 and 613.

22 MR. CRUCIANI: It's impeachment, if anything. And
23 it's not impeachment. You can't just have every document be a
24 memory test and say, I didn't put it on the exhibit list, but
25 here, let me show you; let me see if you remember this.

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1 MR. SHAW: Once you establish that the witness does
2 not remember -- in this example, what the title of the
3 document was called -- you can use a document to refresh the
4 witness' memory. Now, Mr. Cruciani can, in response, under
5 613, include the entire document and do other prophylactic
6 maneuvers. But I absolutely can use a document to refresh a
7 witness' memory that's not admitted into evidence.

8 THE COURT: All right. Let's discuss this rule.
9 This rule gives an adverse party -- Mr. Terry -- certain
10 options when a witness -- Mr. Dondero -- uses a writing to
11 refresh his memory while testifying.

12 MR. SHAW: Correct. Well, it -- an adverse party, so
13 whether that's Mr. Terry or the other party, but you can use a
14 writing to refresh a witness' memory. And then 613 goes on to
15 show that when examining a witness about the witness' prior
16 statement -- so in this case, this is a witness' prior
17 statement, as well -- a party may not show it --

18 THE COURT: A press release?

19 MR. SHAW: Yes.

20 THE COURT: A press release?

21 MR. SHAW: It's a Highland statement. I've also got
22 a letter that Mr. Dondero authored to the Wall Street Journal,
23 as well. But I mean, Mr. --

24 THE COURT: Okay. Are you saying 613(b)?

25 MR. SHAW: 613(a). And I did exactly what 613(a)

James Dondero - Cross (Under Seal)

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1 requires, which is to show it or disclose its contents to the
2 adverse party's attorney.

3 THE COURT: Okay. I overrule the objection.

4 MR. CRUCIANI: Your Honor, may I just --

5 THE COURT: Okay.

6 MR. CRUCIANI: Because it's what you said, in terms
7 of it being the witness' prior statement. He hasn't
8 established that it's the witness' prior statement. It's a
9 press release; it's not his personal statement.

10 MR. SHAW: He authorized the release of the press
11 release. He's the president of Highland Capital Management.
12 It's absolutely his statement.

13 THE COURT: I'm going to allow it.

14 BY MR. SHAW:

15 Q. All right. Now, that article, Mr. Dondero, was entitled,
16 "Matt Wirz, Wall street Journal: Fake News, Sloppy and
17 Malicious Reporting". Do you remember that?

18 A. Yes.

19 Q. All right. And in that document, as well, you also sent
20 to the Wall Street Journal a four-page letter, outlining your
21 issues with the Wall Street Journal's reporting, correct?

22 A. Yes.

23 Q. And Highland is involved in litigation with regard to the
24 Wall street Journal, correct?

25 A. Yes.

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1 Q. You also -- or Highland, as well as you, in your letter
2 to the Wall Street Journal, you said, additionally, "Mr. Terry
3 lied under oath" --

4 MR. CRUCIANI: Your Honor?

5 MR. SHAW: Yeah.

6 MR. CRUCIANI: I'm sorry. I don't if he's reading
7 from something different or if this is the same document.

8 MR. SHAW: Same document, page 6 of 12.

9 THE COURT: Okay.

10 MR. CRUCIANI: Well, I don't think he's -- you said
11 a letter. Is this all one document?

12 MR. SHAW: No. There's a separate letter.

13 MR. CRUCIANI: No, I'm sorry. I just didn't know if
14 you were still on the same document or a different --

15 MR. SHAW: I am on the same document, page 6 of 12.

16 Q. "The allegation is that Mr. Terry lied under oath at the
17 arbitration, including about his contacts with Mr. Daugherty,
18 after his departure from Highland." Is that your statement or
19 Highland's statement?

20 A. Yes.

21 Q. You also -- or Highland also says -- and correct me if
22 I'm wrong -- that, "Mr. Wirz, once again, failed to mention
23 numerous salient facts, including that Mr. Terry's false and
24 sensationalized allegations against Highland were simply part
25 of Mr. Terry's extortion scheme against Highland." Is that

James Dondero - Cross (Under Seal)

13

1 also a statement that you sponsored and approved to be put on
2 the Highland website, as well as included in a letter that you
3 sent to the Wall street Journal?

4 A. Yes. I approved the -- the press release and the sending
5 of the letter to the Journal.

6 Q. All right. And you and Highland have a history of long-
7 standing litigation, correct? Mr. Daugherty, who was in this
8 courtroom, that litigation has been going on since 2012?

9 MR. CRUCIANI: Your Honor, now we're going far afield
10 to other litigation. I object on --

11 MR. SHAW: I'm just going to --

12 MR. CRUCIANI: I object on relevance.

13 THE COURT: Relevance?

14 MR. SHAW: Simply, the relevance, again, is whether
15 or not Mr. Dondero, the keys are turned back over to him,
16 whether he's going to act in Acis' best interests and the best
17 interests of Acis' creditors. And what I'm showing is that he
18 will not. He will act in his own personal interests.

19 THE COURT: Okay. I will sustain the objection.

20 Q. All right. In your direct examination, you talked about
21 Thomas Surgent. Do you recall that?

22 A. Yes.

23 Q. And Mr. Okada mentioned Thomas Surgent as well. You
24 weren't here for his testimony; is that correct?

25 A. I was not.

James Dondero - Cross (Under Seal)

14

1 Q. And Mr. Surgent has not been listed as a witness in this
2 bankruptcy proceeding. Are you aware of that?

3 A. I have no idea.

4 Q. All right. Let's go to -- let me go back to that. You
5 trust Mr. Surgent, correct?

6 A. Yes.

7 Q. And you stated that the compliance department is very
8 important at Highland, right?

9 A. At every financial institution.

10 Q. And of course, the head of the compliance department is
11 an essential part of the compliance department, correct?

12 A. He's the only one who complains about our personal
13 liability for any --

14 Q. Okay.

15 A. -- fraud or bad act at the company.

16 MR. SHAW: Let's go to Exhibit Number 1, if you don't
17 mind, Omar -- page 11?

18 Q. Now, Highland's had the same CCO since when? When did
19 Mr. Surgent become the CCO of Highland?

20 A. I -- I don't know. It's been about a decade, plus or
21 minus.

22 Q. About a decade? Okay.

23 So Exhibit 1 is the arbitration award that was rendered
24 by a panel of three former state-court judges. Have you ever
25 read that document?

James Dondero - Cross (Under Seal)

15

1 A. No.

2 Q. You haven't read the arbitration award that rendered an
3 eight-million dollar arbitration award against Acis?

4 A. No.

5 Q. Now, the allegations and the statements that you included
6 in the letter to the Wall Street Journal and the press release
7 were about the arbitration award, right?

8 A. I believe some of it was, yes.

9 Q. You didn't think it necessary to read the actual
10 arbitration award before issuing that press release?

11 A. I -- I just approved the press release. Press releases,
12 by definition, have to be accurate. They have to be a hundred
13 percent accurate, otherwise the broadcast is defamation. So I
14 know great care was taken, by the people who wrote it, to make
15 sure it was a hundred percent correct and a hundred percent
16 validated. But I was not involved in any of that.

17 MR. SHAW: And I'm sorry, will you go over one more
18 page? I meant page 10 of the actual document -- my
19 apologies -- in the bottom right-hand corner, which is the
20 actual page number in the arbitration award. Thank you.

21 Q. So the references to CCO in this arbitration award,
22 that's to Mr. Thomas Surgent, correct?

23 A. I believe so.

24 Q. All right. And this talks about the CCO's memo to
25 Terry's file. "September 1st, 2016 was the first

James Dondero - Cross (Under Seal)

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1 documentation of his alleged breach of fiduciary duty or self-
2 dealing as a justification for his for-cause termination."

3 Did I read that correctly?

4 A. Yes.

5 Q. And Mr. Terry was terminated roughly three months before,
6 in June of 2006 (sic), right?

7 A. Yes.

8 Q. I'm sorry. I'm trying to find where I was.

9 MR. SHAW: Can you go to the next page, please?

10 Q. Okay. In the first -- it's not a full paragraph, but the
11 first paragraph there says -- and I'm reading from -- it
12 starts, "it is not credible". It says, "It is not credible
13 that a sophisticated CCO, Mr. Surgent, and an HR director
14 would reasonably rely on such basis for Terry's for-cause
15 termination and resulting forfeiture of the value of his
16 limited-partnership interest in Acis."

17 Did I read that correctly?

18 MR. CRUCIANI: Your Honor, again, this was litigated
19 on some issues and loss of issues. It has nothing to do with
20 any of the matters (indiscernible) irrelevant.

21 MR. SHAW: They just interjected Mr. Surgent into
22 this dispute for the first time today. I've not heard his
23 name mentioned until today. And there were numerous findings
24 regarding Mr. Surgent's credibility that three state-court
25 judges found incredible. And that's what I'm trying to

James Dondero - Cross (Under Seal)

17

1 establish with this document.

2 THE COURT: All right.

3 MR. CRUCIANI: Your Honor, another court's opinions
4 or findings are hearsay and can't be relied upon by another
5 court. If you make some ruling in this case, some other judge
6 doesn't say, oh, okay, well, since Judge Jernigan ruled that
7 way, then this must be relevant for my determination. It's
8 hearsay and irrelevant.

9 THE COURT: Okay. I overrule.

10 Q. And this is talking about -- I want to move up just a
11 little bit from where I read from. "Respondent's allegation
12 that Terry had a sexual relationship with a Highland junior
13 attorney is most offensive, as a relationship did not occur
14 and was denied by both Terry and the junior attorney. This
15 allegation was based solely on someone's fantasy", et cetera.
16 And then it talks about the credibility of the CCO. Did I
17 read that correctly?

18 A. I -- yes.

19 Q. But you really wouldn't know about the credibility
20 determinations that the arbitration panel found, with regard
21 to Mr. Sargent, because you haven't even read the arbitration
22 award that entered an eight-million dollar arbitration award
23 against Acis, right?

24 A. Is that a rhetorical question? You're --

25 Q. That's a question.

James Dondero - Cross (Under Seal)

18

1 A. You're repeating what I said before.

2 Q. It's a question.

3 A. Could you repeat it just so I understand the difference?

4 Q. Sure. You don't know of the credibility determinations
5 made by the arbitration panel because you didn't take the time
6 to read the arbitration decision that's Exhibit number 1 to
7 this bankruptcy proceeding, right?

8 A. I didn't read the arbitration award. But people in my
9 legal department did tell me of the questioning of -- or the
10 lack of faith that the panel had in HR and the CCO.

11 Q. In you as well, right?

12 A. Oh, no. I had great faith in both of them.

13 Q. No, but I'm saying the panel also made determinations
14 regarding the credibility of your testimony as well, correct?

15 MR. CRUCIANI: Objection. I don't believe that's
16 accurate. If he has something to point out, that's fine. I
17 don't object on relevance. But I'm not familiar about -- Mr.
18 Dondero was dismissed from the case.

19 MR. SHAW: I can do it (indiscernible), Judge.

20 THE COURT: Okay.

21 Q. All right.

22 THE COURT: Sustained.

23 Q. Okay. So this arbitration decision was issued on October
24 20th, 2017. So I'd like to take a snapshot of Acis on that
25 particular date. Are you there with me?

James Dondero - Cross (Under Seal)

19

1 A. Yes, sure.

2 Q. All right. So as of October 20th, 2017, we know that

3 Acis had a nine-million dollar note left from Highland, as the
4 maker, right?

5 A. In a similar payable due to Highland.

6 Q. And I just want to talk about the note for now.

7 A. Okay.

8 Q. And I appreciate that.

9 Okay. So we've got a note, correct?

10 A. Yes.

11 Q. And that was a simple promissory note that says,

12 Highland, I promise to pay, correct -- that Highland says, I
13 promise to pay?

14 A. Like I said, I -- my testimony is that it was a paired
15 transaction with the -- I don't want to say it was just a
16 simple note, just to pay. It was paired with the -- with the
17 obligations of Acis to Highland.

18 Q. Okay. And on October 20th, 2017, Highland was not at
19 risk of insolvency, right?

20 A. Correct.

21 Q. All right. Highland could pay that note to Acis as it
22 became due, right?

23 A. Correct.

24 Q. All right. On October 20th, 2017 -- the same snapshot --
25 Acis owned interest in various entities.

James Dondero - Cross (Under Seal)

20

1 MR. SHAW: And I'd like to, if you could, pull up
2 Exhibit 167, please, and go to the Schedule A. It should be
3 the last page.

4 Q. So Acis, as of October 20th, 2017, also owned interest in
5 the Acis CLO Management Intermediate Holdings 1 LLC, Acis CLO
6 Management GP, LLC, Acis CLO Management Holdings L.P., and one
7 that's not listed here, which is an interest in Acis Loan
8 Funding, Ltd. Does that ring a bell with you?

9 A. No. I -- I think they're just incidental assets, but
10 they don't -- they don't mean anything to me.

11 Q. Okay. Then they're all assets of Acis as of October
12 20th, 2017, right?

13 A. Or they could just be empty entities. I don't -- I don't
14 know.

15 Q. And then as of October 20th, 2017, Acis was also the name
16 for a folio manager under various collateral-management
17 agreements, right?

18 A. Yes.

19 Q. And how does -- or how did Acis make revenue?

20 A. There were, I think, management fees from the CLOs,
21 management fees from the separate account. And I think were
22 some incidental assets that spun off of the flows.

23 Q. And the vast majority of the revenue from -- that Acis
24 was received was pursuant to the collateral-management
25 agreements, right?

James Dondero - Cross (Under Seal)

21

1 A. Yes.

2 MR. SHAW: All right. Let's go to Exhibit 16, if you
3 would?

4 Q. All right. So this is the assignment and transfer
5 agreement that you discuss with your counsel as well. Who
6 drafted this document?

7 A. Legal, but I don't know whether it was internal or
8 external.

9 Q. And was it presented to you by Mr. Ellington, or Mr.
10 Leventon, or who?

11 A. It would have come from Thomas Surgent's group.

12 Q. All right. Now, if this document is dated November 3rd,
13 2017, it's thirteen days after the arbitration award. Any
14 reason to dispute that?

15 A. No.

16 Q. Now, you testified in your deposition -- and this is a
17 quote -- "Everybody knew it would be scrutinized in
18 hindsight." Do you recall that testimony in your deposition?

19 A. Yes.

20 Q. And why did you know that everybody knew it would be
21 scrutinized in hindsight?

22 A. The note itself had been litigated as part of the
23 arbitration and the -- yeah, the -- the -- the note and the
24 paired-off flows, I don't think, were understood as part of
25 that or -- or -- or since, but everybody -- or -- understood

James Dondero - Cross (Under Seal)

22

1 at that point or -- or shortly thereafter. But we knew it was
2 on everybody's radar screen.

3 Q. Right. You also testified that there were intractable on
4 both sides. You knew that it would be scrutinized in
5 hindsight, right?

6 A. Yes, yes.

7 Q. Okay. So what steps did you take, wearing your hat as
8 the president of Acis? And what steps did you take as the
9 president of -- wearing your hat as the president of Acis?

10 Did I say Acis twice? I'm sorry.

11 What steps did you take to make sure that this
12 transaction was fair for both sides involved?

13 A. There were several iterations of this. I -- I -- not
14 that I saw the iterations, but I wanted there to be something
15 extra. I don't if it was my idea or the lawyer's idea, but I
16 approved of the idea of the -- what we described as the three-
17 million dollar windfall or the three million dollars for
18 expenses, beyond just the cancellation of the note and the
19 flows that -- to have an additional value shifted in the
20 direction of Acis.

21 Q. All right. What about -- we know that the note was
22 transferred. It had a little over nine million dollars left
23 on it, right? That was transferred pursuant to this November
24 3rd transaction, right?

25 A. Yeah, and the liabilities were cancelled.

James Dondero - Cross (Under Seal)

23

1 Q. Okay. Let's just concentrate on the note, please, if you
2 would.

3 A. Sure.

4 Q. So on the note, what efforts did you do to go out to the
5 market to say, hey, how much is this nine-million dollar worth
6 from Highland Capital Management?

7 A. Again, you know, in that -- in a -- to -- to a company
8 mired in bankruptcy, to a company with indeterminate
9 functionality and life, we didn't believe it was plausible.

10 Q. So --

11 A. So -- so we didn't -- we didn't do anything to try and
12 market the note to third parties.

13 Q. Well, Highland's not mired in this litigation. Highland,
14 you said, was a good credit risk, right?

15 A. Yeah, but whoever bought it would be stepping into the
16 shoes of Acis, right? Because the counterparty is Acis.
17 Whoever bought them would be stepping into Acis' shoes.

18 Q. And Acis could have got some money for it as opposed to
19 just three million dollars in expenses, fee support that you
20 get to determine whether that's paid or not, right?

21 A. Well --

22 MR. CRUCIANI: Objection, compound.

23 A. Yeah. I don't think it --

24 THE COURT: Sustained.

25 A. -- works like that.

James Dondero - Cross (Under Seal)

24

1 Q. So no efforts to go out and try to get a third-party
2 valuation of that note that was being transferred from Acis to
3 this Highland entity that was formed in the Cayman Islands,
4 right?

5 A. Again, I believe it was implausible. And so yes, no
6 efforts were made that I'm aware of.

7 Q. All right. What about forming a board of directors for
8 Acis to make sure that there was some oversight on this
9 transaction, that somebody other than James Dondero was
10 involved to make sure that Acis was being -- Acis' interests
11 were being looked after? You didn't do that, did you?

12 A. Acis, at this point, was owned only by myself and Mark
13 Okada. And so you wanted us to set up a board to make sure we
14 were being fair to each other? Or what -- what are you
15 asking?

16 Q. Well, Acis has creditors too, right?

17 A. Yes.

18 Q. And do you think you have an obligation to be fair to
19 those creditors?

20 A. Yes.

21 Q. But instead of getting a board of directors or getting a
22 valuation, and in spite of the fact that you knew that this
23 transaction would be scrutinized in hindsight -- let's go to
24 the last page in the signature pages -- you signed on behalf
25 of Highland Capital Management on behalf of Acis Capital

James Dondero - Cross (Under Seal)

25

1 Management, right?

2 A. Yes.

3 Q. So let's go back to the first page, if you would, of
4 Exhibit 16 -- and you talked about this issue with Mr.
5 Cruciani -- the third whereas paragraph --

6 MR. SHAW: If you could blow that up for me, Omar?

7 Q. All right. So who made that determination that Highland
8 was no longer going to provide the support?

9 A. I -- I don't know.

10 Q. And why did that occur at this point in time, on November
11 3rd, 2017?

12 A. I don't know.

13 Q. I mean, was there some change in financial circumstances
14 that necessitated Highland providing that notice to Acis?

15 A. I -- I don't know.

16 Q. All right. Now as of October 19th, 2017, the day before
17 the arbitration award, was Highland willing to provide the
18 support personnel and other critical services to Acis with
19 respect to the CLOs?

20 A. I -- I don't know if it was reviewed then. I don't know.

21 MR. SHAW: Omar, would you back out of that, please,
22 so I can see the first paragraph? Go all the way to the top.
23 Thank you.

24 Q. One of the parties to this document is Highland CLO
25 Management, Ltd. Do you see that?

James Dondero - Cross (Under Seal)

26

1 A. Yes.

2 Q. And that's a Cayman entity. You testified earlier about
3 Cayman entities, correct?

4 A. Yes.

5 Q. All right. What does that entity do?

6 A. I -- I -- it meets the replacement manager.

7 Q. All right. What assets does that Highland Cayman entity
8 have?

9 A. I have no idea.

10 Q. It is a Highland affiliate though, right?

11 A. It is a Highland affiliate.

12 Q. So we don't know what assets this entity that is being
13 transferred the promissory note has, right?

14 A. Right.

15 Q. And we don't know what assets -- that Cayman entity that
16 is promising to provide Acis with three million dollars of
17 expense support, we don't what assets that entity has, right?

18 A. I -- yes, I don't know.

19 MR. SHAW: Go to Exhibit 15, if you would -- the
20 promissory note. If you would go to page 4? All right. So
21 there is a small caps paragraph -- the first small caps
22 paragraph; zoom in on that.

23 Q. So that paragraph provides for jurisdiction and venue in
24 Dallas County, Texas, right?

25 A. Yes.

James Dondero - Cross (Under Seal)

27

1 Q. All right. So under the promissory note, if Highland had
2 failed to make a payment under the promissory note, Acis could
3 have run over to either state or federal court and sued
4 Highland to recover monies due on the promissory note, right?

5 A. I don't want to make a legal conclusion.

6 Q. You're familiar with venue and jurisdictional provisions,
7 right?

8 A. I'm not a lawyer. I mean, loosely.

9 MR. SHAW: Let's go back to Exhibit 16, please, and
10 go to page 3, paragraph D.

11 Q. So under the agreement that binds this Cayman entity
12 Highland affiliate to provide expense support, the governing
13 law is the Cayman Islands, with the exclusive jurisdiction in
14 the courts of George Town and Grand Cay. Do you see that?

15 A. Yes.

16 Q. So I know you're not a lawyer but in order for Acis to
17 recover that three million dollars in expense support, in the
18 event that this Highland entity doesn't pay it, you would have
19 to go to the Caymans to get that three million dollars that is
20 allegedly owed under this agreement, correct?

21 A. Again, I -- I don't want to draw legal conclusions. I,
22 you know, rely on internal and external counsel to draft these
23 things properly and for Thomas and his group to make sure
24 they're drafted fairly and appropriately, if there's any
25 conflicts.

James Dondero - Cross (Under Seal)

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1 Q. Right, because you sign so many things every single day
2 that you can't possibly read it, right?

3 A. Yes.

4 Q. And even though you knew this Exhibit number 16 was going
5 to be scrutinized in hindsight because of the intractable
6 personalities involved, are you saying you didn't review this
7 document?

8 A. I -- correct.

9 MR. SHAW: If you would back out and go to page 1?

10 Q. So this document, Exhibit 16, not only effectuates the
11 transfer of the promissory to this Highland affiliate in the
12 Caymans. It also purports to transfer the collateral-
13 management agreements to the same Cayman entity, right?

14 A. I -- I don't know.

15 MR. SHAW: Go to page 2, if you would, Omar?

16 Q. All right. So if you look in both paragraph 1 and 2, do
17 you see where, in 1, it says, with notice requesting the
18 appointment of HCLOM as portfolio manager, and then in number
19 2, it says, successor manager of Acis and HCLOM shall properly
20 pursue successor manger appointment of HCLOM. Do you see
21 that?

22 A. Yes.

23 Q. Let's go down to the expense report. That's something
24 you characterized in your deposition -- and I heard earlier
25 today -- as a windfall and a gift to Acis, right?

James Dondero - Cross (Under Seal)

29

1 A. Yes.

2 Q. And it says, in the event Acis delivers written notice to
3 HCLOM that Acis is unable to pay, when due, any Acis expense.

4 Do you see that?

5 A. Yes.

6 Q. All right. Nothing requires HCLOM or -- I'm sorry.

7 Nothing requires Acis to deliver that written notice,
8 right?

9 A. It says, or at Acis' written request, right?

10 Q. Right, where?

11 A. End of the second line.

12 Q. Yeah. So both -- it is up to Acis to request it,
13 right -- written notice or a written request?

14 A. Right.

15 Q. All right. Now, prior to the bankruptcies, you were Acis
16 GP's president, right?

17 A. Yes.

18 Q. You never delivered that written notice to that Highland
19 Cayman entity, for which we have no idea what assets it has,
20 that Acis needed the expense report, right?

21 A. Correct, because Acis was current on all its bills, and
22 all its vendors, and creditors, except for the money that was
23 frozen as going to Highland.

24 Q. And so that's Acis' position, that is was current on all
25 of its outstanding debt, right?

James Dondero - Cross (Under Seal)

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1 A. Yes.

2 Q. All right. That's true for the September 2016 invoice
3 from former judge, James Stanton?

4 A. I -- I believe we were current and in due course on all
5 bills and expenses. I don't know the particulars.

6 Q. And same thing for, for example, Andrews Kurth, that
7 those bills went back as far as September of 2016?

8 A. Yes.

9 Q. So you didn't ask for the expense support from this
10 Highland Cayman entity because you didn't -- on behalf of
11 Acis -- think that Acis needed it?

12 A. Correct.

13 Q. And since the filing of this involuntary petition, Acis
14 has not sought to -- permission from the Court to request the
15 expense support from this Highland affiliate in the Caymans?

16 A. That's correct, as far as I know.

17 MR. SHAW: All right. If you could pull up Exhibit
18 13, just a list of creditors? Could you go to the last page?

19 Q. All right. That was a document that you and your counsel
20 were talking about that you believe your assistant signed,
21 right?

22 A. Yes.

23 Q. And she signed it with your permission?

24 A. Yes.

25 Q. And you understood that it was going to be filed in the

James Dondero - Cross (Under Seal)

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1 bankruptcy court?

2 A. Yes.

3 Q. But you didn't even review that document before you gave
4 her permission to sign it, did you?

5 A. No. I depended on my capable accounting and legal staff
6 to put things like this together.

7 Q. Did you not believe that this bankruptcy was a
8 significant issue for Acis and for Highland, in general?

9 A. I -- I believe the bankruptcy is a significant issue.

10 Q. Right. I mean, you've had lawyer after lawyer after
11 lawyer in this case, right?

12 A. I -- I don't what you're talking about. What -- what's
13 the question?

14 Q. This is a significant matter for Highland, and Highland
15 affiliates, and Acis, right?

16 A. More for Acis, but yes.

17 Q. Now, Highland has been paid under the shared-services and
18 subdivisory agreements over the course of the last two years,
19 right?

20 A. Generally, I believe so.

21 Q. All right. And Highland has been paid under the shared-
22 services and subdivisory agreements after the Stanton law firm
23 invoiced Acis or Highland, after Andrews Kurth invoiced Acis
24 or Highland, after Lackey Hershman invoiced Acis or Highland;
25 isn't that true?

James Dondero - Cross (Under Seal)

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1 A. I -- I bel -- I don't know. I believe so, I guess.

2 Q. So I guess I'm understand -- what I want to understand is
3 how do you make the determination that I'm going to pay
4 Highland under the shared-services agreement and subadvisory
5 agreement, but I'm not going to pay former judge James Stanton
6 for a June 2016 invoice for that litigation with Mr. Terry?
7 How is that decision made?

8 A. We went over this in detail on my deposition. Scott
9 Ellington and his team go through all the legal bills
10 regularly, and they decide when to pay who and how much. Some
11 people are working on multiple assignments for us, some people
12 have discounts in place or whatever, and it's -- but it's
13 completely determined by them.
14 And then they bring forward a schedule, periodically -- once a
15 month, once a quarter -- to pay the bills that they deem are
16 timely and appropriate. But it's -- it's
17 not -- it's -- it's -- and I'll -- I'll assign the final
18 approval that goes to Accounts Payable to pay it, but I'm not
19 involved in deciding who gets paid when, how much, and whether
20 an old bill is going to be paid immediately or discounted, I
21 have no idea.

22 Q. That's up to Mr. Leventon and Mr. Ellington; is that what
23 you're saying?

24 A. Yes.

25 Q. Right.

James Dondero - Cross (Under Seal)

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1 A. Absolutely. I -- we went over that in detail.

2 Q. Right. So let's talk about the assets that Acis would
3 have left over if all of the collateral-management agreements
4 were transferred to a Highland affiliate. All right?

5 So we know that the intent, pre-bankruptcy, was that Acis
6 would be replaced as the portfolio manager with a Highland
7 affiliate, right?

8 A. Yes.

9 Q. And that didn't happen because -- one reason because was
10 this bankruptcy proceeding, correct?

11 A. Yes.

12 Q. All right. What would Acis do if it's no longer the
13 collateral manager under any of these collateral-management
14 agreements?

15 A. It -- it's a registered investment advisor. They
16 could -- they could potentially garner new business. It could
17 pursue litigation claims against, you know, people and
18 professionals that have impaired Acis. It could -- it -- it
19 could do -- it could do a variety of things.

20 Q. Okay. I want to -- you touched on this a little bit, but
21 I asked you the exact same question in your deposition on
22 Tuesday, and this is what your response was. "It has very
23 good claims against your firm and Josh Terry that could be
24 worth boatloads of money down the road".

25 Is that what your testimony (sic) on Tuesday?

James Dondero - Cross (Under Seal)

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1 A. I wish I had used a better word than "boatload", but yes.

2 Q. All right, but you didn't make any mistakes in saying
3 that you think Acis has very good claims against my law firm,
4 right?

5 A. Yes. And -- and again, I'm not a lawyer, so I don't know
6 if the claims are Acis' or the investors' or whatever,
7 but -- but I -- I believe a frivolous of inappropriate
8 bankruptcy filing that impairs innocent investors and
9 potential enormous liability.

10 Q. And what about Winstead? Does -- do the investors or
11 Acis have claims against Winstead, in your opinion?

12 MR. CRUCIANI: Your Honor, we're going far from
13 the -- this is not that relevant.

14 MR. SHAW: It --

15 THE COURT: Relevance?

16 MR. SHAW: What as -- what assets are -- does -- is
17 this alleged debtor going to have if they are released to do
18 what they want to do? I mean, it's the -- absolutely on
19 abstention, which is: is this is the best interest of the
20 debtors, the debtor, and the creditors?

21 So I think it absolutely goes to that.

22 THE COURT: All right. I sustain the objection.

23 Move on.

24 (Pause)

25 MR. SHAW: Sorry, if I can just gather my notes,

James Dondero - Cross (Under Seal)

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1 here? I apologize.

2 Q. So I want to go back to your testimony on direct
3 examination. You were talking about Exhibit 14, which we
4 don't need to bring up, but that was the purchase and sale of
5 the CLO participation interest, that October of 2016
6 transaction. Do you recall that conversation you had with Mr.
7 Cruciani?

8 A. I -- I mean, no, please refresh me a little bit more than
9 that.

10 Q. Yeah, so the Exhibit 14 was the transaction I think you
11 described as a tax-planning transaction where Acis conveyed
12 its participation interests in certain CLOs --

13 A. Yes.

14 Q. -- to Highland in exchange for the note. Do you recall
15 that?

16 A. Yes.

17 Q. Now, in response to Mr. Cruciani's questions with regard
18 to section 3.6 --

19 MR. SHAW: Which, actually, let's go ahead and bring
20 up Exhibit 14, if you don't mind, 3.6?

21 Q. And you remember we were talking about the fact that this
22 section says that even if the seller's rights with respect to
23 the servicer fees are terminated, such terminated -- such
24 termination shall not affect the purchaser's obligations under
25 the note? Do you see that? First sentence at the top of

James Dondero - Cross (Under Seal)

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1 that?

2 A. Right.

3 Q. Right. And your explanation for, well, that doesn't
4 really mean what it says, that's kind of what you were saying,
5 wasn't it?

6 A. I'm sorry, rephrase -- repeat that question again? Yeah.

7 Q. I think you were getting at that the words in this
8 document, Exhibit 14, weren't actually an accurate reflection
9 of the intent of the deal. Is that what you were saying?

10 A. No, I'm not saying that at all. I'm -- I'm saying it was
11 paired together, it was a tax transaction, it was supposed to
12 have very little net value, there was supposed to be
13 offsetting flows, and the recommendation on the sale was all
14 guided by counsel, internal and external, and I -- and I think
15 some of these "except for" clauses that you're ignoring is
16 what allows that to be valid and appropriate.

17 Q. And then -- and you actually testified in -- I believe in
18 your deposition that, at the time that you executed this
19 agreement, you did it on behalf of both Acis and Highland, you
20 believed this was a fair deal for both sides involved, right?
21 Both Highland and Acis, this is a good deal for both sides,
22 right?

23 A. I think marginally fair for Highland and a windfall for
24 Acis was my testimony.

25 Q. So at the time that you executed the original agreement,

James Dondero - Cross (Under Seal)

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1 Exhibit number 14 --

2 A. Oh, I'm sorry.

3 Q. Yeah, the --

4 A. When the -- when the tax planning was originally put in
5 place, after Josh left, yes.

6 Q. You thought that was a fair deal, arm's-length, good deal
7 for both sides, right?

8 A. Yes.

9 Q. But now you're kind of saying: well, actually, Highland
10 didn't get a really good deal under this thing because even if
11 we don't get the servicer fees, we've still got to pay on the
12 note, right?

13 A. I'm -- I'm saying I think your ignoring some of the
14 "except" paragraphs. And I'm not a lawyer, but again, counsel
15 thought it was appropriate and adequately covered to solid and
16 be fair -- and being fair to both sides and being compliant
17 with our hats as both Acis and Highland owners.

18 Q. Now, let's kind of change subjects a little bit, which is
19 the -- this new investor from Boston that came in to invest in
20 the equity. And in what CLO did that new investor invest?

21 Or --

22 A. They invested --

23 Q. -- was it the risk-retention vehicle?

24 A. They invested in ALF, the risk-retention vehicle.

25 Q. And at the time they came in to that transaction, they

James Dondero - Cross (Under Seal)

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1 were aware of the pendency of the Terry arbitration, right?

2 A. Yes.

3 Q. Okay, because you guys, you know, full disclosure, you've
4 got to perform your due diligence, you have an obligation to
5 let these people know: hey, you know, there's some hair on
6 this transaction, right?

7 A. Well, they didn't think it was hair. They -- they
8 thought it was de minimis, as we did. But we kept them fully
9 informed.

10 Q. You have a particularly close relationship with your
11 general counsel, Mr. Ellington, right?

12 A. Well, what do you mean by "particularly close"?

13 Q. You talk almost every day, right?

14 A. Mm, well, in a -- in a situation like this, but normally,
15 it's three or four times a week.

16 Q. And you guys are actually partners in a litigation claim
17 business, too, correct?

18 MR. CRUCIANI: Your Honor, again, we seem like we're
19 doing everything but addressing the bankruptcy issues. This
20 is irrelevant (indiscernible).

21 THE COURT: Okay.

22 Relevance?

23 MR. SHAW: This is relevant to the extreme conflicts
24 of interest that they had with Mr. Dondero sitting with Mr.
25 Ellington as the -- as the general counsel of Highland, then

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1 you have Mr. Ellington apparently representing Acis. It's
2 just this absolute mess of a maze of conflicts. So it goes --

3 THE COURT: A separate --

4 MR. SHAW: -- to that.

5 THE COURT: -- business, though, that has nothing to
6 do with Highland?

7 MR. SHAW: Just to establish the relationship between
8 them and --

9 THE COURT: No, it's sustained.

10 Did you hear that? Thirty minutes?

11 MR. SHAW: Thirty minutes, total, of all my time.

12 Got it. Should I have them get the lookout for me?

13 Q. Now, you mentioned that Acis was the target of an SEC
14 investigation? Did I hear that right?

15 A. Spawned by Josh Terry.

16 Q. Is it -- is it actually Highland Capital Management or is
17 it Acis?

18 A. Acis.

19 Q. So the subpoena -- any subpoenas or anything else that
20 have been issued were issued to Acis and not to Highland?

21 A. Well, to my knowledge, it was primarily Acis. It might
22 have included Highland, also, but it was primarily Acis.

23 Q. And Highland has been the subject of an SEC investigation
24 before, right?

25 MR. CRUCIANI: Your Honor, again, this is like

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1 mudslinging on a Friday afternoon. I --

2 THE COURT: Relevance?

3 MR. SHAW: He testified to it on direct examination.

4 I have to be able to at least address it.

5 MR. CRUCIANI: He didn't testify to an SEC Highland
6 investigation.

7 MR. SHAW: He said Acis was under investigation by --

8 MR. CRUCIANI: You asked a different question.

9 MR. SHAW: Well --

10 MR. CRUCIANI: You asked about --

11 THE COURT: You're --

12 MR. CRUCIANI: -- a separate Highland SEC
13 investigation. At least, I understood that to be the
14 question. If --

15 THE COURT: That's what I thought, too.

16 MR. SHAW: I did, and it -- what I'm trying to
17 establish is that it's factually incorrect. And what he's
18 trying to say is that Mr. Terry is this "terrorist" that is
19 filing -- that is -- he stated that Mr. Terry has made this
20 investigation and has caused Acis all these problems, but it's
21 really not Acis.

22 THE COURT: I'll overrule and allow a little latitude
23 here.

24 MR. CRUCIANI: Well, I'm --

25 MR. SHAW: Just -- yeah.

James Dondero - Cross (Under Seal)

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1 MR. CRUCIANI: I'll object on the best evidence rule.
2 If he's got a subpoena, then that's the best evidence of to
3 whom it was directed.

4 MR. SHAW: Once again, Mr. Cruciani is using the
5 best-evidence rule inappropriately. The best-evidence rule is
6 not --

7 THE COURT: Okay --

8 MR. SHAW: Yeah.

9 THE COURT: -- overruled.

10 MR. SHAW: Okay. Thanks.

11 THE COURT: Okay.

12 BY MR. SHAW:

13 Q. Just real quick: Highland has been the subject of an SEC
14 investigation before and, in fact, was an -- a cease-and-
15 desist order was issued with regard to Highland, right? Or a
16 consent order? I'm sorry, I might have mischaracterized that.

17 MR. CRUCIANI: Your Honor --

18 MR. SHAW: That's the only question I want.

19 MR. CRUCIANI: I object. I this has any relationship
20 to what he testified to on the two-million-page --

21 THE COURT: Um-hum.

22 MR. CRUCIANI: -- subpoena, that's one thing. I
23 understand this to be completely unrelated. So perhaps the
24 witness could just testify to that, then it would clear that
25 up, perhaps, as I say it without objections.

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1 THE COURT: This is all so confusing. He testified
2 at some point, essentially, that Mr. Terry drummed things up
3 at the SEC, resulting in a -- them having to produce two-
4 million-dollars' of documents?

5 MR. SHAW: Right.

6 THE COURT: Okay, that being the prior testimony,
7 what are you asking him now?

8 MR. SHAW: I'm asking him about one previous order by
9 the SEC of a previous investigation into the SEC. The
10 implication that Mr. Dondero is making, in my opinion, is that
11 Mr. Terry is just frivolously filing -- or making complaints
12 with the SEC.

13 THE COURT: Your question is: was there some prior
14 activity regarding the SEC --

15 MR. SHAW: Yes.

16 THE COURT: -- directed towards Highland?

17 MR. SHAW: That's it.

18 THE COURT: Okay. That's the question.

19 THE WITNESS: I --

20 BY MR. SHAW:

21 Q. Is there some -- was there some previous investigation by
22 the SEC --

23 A. Over the year --

24 Q. -- into Highland?

25 A. -- Over the years, we've had investigations. We've never

James Dondero - Cross (Under Seal)

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1 been found guilty of anything. We've never -- except for a
2 200,000-dollar books-and-records fine and an HSR fine of a
3 couple of hundred thousand dollars, we've never been found
4 guilty of anything. And that was over a seven-year period of
5 Pat Daugherty going there every six months. That was Josh
6 Terry, from what we've heard from the SEC, going there twice.
7 You know, whatever.

8 But there's costs to providing all the records and providing
9 all the evidence requests, because under an abundance of
10 caution, when people go there or just, like, when Josh Terry
11 tries to get my professional certification pulled from the CFA
12 Society, they start a folder and they start an investigation,
13 and then we have to answer all those. And there's a cost to
14 it, and -- and a lot of it is appropriately assigned to Acis.

15 Q. And you think Mr. Terry initiated that investigation
16 into -- by the CFA?

17 A. They said he did.

18 Q. They said he did?

19 A. Yes.

20 Q. Really? Okay. All right, the DAF. You said that
21 Highland received a tax deduction for that initial
22 contribution of assets that seeded the DAF. Do you recall
23 that?

24 A. Yes.

25 Q. How much was that tax deduction?

James Dondero - Cross (Under Seal)

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1 MR. CRUCIANI: Your Honor, the amount of a tax
2 deduction is relevant to --

3 MR. SHAW: Because they continue to try to drive this
4 huge distinction that these are two separate entities, that
5 they're not involved at all with each other. And the point is
6 is that they absolutely are interrelated and controlled by Mr.
7 Dondero and Highland. And he --

8 THE COURT: Over --

9 MR. SHAW: -- he --

10 THE COURT: Overruled.

11 Q. So how much was that tax deduction?

12 A. You know, I -- back in 2009, I think we got a fifty-
13 million-dollar tax-- forty or fifty-million-dollar deduction.
14 That was the value of the assets contributed to the
15 foundation.

16 Q. All right, now, Highland is paid fees by the DAF to
17 manage the DAF's assets, right?

18 A. I -- I believe there's some honest arm's-length fee.

19 Q. All right, now, I think you testified that this -- Acis
20 has this toxic brand, and therefore you can't get a new deal
21 done. Acis actually did a refi in April of 2017, didn't it?

22 A. I -- I -- I believe so.

23 Q. All right, and that was after the revelations about Mr.
24 Terry recording were made public in June of 2000 -- I mean,
25 I'm sorry, of September of 2016, right?

James Dondero - Cross (Under Seal)

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1 A. Yes.

2 Q. All right, so as of April of 2017, we know that the Acis
3 brand wasn't so tainted that you couldn't get a refi done,
4 right?

5 A. It had cost us a lot to do it, but we did get one done.

6 Q. All right, and in 2017, Acis also issued a brand-new CLO,
7 CLO 7, right?

8 A. Yes.

9 Q. All right, and that was after the revelation about Mr.
10 Terry's recording was made public in a filing that actually
11 was made by Highland Capital Management in September of 2016,
12 right?

13 A. Yes.

14 Q. Have you ever instructed any person, including Mr.
15 Leventon or Mr. Ellington, to effectual the transfer of Acis'
16 assets in order to make it harder or more difficult for Mr.
17 Terry to collect his judgment?

18 A. No.

19 MR. SHAW: Pass the witness.

20 THE COURT: All right.

21 Redirect?

22 MR. CRUCIANI: Nothing, Your Honor.

23 THE COURT: All right. Mr. Dondero, you are excused.

24 THE WITNESS: Thank you.

25 (End of sealed portion)

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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
FOR THE ALLEGED DEBTORS:					
James Dondero		4			

C E R T I F I C A T I O N

I, Clara Rubin, the court-approved transcriber, do
hereby certify the foregoing is a true and correct transcript
from the official electronic sound recording of the
proceedings in the above-entitled matter.



March 27, 2018

CLARA RUBIN

DATE

March 23, 2018

A	addressing (1)	animus (1)	9:4;14;23;15:2,3, 7,10,20,21;17:22,22; 18:8;21:13;25:17	books-and-records (1)
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able (1)	adequately (1)	apologize (1)	B	Boston (1)
40:4	37:15	35:1		37:19
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36:8	afield (1)	8:24;13:1,4;15:11;	34:8;38:19	19
accurately (1)	13:9	22:16	based (1)	broached (1)
4:15	afternoon (1)	April (2)	17:15	6:19
Acis (80)	40:1	44:21;45:2	basis (1)	broadcast (1)
15:3;16:16;17:23;	again (13)	arbitration (23)	16:14	15:13
18:24;19:3,17,21,25;	6:14;12:22;13:14;	6:13;7:5,8;9:4;	became (1)	business (3)
20:4,5,5,6,7,11,15,	16:18;23:7;24:5;	12:17;14:23;15:2,3,	19:22	33:16;38:17;39:5
19,23;22:8,9,10,20;	27:21;34:5;36:6;	7,10,20,21;17:20,21,	become (1)	
23:16,16,18;24:2,8,	37:14;38:18;39:25;	22:18;5,6,8,23;	14:19	C
10,12,16,25;25:14,	41:4	21:13,23;25:17;38:1	behalf (4)	
18:26;16;27:2,16;	against (8)	argument (3)	24:24,25;30:10;	called (1)
28:19,25;29:2,3,3,7,	12:24,25;15:3;	7:18;8:3,9	36:19	10:3
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	toxic (1) 44:20			
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	transferred (5)	U	Wall (10) 8:25;9:3;10:22; 11:16,20,21,24;12:2; 13:3;15:6 wants (1) 5:24 way (6) 6:2,19,19;7:19; 17:7;25:22 wearing (2) 22:7,9 website (2) 9:8;13:2 week (1) 38:15 weren't (2) 13:24;36:8 What's (2) 9:12;31:12 whereas (1) 25:5 wife (2) 7:9,11 willing (1) 25:17 windfall (3) 22:17;28:25;36:23 Winstead (2) 34:10,11 Wirz (3) 8:25;11:16;12:22 wish (1) 34:1 without (1) 41:25 witness (12)	Y

March 23, 2018

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2 (3) 28:15,16,19 200,000-dollar (1) 43:2 2000 (1) 44:24 2006 (1) 16:6 2009 (1) 44:12 2012 (1) 13:8 2016 (7) 15:25;30:2,7;32:6; 35:5;44:25;45:11 2017 (13) 18:24;19:2,18,24; 20:4,12,15;21:13; 25:11,16;44:21;45:2, 6 20th (7) 18:24;19:2,18,24; 20:4,12,15 24 (2) 4:22,23 261 (2) 4:22;6:10 262 (2) 4:23;6:10	7 (1) 45:7			
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EXHIBIT 94

**TERRITORY OF THE BRITISH VIRGIN ISLANDS
BVI BUSINESS COMPANIES ACT, 2004**



ABC4332AA9

**CERTIFICATE OF INCORPORATION
(SECTION 7)**

The REGISTRAR of CORPORATE AFFAIRS, of the British Virgin Islands HEREBY CERTIFIES, that pursuant to the BVI Business Companies Act, 2004, all the requirements of the Act in respect of incorporation having been complied with,

Highland CLO Assets Holdings Limited

BVI COMPANY NUMBER: 1964412

is incorporated in the BRITISH VIRGIN ISLANDS as a BVI BUSINESS COMPANY, this 19th day of December, 2017.



for **REGISTRAR OF CORPORATE AFFAIRS**
19th day of December, 2017

EXHIBIT 95

BVI Co No: 1964412



TERRITORY OF THE BRITISH VIRGIN ISLANDS

THE BVI BUSINESS COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

Highland CLO Assets Holdings Limited

Incorporated this 19th day of December 2017

Maples Corporate Services (BVI) Limited

Kingston Chambers

PO Box 173

Road Town, Tortola

British Virgin Islands

TERRITORY OF THE BRITISH VIRGIN ISLANDS

THE BVI BUSINESS COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

Highland CLO Assets Holdings Limited

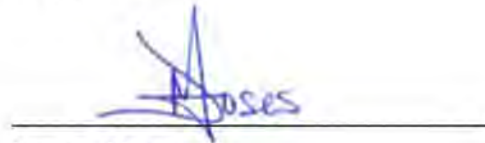
- 1 The name of the Company is Highland CLO Assets Holdings Limited.
- 2 The Company is a company limited by shares.
- 3 The first Registered Office of the Company shall be at the offices of Maples Corporate Services (BVI) Limited, Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands. The Directors or Members may from time to time change the Registered Office of the Company by resolution of the Directors or Resolution of Members.
- 4 The first Registered Agent of the Company will be Maples Corporate Services (BVI) Limited of Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands. The Directors or Members may from time to time change the Registered Agent of the Company by resolution of the Directors or Resolution of Members.
- 5 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the British Virgin Islands.
- 6 The liability of each Member is limited to the amount unpaid on such Member's shares.
- 7 The Company is authorised to issue a maximum of 50,000 shares of par value US\$1.00 each of the following classes:
 - (a) 25,000 class A shares (the "**Class A Shares**"); and
 - (b) 25,000 class B shares (the "**Class B Shares**").
- 8 Each Class A Share confers on the holder:
 - (a) the right to one vote on any Resolution of Members;
 - (b) no rights in relation to any distribution paid by the Company, including, for the avoidance of doubt any dividend or distribution of the surplus assets of the Company on a liquidation.

- 9 Each Class B Share confers on the holder:
- (a) the right to an equal share in any dividend paid by the Company in accordance with the Statute;
 - (b) the right to an equal share in the distribution of the surplus assets of the Company; and
 - (c) no right to vote on any Resolution of Members.
- 10 Shares may only be issued as registered shares and the Company is not authorised to issue bearer shares. Registered shares may not be exchanged for bearer shares or converted to bearer shares.
- 11 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.
- 12 Subject to the provisions of the Statute, the Company may from time to time amend the Memorandum of Association or the Articles of Association by Resolution of Members or resolution of the Directors.



We, Maples Corporate Services (BVI) Limited of Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands in our capacity as registered agent for the Company hereby apply to the Registrar for the incorporation of the Company this 19th day of December 2017.

Incorporator



Denery Moses

Authorised Signatory

Maples Corporate Services (BVI) Limited



TERRITORY OF THE BRITISH VIRGIN ISLANDS

THE BVI BUSINESS COMPANIES ACT (AS AMENDED)

COMPANY LIMITED BY SHARES

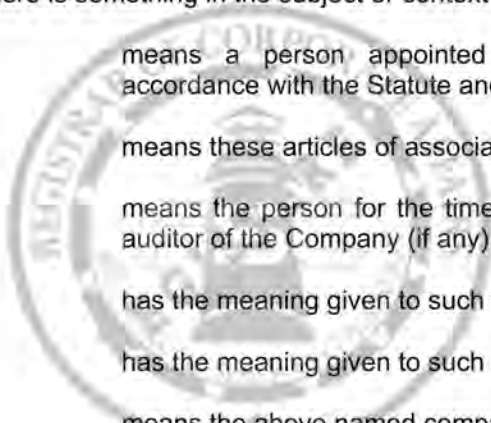
ARTICLES OF ASSOCIATION

OF

Highland CLO Assets Holdings Limited

1 Interpretation

1.1 In the Articles, unless there is something in the subject or context inconsistent therewith:



"Alternate Director"	means a person appointed as an alternate director in accordance with the Statute and the Articles.
"Articles"	means these articles of association of the Company.
"Auditor"	means the person for the time being performing the duties of auditor of the Company (if any).
"Class A Share"	has the meaning given to such term in the Memorandum.
"Class B Share"	has the meaning given to such term in the Memorandum.
"Company"	means the above named company.
"Directors"	means the directors for the time being of the Company.
"Distribution"	means any distribution (including an interim or final dividend).
"Electronic Record"	has the same meaning as in the Electronic Transactions Act.
"Electronic Transactions Act"	means the Electronic Transactions Act, 2001 of the British Virgin Islands.
"Member"	has the same meaning as in the Statute.
"Memorandum"	means the memorandum of association of the Company.
"Recognised Exchange"	has the same meaning as in the Statute.
"Register of Members"	means the register of Members maintained in accordance with the Statute.

"Registered Agent"	means the registered agent for the time being of the Company.
"Registered Office"	means the registered office for the time being of the Company.
"Resolution of Members"	means a resolution passed by a simple majority of the Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a written resolution signed by or on behalf of [an absolute majority] ¹ of the Members. In computing the majority when a poll is demanded, and in the case of a written resolution, regard shall be had to the number of votes to which each Member is entitled by the Articles.
"Seal"	means the common seal of the Company and includes every duplicate seal.
"Share"	means any Class A Share or Class B Share in the Company and includes a fraction of a share in the Company and the terms "Shares" shall be interpreted accordingly.
"Statute"	means the BVI Business Companies Act of the British Virgin Islands.
"Treasury Share"	means a Share held in the name of the Company as a treasury share in accordance with the Statute.

1.2 In the Articles:

- (a) words importing the singular number include the plural number and vice versa;
- (b) words importing the masculine gender include the feminine gender;
- (c) words importing persons include corporations as well as any other legal or natural person;
- (d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in

¹ JP – please confirm whether this should be unanimous if passed by way of written resolution.

others. The term "or" shall not be interpreted to be exclusive and the term "and" shall not be interpreted to require the conjunctive (in each case, unless the context otherwise requires);

- (i) headings are inserted for reference only and shall be ignored in construing the Articles;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (k) any requirements as to execution or signature under the Articles including the execution of the Memorandum and Articles themselves can be satisfied in the form of an electronic signature as provided for in the Electronic Transactions Act;
- (l) section 8(2) of the Electronic Transactions Act shall not apply;
- (m) the term "clear days" in relation to the period of a notice means that period excluding the day when the notice is received or deemed to be received and the day for which it is given or on which it is to take effect;
- (n) the term "holder" in relation to a Share means a person whose name is entered in the Register of Members as the holder of such Share;
- (o) the term "simple majority" in relation to a Resolution of Members means a majority of those entitled to vote on the resolution and actually voting on the resolution (and absent Members, Members who are present but do not vote, blanks and abstentions are not counted); and
- (p) the term "absolute majority" in relation to a Resolution of Members means a majority of all those entitled to vote on the resolution regardless of how many actually vote or abstain.

2 Commencement of Business

- 2.1 The business of the Company may be commenced as soon after incorporation of the Company as the Directors shall see fit.
- 2.2 The Directors may pay, out of any monies of the Company, all expenses incurred in the formation and establishment of the Company, including the expenses of incorporation.

3 Issue of Shares

Subject to the Statute and the provisions, if any, in the Memorandum (and to any direction that may be given by the Company in general meeting) and without prejudice to any rights attached to any existing Shares, the Directors may allot, issue, grant options over or otherwise dispose of Shares (including fractions of a Share) with or without preferred, deferred or other rights or restrictions, whether in regard to Distribution, voting, return of investment or otherwise and to such persons, at such times, for such consideration, and on such other terms as they think proper, and may also (subject to the Statute and the Articles) vary such rights. A bonus share issued by the Company shall be deemed to have been fully paid for on issue.

4 Register of Members

The Company shall maintain or cause to be maintained the Register of Members in accordance with the Statute.

5 Closing Register of Members, Fixing Record Date and Beneficial Ownership Reporting Requirements

- 5.1 For the purpose of determining Members entitled to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any Distribution, or in order to make a determination of Members for any other purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed forty days.
- 5.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any Distribution, or in order to make a determination of Members for any other purpose.
- 5.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to vote at a meeting of Members or Members entitled to receive payment of a Distribution, the date on which notice of the meeting is sent or the date on which the resolution of the Directors resolving to pay such Distribution is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.
- 5.4 In order to enable the Company to comply with its obligations under the Beneficial Ownership Secure Search System Act, 2017 of the British Virgin Islands, as amended from time to time (the "**BOSS Act**"), every Member shall:
- (a) as soon as practicable (and in any event within fifteen days) following a request in writing given by the Company (acting by any Director) to such Member (each, a "**Request for Information**"), provide to the Company all such information and copies of all such documents as set out in such Request for Information, relating to (i) the identification of any beneficial owner or registrable legal entity (as those terms are described in the BOSS Act), and (ii) the provision of particulars of any such beneficial owner or registrable legal entity which are required to be maintained under the BOSS Act, in each case which are within the knowledge, possession or control of the Member; and
 - (b) notify the Company from time to time of (i) any change of the beneficial owners or registrable legal entities of the Company, and (ii) any change of any information which has been provided by such Member to the Company pursuant to a Request for Information, in each case of which the Member is or becomes aware, immediately upon becoming aware of the same.
- 5.5 If any Member fails to comply fully with any Request for Information to the satisfaction of the Directors (a "**Non-Compliant Member**"), the Directors may give to the Non-Compliant Member not less than fourteen clear days' notice (the "**Compliance Notice**") requiring the Non-Compliant Member to comply fully with the Request for Information. The Compliance Notice shall specify

what information and documents are to be provided and shall state that if the notice is not complied with the Shares held by such Non-Compliant Member will be liable to be suspended in the manner and with the consequences set out in this Article. If the Compliance Notice is not complied with to their satisfaction, the Directors may declare that the rights attaching to the Shares held by the Non-Compliant Member (the "**Suspended Shares**") shall be suspended, and such suspension shall continue in force until the Directors have declared that such Non-Compliant Member has complied fully with the Compliance Notice (the "**Suspension Period**"). Notwithstanding any other provision of the Memorandum or the Articles, during the Suspension Period, unless otherwise determined by the Directors in their absolute discretion, the Suspended Shares shall not confer any rights on the Non-Compliant Member and:

- (a) the Non-Compliant Member shall not be entitled to transfer any Suspended Shares to any person; the Directors shall refuse to register any such purported transfer of Suspended Shares; and any such purported transfer shall be void;
- (b) the Non-Compliant Member shall not be entitled to exercise any right of redemption in respect of any Suspended Shares;
- (c) the Suspended Shares shall not be voted at any general meeting of the Company, and shall not be counted in determining the total number of outstanding Shares for any purpose under the Articles, and the Non-Compliant Member shall not be required or entitled to sign any written resolutions of shareholders or members of the Company; and
- (d) any amount payable (in cash or by distribution of assets) to the Non-Compliant Member (including, without limitation, any Distribution which is payable by the Company in respect of the Suspended Shares or any share in the distribution of the surplus assets of the Company) shall be withheld by the Company, and the Non-Compliant Member shall not be entitled to receive any such amount, unless and until the Suspension Period has terminated. No interest shall be payable by the Company in respect of any payment withheld pursuant to this Article.

6 Certificates for Shares

- 6.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or other person authorised by the Directors or shall be given under Seal. The Directors may authorise certificates to be issued with the authorised signature(s) or Seal affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and subject to the Articles no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 6.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 6.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by

the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) upon delivery of the old certificate.

- 6.4 Every share certificate sent in accordance with the Articles will be sent at the risk of the Member or other person entitled to the certificate. The Company will not be responsible for any share certificate lost or delayed in the course of delivery.

7 Transfer of Shares

- 7.1 Shares are transferable subject to the approval of the Directors by resolution who may, in their absolute discretion, decline to register any transfer of Shares without giving any reason. If the Directors refuse to register a transfer they shall notify the transferee within two months of such refusal.
- 7.2 The instrument of transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and if registration as a holder of the Shares imposes a liability to the Company on the transferee, signed by or on behalf of the transferee) and contain the name and address of the transferee. The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.
- 7.3 Where Shares are listed on a Recognised Exchange, (a) Articles 7.1 and 7.2 shall not apply and (b) the Shares may be transferred without the need for a written instrument of transfer if the transfer is carried out in accordance with the law, rules, procedures and other requirements applicable to shares listed on the Recognised Exchange.

8 Redemption, Repurchase and Surrender of Shares

- 8.1 Subject to the provisions of the Statute (save that sections 60 and 61 of the Statute shall not apply to the Company), the terms attached to Shares, as specified in the Memorandum and the Articles, may provide for such Shares to be redeemed or to be liable to be redeemed at the option of the Member or the Company on such terms as so specified.
- 8.2 Subject to the provisions of the Statute (save that sections 60 and 61 of the Statute shall not apply to the Company), the Company may purchase or otherwise acquire its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.
- 8.3 The Company may make a payment in respect of the redemption, purchase or other acquisition of its own Shares in any manner permitted by the Statute.
- 8.4 The Directors may accept the surrender for no consideration of any fully paid Share including, for the avoidance of doubt, a Treasury Share. Any such surrender shall be in writing and signed by the Member holding the Share or Shares.

9 Treasury Shares

Subject to the Statute, the Directors may, prior to the purchase, redemption or surrender of any Share, resolve that such Share shall be held as a Treasury Share.

10 Variation of Rights of Shares

- 10.1 If at any time the authorised Shares are divided into different classes of Shares, all or any of the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied without the consent of the holders of the issued Shares of that class where such variation is considered by the Directors not to have a material adverse effect upon such rights; otherwise, any such variation shall be made only with the consent in writing of the holders of not less than two thirds of the issued Shares of that class, or with the sanction of a resolution passed by a majority of not less than two thirds of the votes cast at a separate meeting of the holders of the Shares of that class. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of Shares of the relevant class. To any such meeting all the provisions of the Articles relating to general meetings shall apply *mutatis mutandis*, except that the necessary quorum shall be one person holding or representing by proxy at least one third of the issued Shares of the class and that any holder of Shares of the class present in person or by proxy may demand a poll.
- 10.2 For the purposes of a separate class meeting, the Directors may treat two or more or all the classes of Shares as forming one class of Shares if the Directors consider that such class of Shares would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate classes of Shares.
- 10.3 The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking *pari passu* therewith.

11 Commission on Sale of Shares

The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) or procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any Shares. Such commissions may be satisfied by the payment of cash and/or, subject to the Statute, the issue of fully or partly paid-up Shares. The Company may also on any issue of Shares pay such brokerage as may be lawful.

12 Non Recognition of Trusts

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by the Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the holder.

13 Lien on Shares

- 13.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or his estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.

- 13.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently due and payable, and is not paid within fourteen clear days after notice has been received or deemed to have been received by the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 13.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or his nominee shall be registered as the holder of the Shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under the Articles.
- 13.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

14 Call on Shares

- 14.1 Subject to the terms of the allotment and issue of any Shares, the Directors may make calls upon the Members in respect of any monies unpaid on their Shares, and each Member shall (subject to receiving at least fourteen clear days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on the Shares. A call may be revoked or postponed, in whole or in part, as the Directors may determine. A call may be required to be paid by instalments. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the Shares in respect of which the call was made.
- 14.2 A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.
- 14.3 The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof.
- 14.4 If a call remains unpaid after it has become due and payable, the person from whom it is due shall pay interest on the amount unpaid from the day it became due and payable until it is paid at such rate as the Directors may determine (and in addition all expenses that have been incurred by the Company by reason of such non-payment), but the Directors may waive payment of the interest or expenses wholly or in part.
- 14.5 An amount payable in respect of a Share on issue or allotment or at any fixed date shall be deemed to be a call and if it is not paid all the provisions of the Articles shall apply as if that amount had become due and payable by virtue of a call.
- 14.6 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.
- 14.7 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by him, and may (until the

amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.

- 14.8 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a dividend or other Distribution payable in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

15 Forfeiture of Shares

- 15.1 If a call or instalment of a call remains unpaid after it has become due and payable the Directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued and any expenses incurred by the Company by reason of such non-payment. The notice shall specify where payment is to be made and shall state that if the notice is not complied with the Shares in respect of which the call was made will be liable to be forfeited.
- 15.2 If the notice is not complied with, any Share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the Directors. Such forfeiture shall include all Distributions or other monies payable in respect of the forfeited Share and not paid before the forfeiture.
- 15.3 A forfeited Share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale, re-allotment or disposition the forfeiture may be cancelled on such terms as the Directors think fit. Where for the purposes of its disposal a forfeited Share is to be transferred to any person the Directors may authorise some person to execute an instrument of transfer of the Share in favour of that person.
- 15.4 A person any of whose Shares have been forfeited shall cease to be a Member in respect of them and shall surrender to the Company for cancellation the certificate for the Shares forfeited.
- 15.5 A certificate in writing under the hand of one Director or officer of the Company that a Share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share. The certificate shall (subject to the execution of an instrument of transfer) constitute a good title to the Share and the person to whom the Share is sold or otherwise disposed of shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the Share.
- 15.6 The provisions of the Articles as to forfeiture shall apply in the case of non payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time as if it had been payable by virtue of a call duly made and notified.

16 Transmission of Shares

- 16.1 If a Member dies the survivor or survivors (where he was a joint holder) or his legal personal representatives (where he was a sole holder), shall be the only persons recognised by the Company as having any title to his Shares. The estate of a deceased Member is not thereby released from any liability in respect of any Share, for which he was a joint or sole holder.
- 16.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy or liquidation or dissolution of a Member (or in any other way than by transfer) may, upon such evidence being

produced as may be required by the Directors, elect, by a notice in writing sent by him to the Company, either to become the holder of such Share or to have some person nominated by him registered as the holder of such Share. If he elects to have another person registered as the holder of such Share he shall sign an instrument of transfer of that Share to that person. The Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution, as the case may be.

- 16.3 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of a Member (or in any other case than by transfer) shall be entitled to the same Distributions and other advantages to which he would be entitled if he were the holder of such Share. However, he shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to general meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him be registered as the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days of being received or deemed to be received (as determined pursuant to the Articles) the Directors may thereafter withhold payment of all Distributions or other monies payable in respect of the Share until the requirements of the notice have been complied with.

17 Offices and Places of Business

Subject to the provisions of the Statute, the Company may by resolution of the Directors or Resolution of Members change the location of its Registered Office and its Registered Agent, provided that the Company's Registered Office shall at all times be the office of the Registered Agent. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

18 General Meetings

- 18.1 All general meetings other than annual general meetings shall be called extraordinary general meetings.
- 18.2 The Company may, but shall not be obliged to, in each year hold a general meeting as its annual general meeting, and, where called, shall specify the meeting as such in the notices calling it. Any annual general meeting shall be held at such time and place as the Directors shall appoint.
- 18.3 The Directors may call general meetings, and they shall on a Members' requisition forthwith proceed to convene an extraordinary general meeting of the Company.
- 18.4 A Members' requisition is a requisition of Members holding at the date of deposit of the requisition not less than ten per cent. in par value (if all the issued Shares have a par value), or otherwise by number of the issued Shares which as at that date carry the right to vote in respect of the matter for which the meeting is requested.
- 18.5 The Members' requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the Registered Office, and may consist of several documents in like form each signed by one or more requisitionists.

18.6 If there are no Directors as at the date of the deposit of the Members' requisition or if the Directors do not within twenty-one days from the date of the deposit of the Members' requisition duly proceed to convene a general meeting to be held within a further twenty-one days, the requisitionists, or any of them representing more than one-half of the total voting rights of all of the requisitionists, may themselves convene a general meeting, but any meeting so convened shall be held no later than the day which falls three months after the expiration of the said twenty-one day period.

18.7 A general meeting convened as aforesaid by requisitionists shall be convened in the same manner as nearly as possible as that in which general meetings are to be convened by Directors.

19 Notice of General Meetings

19.1 At least seven clear days' notice shall be given of any general meeting. Every notice shall specify the place, the day and the hour of the meeting and the general nature of the business to be conducted at the general meeting and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of the Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:

- (a) in the case of an annual general meeting, by all of the Members entitled to attend and vote thereat; and
- (b) in the case of an extraordinary general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, together holding not less than ninety five per cent. in par value (if all the issued Shares have a par value), or otherwise by number of the Shares giving that right.

19.2 Notwithstanding any other provision of the Articles, the accidental omission to give notice of a general meeting to, or the non receipt of notice of a general meeting by, any person entitled to receive such notice, or the accidental failure to refer in any notice or other document to a meeting as an "annual general meeting" or "extraordinary general meeting", as the case may be, shall not invalidate the proceedings of that general meeting.

20 Proceedings at General Meetings

20.1 No business shall be transacted at any general meeting unless a quorum is present. Two Members being individuals present in person or by proxy or if a corporation or other non-natural person by its duly authorised representative or proxy shall be a quorum unless the Company has only one Member entitled to vote at such general meeting in which case the quorum shall be that one Member present in person or by proxy or (in the case of a corporation or other non-natural person) by its duly authorised representative or proxy.

20.2 A person may participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.

20.3 A resolution in writing (in one or more counterparts) signed by or on behalf of Members representing an absolute majority of the votes of Members for the time being entitled to receive

notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall, without the need for any advance notice, be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held. If any Resolution of Members in writing is passed otherwise than by the unanimous written consent of all Members, a copy of such resolution shall be sent to all Members by whom (or on whose behalf) the resolution has not been signed, but the accidental omission to send such a copy to, or the non receipt of a copy by, any person entitled to receive such copy shall not invalidate the resolution.

- 20.4 If a quorum is not present within half an hour from the time appointed for the meeting to commence or if during such a meeting a quorum ceases to be present, the meeting, if convened upon a Members' requisition, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and/or place or to such other day, time and/or place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting to commence, the Members present shall be a quorum.
- 20.5 The Directors may, at any time prior to the time appointed for the meeting to commence, appoint any person to act as chairman of a general meeting of the Company or, if the Directors do not make any such appointment, the chairman, if any, of the board of Directors shall preside as chairman at such general meeting. If there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the meeting to commence, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 20.6 If no Director is willing to act as chairman or if no Director is present within fifteen minutes after the time appointed for the meeting to commence, the Members present shall choose one of their number to be chairman of the meeting.
- 20.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 20.8 When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice of an adjourned meeting.
- 20.9 A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman demands a poll, or any other Member or Members collectively present in person or by proxy (or in the case of a corporation or other non-natural person, by its duly authorised representative or proxy) and holding at least ten per cent. in par value (if all the issued Shares have a par value), or otherwise by number of the Shares giving a right to attend and vote at the meeting demand a poll.
- 20.10 Unless a poll is duly demanded and the demand is not withdrawn a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 20.11 The demand for a poll may be withdrawn.

- 20.12 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 20.13 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such date, time and place as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 20.14 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

21 Votes of Members

- 21.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member who (being an individual) is present in person or by proxy or, if a corporation or other non-natural person is present by its duly authorised representative or by proxy, shall have one vote and on a poll every Member present in any such manner shall have one vote for every Share of which he is the holder.
- 21.2 In the case of joint holders the vote of the senior holder who tenders a vote, whether in person or by proxy (or, in the case of a corporation or other non-natural person, by its duly authorised representative or proxy), shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the Register of Members.
- 21.3 A Member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person on such Member's behalf appointed by that court, and any such committee, receiver, curator bonis or other person may vote by proxy.
- 21.4 No person shall be entitled to vote at any general meeting unless he is registered as a Member on the record date for such meeting nor unless all calls or other monies then due and payable by him in respect of Shares have been paid.
- 21.5 No objection shall be raised as to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time in accordance with this Article shall be referred to the chairman whose decision shall be final and conclusive.
- 21.6 On a poll or on a show of hands votes may be cast either personally or by proxy (or in the case of a corporation or other non-natural person by its duly authorised representative or proxy). A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands and shall specify the number of Shares in respect of which each proxy is entitled to exercise the related votes.
- 21.7 On a poll, a Member holding more than one Share need not cast the votes in respect of his Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing him, a proxy appointed under one

or more instruments may vote a Share or some or all of the Shares in respect of which he is appointed either for or against a resolution and/or abstain from voting a Share or some or all of the Shares in respect of which he is appointed.

22 Proxies

- 22.1 The instrument appointing a proxy shall be in writing and shall be executed under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation or other non natural person, under the hand of its duly authorised representative. A proxy need not be a Member.
- 22.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the manner by which the instrument appointing a proxy shall be deposited and the place and the time (being not later than the time appointed for the commencement of the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting or in an instrument of proxy sent out by the Company, the instrument appointing a proxy shall be deposited physically at the Registered Office not less than 48 hours before the time appointed for the meeting or adjourned meeting to commence at which the person named in the instrument proposes to vote.
- 22.3 The chairman may in any event at his discretion declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted, or which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 22.4 The instrument appointing a proxy may be in any usual or common form (or such other form as the Directors may approve) and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 22.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or transfer was received by the Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

23 Corporate Members

Any corporation or other non-natural person which is a Member may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual Member.

24 Shares that May Not be Voted

Shares in the Company that are beneficially owned by the Company (including Treasury Shares) shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

25 Directors

There shall be a board of Directors consisting of not less than one person (exclusive of Alternate Directors). The first Director(s) of the Company shall be appointed by the Registered Agent.

26 Powers and Duties of Directors

- 26.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Resolution of Members, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 26.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 26.3 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.
- 26.4 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and assets (present and future) and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.
- 26.5 A Director, in exercising his powers or performing his duties, shall act honestly and in good faith and in what the Director believes to be in the best interests of the Company.
- 26.6 Notwithstanding the foregoing Article:
- (a) if the Company is a wholly-owned subsidiary, a Director may, when exercising powers or performing duties as a Director, act in a manner which he believes is in the best interests of the Company's parent even though it may not be in the best interests of the Company;
 - (b) if the Company is a subsidiary, but not a wholly-owned subsidiary, a Director may, when exercising powers or performing duties as a Director, with the prior agreement of all the Members, other than its parent, act in a manner which he believes is in the best interests of the Company's parent even though it may not be in the best interests of the Company; and

- (c) if the Company is carrying out a joint venture between the Members, a Director may, when exercising powers or performing duties as a Director in connection with the carrying out of the joint venture, act in a manner which he believes is in the best interests of a Member or Members, even though it may not be in the best interests of the Company.

26.7 Section 175 of the Statute shall not apply to the Company.

27 Appointment and Removal of Directors

27.1 The Company may by Resolution of Members or resolution of the Directors appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by the Articles as the maximum number of Directors.

27.2 The Company may by Resolution of Members or resolution of the Directors remove any Director with or without cause.

27.3 Sections 114(2) and 114(3) of the Statute shall not apply to the Company.

28 Vacation of Office of Director

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that he resigns the office of Director; or
- (b) the Director absents himself (for the avoidance of doubt, without being represented by proxy or an Alternate Director appointed by him) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and the Directors pass a resolution that he has by reason of such absence vacated office; or
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (d) the Director is found to be or becomes of unsound mind; or
- (e) all of the other Directors (being not less than two in number) determine that he should be removed as a Director, either by a resolution passed by all of the other Directors at a meeting of the Directors duly convened and held in accordance with the Articles or by a resolution in writing signed by all of the other Directors; or
- (f) the Director becomes disqualified to act as a Director under section 111 of the Statute.

29 Proceedings of Directors

29.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an Alternate Director shall, if his appointor is not present, be counted in the quorum. A Director who also acts as an Alternate Director shall, if his appointor is not present, count twice towards the quorum.

- 29.2 Subject to the provisions of the Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. A Director who is also an Alternate Director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote.
- 29.3 A person may participate in a meeting of the Directors or a meeting of any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 29.4 A resolution in writing (in one or more counterparts) signed by a majority of the Directors or a majority of the members of a committee of the Directors or, in the case of a resolution in writing relating to the removal of any Director or the vacation of office by any Director, all of the Directors other than the Director who is the subject of such resolution (an Alternate Director being entitled to sign such a resolution on behalf of his appointor and if such Alternate Director is also a Director, being entitled to sign such resolution both on behalf of his appointor and in his capacity as a Director) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.
- 29.5 A Director or Alternate Director may, or other officer of the Company on the direction of a Director or Alternate Director shall, call a meeting of the Directors by at least two days' notice in writing to every Director and Alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held. To any such notice of a meeting of the Directors all the provisions of the Articles relating to the giving of notices by the Company to the Members shall apply *mutatis mutandis*.
- 29.6 The continuing Directors (or a sole continuing Director, as the case may be) may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to be equal to such fixed number, or of summoning a general meeting of the Company, but for no other purpose.
- 29.7 The Directors may elect a chairman of their board and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for the meeting to commence, the Directors present may choose one of their number to be chairman of the meeting.
- 29.8 All acts done by any meeting of the Directors or of a committee of the Directors (including any person acting as an Alternate Director) shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or Alternate Director, and/or that they or any of them were disqualified, and/or had vacated their office and/or were not entitled to vote, be as valid as if every such person had been duly appointed and/or not disqualified to be a Director or Alternate Director and/or had not vacated their office and/or had been entitled to vote, as the case may be.

30 Presumption of Assent

A Director or Alternate Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent from such action with the person acting as the chairman or secretary of the meeting before the adjournment thereof or shall forward such dissent by registered post to such person immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director or Alternate Director who voted in favour of such action.

31 Directors' Interests

- 31.1 A Director or Alternate Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 31.2 A Director or Alternate Director may act by himself or by, through or on behalf of his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as if he were not a Director or Alternate Director.
- 31.3 A Director or Alternate Director may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as a shareholder, a contracting party or otherwise, and no such Director or Alternate Director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company.
- 31.4 No person shall be disqualified from the office of Director or Alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or Alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or Alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by or arising in connection with any such contract or transaction by reason of such Director or Alternate Director holding office or of the fiduciary relationship thereby established. A Director (or his Alternate Director in his absence) shall be at liberty to vote in respect of any contract or transaction in which he is interested provided that the nature of the interest of any Director or Alternate Director in any such contract or transaction shall be disclosed by him at or prior to its consideration and any vote thereon.
- 31.5 Any notice that a Director or Alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be deemed a general notice of such interest for the purposes of the Statute and be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which he has an interest, and after such general notice it shall not be necessary to give a general or special notice relating to any particular transaction.

32 Minutes

The Directors shall cause minutes to be made in books kept for the purpose of all appointments of officers made by the Directors, all proceedings at meetings of the Company or the holders of any class of Shares and of the Directors, and of committees of the Directors, including the names of the Directors or Alternate Directors present at each meeting.

33 Delegation of Directors' Powers

- 33.1 Subject to the Statute, the Directors may delegate any of their powers, authorities and discretions, including the power to sub-delegate, to any committee consisting of one or more Directors. They may also, subject to the Statute, delegate to any managing director or any Director holding any other executive office such of their powers, authorities and discretions as they consider desirable to be exercised by him provided that an Alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if he ceases to be a Director. Any such delegation may be made subject to any conditions the Directors may impose and either collaterally with or to the exclusion of their own powers and any such delegation may be revoked or altered by the Directors. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 33.2 Subject to the Statute, the Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees, local boards or agencies. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and any such appointment may be revoked or altered by the Directors. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 33.3 Subject to the Statute, the Directors may by power of attorney or otherwise appoint any person to be the agent of the Company on such conditions as the Directors may determine, provided that the delegation is not to the exclusion of their own powers and may be revoked by the Directors at any time.
- 33.4 Subject to the Statute, the Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under the Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised signatory to delegate all or any of the powers, authorities and discretions vested in him.
- 33.5 The Directors may appoint such officers of the Company (including, for the avoidance of doubt and without limitation, any secretary) as they consider necessary on such terms, at such remuneration and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of his appointment an officer of the Company may be removed by resolution of the Directors or Resolution of Members. An officer of the Company may vacate his office at any time if he gives notice in writing to the Company that he resigns his office.

34 Alternate Directors

- 34.1 Any Director (but not an Alternate Director) may appoint any other Director, or any other person willing to act, to be his Alternate Director.

- 34.2 An Alternate Director shall cease to be an Alternate Director if his appointor ceases to be a Director.
- 34.3 Any appointment or removal of an Alternate Director shall be undertaken in accordance with the Statute.
- 34.4 An Alternate Director shall have the rights and shall be subject to the liabilities described in the Statute in relation to his acts or omissions while appointed as an Alternate Director.

35 No Minimum Shareholding

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director is not required to hold Shares.

36 Remuneration of Directors

- 36.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any class of Shares or debentures of the Company, or otherwise in connection with the business of the Company or the discharge of their duties as a Director, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.
- 36.2 The Directors may by resolution approve additional remuneration to any Director for any services which in the opinion of the Directors go beyond his ordinary routine work as a Director. Any fees paid to a Director who is also counsel, attorney or solicitor to the Company, or otherwise serves it in a professional capacity shall be in addition to his remuneration as a Director.

37 Seal

- 37.1 The Company shall have a Seal. The Seal shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors.
- 37.2 The Company may have for use in any place or places outside the British Virgin Islands a duplicate Seal or Seals each of which shall be a facsimile of the Seal of the Company and, if the Directors so determine, with the addition on its face of the name of every place where it is to be used.
- 37.3 A Director or officer, representative or attorney of the Company may without further authority of the Directors affix the Seal over his signature alone to any document of the Company required to be authenticated by him under seal or to be filed wheresoever.

38 Dividends, Distributions and Reserve

- 38.1 Subject to the Statute and this Article and except as otherwise provided by the rights attached to any Shares, the Directors may resolve to pay Distributions on Shares in issue and authorise payment of the Distributions out of the funds of the Company lawfully available therefor. A dividend shall be deemed to be an interim dividend unless the terms of the resolution pursuant to

which the Directors resolve to pay such dividend specifically state that such dividend shall be a final dividend. No Distribution shall be authorised if such Distribution would cause the Company or its Directors to be in breach of the Statute.

- 38.2 The Directors may deduct from any Distribution payable to any Member all sums of money (if any) payable by him to the Company on account of calls or otherwise.
- 38.3 The Directors may resolve that any Distribution or redemption be paid wholly or partly by the distribution of specific assets and in particular (but without limitation) by the distribution of shares, debentures, or securities of any other company or in any one or more of such ways and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and may fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees in such manner as may seem expedient to the Directors.
- 38.4 Except as otherwise provided by the rights attached to any Shares, Distributions may be paid in any currency. The Directors may determine the basis of conversion for any currency conversions that may be required and how any costs involved are to be met.
- 38.5 The Directors may, before resolving to pay any Distribution, set aside such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for any purpose of the Company and pending such application may, at the discretion of the Directors, be employed in the business of the Company.
- 38.6 Any Distribution, redemption payment, interest or other monies payable in cash in respect of Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, other Distributions, bonuses, or other monies payable in respect of the Share held by them as joint holders.
- 38.7 No Distribution or redemption payment shall bear interest against the Company.
- 38.8 Any Distribution or redemption payment which cannot be paid to a Member and/or which remains unclaimed after six months from the date on which such Distribution becomes payable may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or other Distribution shall remain as a debt due to the Member. Any Distribution or redemption payment which remains unclaimed after a period of six years from the date on which such Distribution or redemption payment becomes payable shall be forfeited and shall revert to the Company.

39 Books of Account

- 39.1 The Directors shall cause proper books of account (including, where applicable, underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or

expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company, in accordance with the Statute.

39.2 The Directors shall determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute or authorised by the Directors or by the Company in general meeting.

39.3 The Directors may cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

40 Audit

40.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.

40.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.

40.3 Auditors shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at any time during their term of office, upon request of the Directors or any general meeting of the Members.

41 Notices

41.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to him or to his address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent by airmail.

41.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the British Virgin Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.

- 41.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under the Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 41.4 Notice of every general meeting shall be given in any manner authorised by the Articles to every holder of Shares carrying an entitlement to receive such notice on the date such notice is given except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for his death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

42 Winding Up

- 42.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. Subject to the rights attaching to any Shares, each Share will rank *pari passu* with each other Share in relation to the distribution of surplus assets on a winding up.
- 42.2 If the Company shall be wound up the liquidator may, subject to the rights attaching to any Shares and subject to contrary direction by Resolution of Members, divide amongst the Members in kind the whole or any part of the assets of the Company (whether such assets shall consist of property of the same kind or not) and may for that purpose value any assets and determine how the division shall be carried out as between the Members or different classes of Members. The liquidator may, subject to contrary direction by Resolution of Members, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Members as the liquidator, subject to contrary direction by Resolution of Members, shall think fit, but so that no Member shall be compelled to accept any asset upon which there is a liability.

43 Indemnity and Insurance

- 43.1 Subject to the Statute, every Director and officer of the Company (which for the avoidance of doubt, shall not include Auditors), together with every former Director and former officer of the Company (each an "**Indemnified Person**") shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud or wilful default. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud or wilful default of such Indemnified Person. No person shall be found to have committed actual fraud or wilful default under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 43.2 Subject to the Statute, the Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity

will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.

- 43.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.

44 Financial Year

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

45 Transfer by Way of Continuation

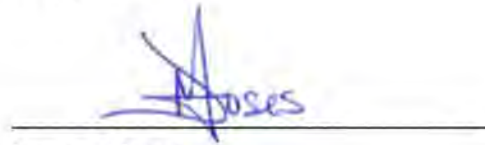
The Company shall, subject to the provisions of the Statute, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the British Virgin Islands and to be deregistered in the British Virgin Islands.

46 Mergers and Consolidations

The Company shall, subject to the provisions of the Statute, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.

We, Maples Corporate Services (BVI) Limited of Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands in our capacity as registered agent for the Company hereby apply to the Registrar for the incorporation of the Company this 19th day of December 2017.

Incorporator



Denery Moses

Authorised Signatory

Maples Corporate Services (BVI) Limited



EXHIBIT 96

**REGISTER OF MEMBERS
OF
HIGHLAND CLO ASSETS HOLDINGS LIMITED**

1 February 2018

NAME OF MEMBER	ADDRESS	DATE OF ENTRY AS MEMBER	DATE OF RESOLUTION APPROVING ISSUE/ TRANSFER OF SHARES	CERTIFICATE NUMBER	NUMBER OF SHARES ACQUIRED	CLASS OF SHARES	SOURCE OF SHARES	AMOUNT PAID THEREON	DATE OF DISPOSSESSION OF SHARES	METHOD OF DISPOSSESSION OF SHARES	NUMBER OF SHARES DISPOSSESSED
Highland Capital Management, L.P.	300 Crescent Court, Suite 700 , Dallas, TX, 75201, United States of America	20 Dec 2017	20 Dec 2017	No Certificate Issued	100	Class A Shares	Subscription	In Full			
BALANCE OF SHARES	Class A Shares: 100										
Mark Okada	9008 Briarwood LN, Dallas, TX, 75209-2016, United States of America	20 Dec 2017	20 Dec 2017	No Certificate Issued	25	Class B Shares	Original Issue	In Full			
BALANCE OF SHARES	Class B Shares: 25										
The Dugaboy Investment Trust	300 Crescent Court, Suite 700, Dallas, Tx, 75201, United States of America	20 Dec 2017	20 Dec 2017	No Certificate Issued	75	Class B Shares	Original Issue	In Full			
BALANCE OF SHARES	Class B Shares: 75										

EXHIBIT 97

**REGISTER OF MEMBERS
OF
NEUTRA, LTD.**

Member Name	Address	Date Entered As A Member	Source of Shares	Shares Issued	Cert #	% Paid	Date of Transfer of Shares	Transferee	No of Shares Out	Total Share Holding
Maples Corporate Services Limited	PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands	12 Dec 2012	SUBSCRIBER	1 Share	No cert	100	25 Jan 2013	Pollack, Ltd.	1 Share	0
Pollack, Ltd.	300 Crescent, Court Suite, 700, Dallas. Texas, 75201, United States of America	25 Jan 2013	Maples Corporate Services Limited	1 Share	No cert	100	20 Dec 2017	CLO Assets Holdings Limited	100 Shares	0
		29 Jan 2013	ISSUE	99 Shares	No cert	100				
Highland CLO Assets Holdings Limited	c/o Maples Corporate Services (BVI) Limited, Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands	20 Dec 2017	Pollack, Ltd.	100 Shares	No cert	100	03 Apr 2018	Highland Capital Management, L.P., as trustee of the Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited	100 Shares	100 Shares
		07 Sept 2022	Highland Capital Management,	100 Shares	No cert	100				

Share Class	Voting Rights
Shares	Yes

HCL0M00007527

			L.P., as trustee of Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited							
Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited	100 Crescent Court, Suite 1850 Dallas, Texas 75201	03 Apr 2018	Highland CLO Assets Holdings Limited	100 Shares	No cert	100	07 Sept 2022	Highland CLO Assets Holdings Limited	100 Shares	0

CO Services Cayman Limited

Billing Attorney: **Bullmore, Nick**

Client Ref: 1072344/0001/Z1960901v2

Incorp: 373873

Share Class	Voting Rights
Shares	Yes

HCL0M00007528

EXHIBIT 98

**REGISTER OF MEMBERS
OF
HIGHLAND CLO MANAGEMENT LTD.**

Member Name	Address	Date Entered As A Member	Source of Shares	Shares Issued	Cert #	% Paid	Date of Transfer of Shares	Transferee	No of Shares Out	Total Share Holding
Maples Corporate Services Limited	PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands	27 Oct 2017	SUBSCRIBER	1 Share	No cert	100	07 Feb 2018	REPURCHASE	1 Share	0
Highland Capital Management, L.P.	300 Crescent Court, Suite 700, Dallas, Texas, 75201, United States of America	07 Feb 2018	ISSUE	100 Class A Shares	No cert	100	27 Feb 2023	Mark Okada	25 Class A Shares	0
							27 Feb 2023	Dugaboy Investment Trust	75 Class A Shares	
Neutra, Ltd.	Willow House, Cricket Square, Grand Cayman KY1-1001, Cayman Islands	07 Feb 2018	ISSUE	100 Class B Shares	No cert	100	27 Feb 2023	Mark Okada	25 Class B Shares	0
							27 Feb 2023	Dugaboy Investment Trust	75 Class B Shares	
Mark Okada	300 Crescent Court, Suite 700, Dallas, Texas, 75201, United States of America	27 Feb 2023	Neutra, Ltd.	25 Class B Shares	No cert	100				25 Class B Shares
		27 Feb 2023	Highland Capital Management, L.P.	25 Class A Shares	No cert	100				25 Class A Shares
Dugaboy Investment Trust	300 Crescent Court, Suite 700, Dallas, Texas, 75201, United	27 Feb 2023	Neutra, Ltd.	75 Class B Shares	No cert	100				75 Class B Shares
		27 Feb 2023	Highland	75 Class A	No cert	100				
Share Class		Voting Rights								
Class A		Yes								
Class B		Yes								

	States of America		Capital Management, L.P.	Shares						75 Class A Shares
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CO Services Cayman Limited

Billing Attorney: **Bullmore, Nick**

Client Ref: 1072335/0001/Z1958559v4

Incorp: **328533**

Share Class	Voting Rights
Class A	Yes
Class B	Yes

HCL0M00010490

EXHIBIT 99

**HIGHLAND CLO MANAGEMENT, LTD.
(THE "COMPANY")**

**WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED 2 FEBRUARY 2023**

1. SHARE TRANSFER

1.1 **IT IS NOTED** that the Director has received duly executed share transfer forms relating to:

- (a) the transfer by Highland Capital Management, L.P. of 75 Class A Shares to The Dugaboy Investment Trust and 25 Class A Shares to Mark Okada; and
- (b) the transfer by Neutra, Ltd. of 75 Class B Shares to The Dugaboy Investment Trust and 25 Class B Shares to Mark Okada

(1.1 (a) and (b) together the "**Transfers**").

1.2 **IT IS RESOLVED** that:

- (a) the Transfers be approved with effect from the date hereof; and
- (b) the Company's registered office provider be instructed to update the Register of Members of the Company to reflect the Transfers.

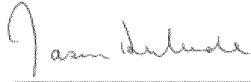
2. GENERAL AUTHORISATION

2.1 **IT IS RESOLVED** that, in connection with or to carry out the actions contemplated by the foregoing resolutions, any 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 any 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.

3. RATIFICATION OF PRIOR ACTIONS

3.1 **IT IS RESOLVED** that any and all actions of the Company, or of any 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, all the Directors prior to such action being taken.

[Signature page follows]

A handwritten signature in cursive script, appearing to read "Jason Dulude".

Jason Dulude
Director

EXHIBIT 100

HIGHLAND CLO MANAGEMENT, LTD.
(the "Company")

SHARE TRANSFER FORM

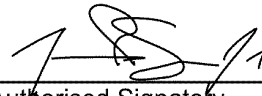
Dated 2 February 2023

We, Highland Capital Management, L.P. (the "**Transferor**"), do hereby:

1. transfer to Mark Okada (the "**Transferee**"), 25 Class A Shares (the "**Shares**") standing in our name in the register of members of the Company to hold unto the Transferee, its executors, administrators and assigns, subject to the several conditions on which we held the same at the time of execution of this Share Transfer Form; and
2. consent that our name remains on the register of the Company until such time as the Company enters the Transferee's name in the register of the Company.

I, the Transferee, acknowledge and agree the transfer of Shares shall be: (i) without recourse to the Transferor; and (ii) without representations of the Transferor.

SIGNED for and on behalf of **TRANSFEROR**:

)
) 
) _____
) Duly Authorised Signatory
)
) Name: James P. Seery, Jr.
)
) Title: Chief Executive Officer

And I, the Transferee, do hereby agree to take the Shares subject to the same conditions.

SIGNED for and on behalf of **TRANSFEE**:

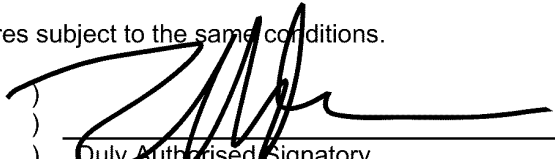
)
) 
) _____
) Duly Authorised Signatory
)
) Name: Mark Okada
)
) Title: _____

EXHIBIT 101

HIGHLAND CLO MANAGEMENT, LTD.
(the "Company")

SHARE TRANSFER FORM

Dated 2 February 2023

We, Neutra, Ltd. (the "**Transferor**"), do hereby:


1. transfer to The Dugaboy Investment Trust (the "**Transferee**"), 75 Class B Shares (the "**Shares**") standing in our name in the register of members of the Company to hold unto the Transferee, its executors, administrators and assigns, subject to the several conditions on which we held the same at the time of execution of this Share Transfer Form; and
2. consent that our name remains on the register of the Company until such time as the Company enters the Transferee's name in the register of the Company.

We, the Transferee, acknowledge and agree the transfer of Shares shall be: (i) without recourse to the Transferor; and (ii) without representations of the Transferor.

SIGNED for and on behalf of TRANSFEROR:

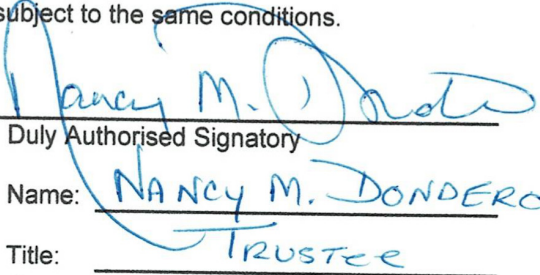
By: Highland Offshore Director, LLC, its Sole Director

By: Highland Capital Management, L.P., its Sole Member

)
) 
) Duly Authorised Signatory
)
) Name: James P. Seery, Jr.
)
) Title: Chief Executive Officer

And we, the Transferee, do hereby agree to take the Shares subject to the same conditions.

SIGNED for and on behalf of TRANSFEE:

)
) 
) Duly Authorised Signatory
)
) Name: NANCY M. DONDERO
)
) Title: TRUSTEE

HIGHLAND CLO MANAGEMENT, LTD.
(the "Company")

SHARE TRANSFER FORM


Dated 2 February 2023

We, Highland Capital Management, L.P. (the "Transferor"), do hereby:

1. transfer to The Dugaboy Investment Trust (the "Transferee"), 75 Class A Shares (the "Shares") standing in our name in the register of members of the Company to hold unto the Transferee, its executors, administrators and assigns, subject to the several conditions on which we held the same at the time of execution of this Share Transfer Form; and
2. consent that our name remains on the register of the Company until such time as the Company enters the Transferee's name in the register of the Company.

We, the Transferee, acknowledge and agree the transfer of Shares shall be: (i) without recourse to the Transferor; and (ii) without representations of the Transferor.

SIGNED for and on behalf of **TRANSFEROR**:

) 
)
) Duly Authorised Signatory
)
) Name: James P. Seery, Jr.
)
) Title: Chief Executive Officer

And we, the Transferee, do hereby agree to take the Shares subject to the same conditions.

SIGNED for and on behalf of **TRANSFEE**:

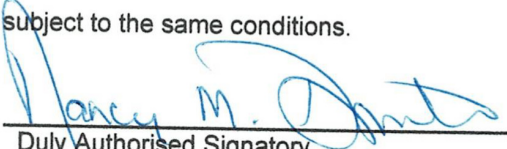
) 
)
) Duly Authorised Signatory
)
) Name: NANCY M. DONDERO
)
) Title: TRUSTEE

EXHIBIT 102

HIGHLAND CLO MANAGEMENT, LTD.
(the "Company")

SHARE TRANSFER FORM

Dated 2 February 2023

We, Neutra, Ltd. (the "**Transferor**"), do hereby:

1. transfer to Mark Okada (the "**Transferee**"), 25 Class B Shares (the "**Shares**") standing in our name in the register of members of the Company to hold unto the Transferee, its executors, administrators and assigns, subject to the several conditions on which we held the same at the time of execution of this Share Transfer Form; and
2. consent that our name remains on the register of the Company until such time as the Company enters the Transferee's name in the register of the Company.


I, the Transferee, acknowledge and agree the transfer of Shares shall be: (i) without recourse to the Transferor; and (ii) without representations of the Transferor.

SIGNED for and on behalf of **TRANSFEROR**:

By: Highland Offshore Director, LLC, its Sole Director

By: Highland Capital Management, L.P., its Sole
Member

)
)
)
)
)
)
)


Duly Authorised Signatory

Name: James P. Seery, Jr.

Title: Chief Executive Officer

And I, the Transferee, do hereby agree to take the Shares subject to the same conditions.

SIGNED for and on behalf of **TRANSFEE**:

)
)
)
)
)
)
)


Duly Authorised Signatory

Mark Okada

Name: _____

Title: _____

EXHIBIT 103

Form	SS-4	Application for Employer Identification Number (For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.) ▶ Go to www.irs.gov/FormSS4 for instructions and the latest information. ▶ See separate instructions for each line. ▶ Keep a copy for your records.		OMB No. 1545-0003
	(Rev. December 2017)			EIN 98-1432973
Department of the Treasury Internal Revenue Service				
Type or print clearly.	1 Legal name of entity (or individual) for whom the EIN is being requested HIGHLAND CLO MANGEMENT, LTD.			
	2 Trade name of business (if different from name on line 1)		3 Executor, administrator, trustee, "care of" name C/O MAPLES CORPORATE SERVICES LIMITED	
	4a Mailing address (room, apt., suite no. and street, or P.O. box) PO BOX 309, UGLAND HOUSE		5a Street address (if different) (Do not enter a P.O. box.)	
	4b City, state, and ZIP code (if foreign, see instructions) GRAND CAYMAN, KY1-1104, CAYMAN ISLANDS		5b City, state, and ZIP code (if foreign, see instructions)	
	6 County and state where principal business is located CAYMAN ISLANDS			
	7a Name of responsible party HIGHLAND CAPITAL MANAGEMENT LP		7b SSN, ITIN, or EIN 75-2716725	
	8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		8b If 8a is "Yes," enter the number of LLC members <input type="checkbox"/> Yes <input type="checkbox"/> No	
	8c If 8a is "Yes," was the LLC organized in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	9a Type of entity (check only one box). Caution. If 8a is "Yes," see the instructions for the correct box to check.			
	<input type="checkbox"/> Sole proprietor (SSN) <input type="checkbox"/> Estate (SSN of decedent) <input type="checkbox"/> Partnership <input type="checkbox"/> Plan administrator (TIN) <input checked="" type="checkbox"/> Corporation (enter form number to be filed) ▶ <input type="checkbox"/> Trust (TIN of grantor) <input type="checkbox"/> Personal service corporation <input type="checkbox"/> Military/National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government <input type="checkbox"/> Other nonprofit organization (specify) ▶ <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises <input type="checkbox"/> Other (specify) ▶ Group Exemption Number (GEN) if any ▶			
9b If a corporation, name the state or foreign country (if applicable) where incorporated		State	Foreign country CAYMAN ISLANDS	
10 Reason for applying (check only one box)		<input type="checkbox"/> Banking purpose (specify purpose) ▶ <input checked="" type="checkbox"/> Started new business (specify type) ▶ <input type="checkbox"/> Changed type of organization (specify new type) ▶ <input type="checkbox"/> Purchased going business <input type="checkbox"/> Hired employees (Check the box and see line 13.) <input type="checkbox"/> Created a trust (specify type) ▶ <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Created a pension plan (specify type) ▶ <input type="checkbox"/> Other (specify) ▶		
11 Date business started or acquired (month, day, year). See instructions. 10/27/2017		12 Closing month of accounting year DECEMBER		
13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.		14 If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. <input type="checkbox"/>		
Agricultural		Household		Other
15 First date wages or annuities were paid (month, day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) <input type="checkbox"/> N/A				
16 Check one box that best describes the principal activity of your business.				
<input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Health care & social assistance <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-other <input type="checkbox"/> Retail <input checked="" type="checkbox"/> Other (specify) ▶ INVESTMENT MANAGEMENT				
17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided. INVESTMENT MANAGEMENT				
18 Has the applicant entity shown on line 1 ever applied for and received an EIN? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
If "Yes," write previous EIN here ▶				
Third Party Designee	Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.			
	Designee's name CHRIS NESMITH		Designee's telephone number (include area code) 972-419-4452	
	Address and ZIP code 300 CRESCENT COURT, SUITE 700, DALLAS, TX 75201		Designee's fax number (include area code) 972-628-4147	
	Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.		Applicant's telephone number (include area code) 972-628-4100	
Name and title (type or print clearly) ▶ JAMES DONDERO, PRESIDENT		Applicant's fax number (include area code)		
Signature ▶ 		Date ▶ 6/18/18		

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 16055N

Form **SS-4** (Rev. 12-2017)

HCL0M02026806

EXHIBIT 104

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:) Case No. 18-30264-Sgj7
ACIS CAPITAL MANAGEMENT, L.P.,) Dallas, Texas
Alleged Debtor.) March 23, 2018
-----) 9:36 a.m.
ACIS CAPITAL MANAGEMENT GP, LLC,) Case No. 18-30265-sgj7
Alleged Debtor.)
-----)

TRANSCRIPT OF HEARING ON:

AS TO CASE NO. 18-30264-sgj7:

[#80] EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING
INVOLUNTARY PETITIONS FILED BY CLO HOLDCO, LTD., HIGHLAND CLO
FUNDING, LTD., NEUTRA, LTD.;

[#81] MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #80
MOTION TO INTERVENE) FILED BY CREDITOR HIGHLAND CLO FUNDING,
LTD., CREDITOR CLO HOLDCO, LTD., CREDITOR NEUTRA, LTD.) FILED
BY PETITIONING CREDITOR JOSHUA TERRY

[#87] OBJECTION TO (RELATED DOCUMENT(S): #80 EMERGENCY MOTION
TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS
FILED BY CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO
HOLDCO, LTD., CREDITOR NEUTRA, LTD., #81 MOTION FOR EXPEDITED
HEARING (RELATED DOCUMENTS, #80 MOTION TO INTERVENE) FILED BY
CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO HOLDCO,
LTD., CREDITOR NEUTRA, LTD.) FILED BY PETITIONING CREDITOR
JOSHUA TERRY

(cont'd. next page)

1 AS TO CASE NO. 18-30265-sgj7:
2 [#77] EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING
3 INVOLUNTARY PETITIONS FILED BY CLO FUNDING, LTD., HIGHLAND CLO
4 FUNDING, LTD., NEUTRA, LTD.;

5 [#78] MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #77
6 MOTION TO INTERVENE) FILED BY CLO FUNDING, LTD., HIGHLAND CLO
7 FUNDING, LTD., NEUTRA, LTD.;

8 [#83] OBJECTION TO (RELATED DOCUMENT(S): #77 EMERGENCY MOTION
9 TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS
10 FILED BY CREDITOR NEUTRA, LTD., CREDITOR HIGHLAND CLO FUNDING,
11 LTD., CREDITOR CLO FUNDING, LTD., #78 MOTION FOR EXPEDITED
12 HEARING (RELATED DOCUMENTS #77 MOTION TO INTERVENE) FILED BY
13 CREDITOR NEUTRA, LTD., CREDITOR HIGHLAND CLO FUNDING, LTD.,
14 CREDITOR CLO FUNDING, LTD.) FILED BY PETITIONING CREDITOR
15 JOSHUA TERRY

16 BEFORE THE HONORABLE STACEY G. JERNIGAN
17 UNITED STATES BANKRUPTCY COURT
18
19
20

21 Transcription Services: eScribers, LLC
22 7227 North 16th Street
23 Suite #207
Phoenix, AZ 85020
(973) 406-2250

24 PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

25 TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

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operations@escribers.net | www.escribers.net

1 APPEARANCES:

2 For the Debtor:

MICHAEL D. WARNER, ESQ.
Cole Schotz P.C.
1700 City Center Tower II
301 Commerce Street
Suite 1700
Fort Worth, TX 76102

WARREN A. USATINE, EQ.
Cole Schotz P.C.
25 Main Street
Hackensack, NJ 07601

GARY CRUCIANI, ESQ.
MICHAEL P. FRITZ, ESQ.
McKool Smith
300 Crescent Court
Suite 1500
Dallas, TX 75201

11 For Joshua N. Terry,
12 Petitioning Creditor:

RAKHEE V. PATEL, ESQ.
ANNMARIE CHIARELLO, ESQ.
Winstead PC
2728 N. Harwood Street
Suite 500
Dallas, TX 75201

BRIAN P. SHAW, ESQ.
Clouse Dunn LLP
1201 Elm Street
Suite 5200
Dallas, TX 75270

18 For Highland CLO Funding, SCOTT RICHARD LARSON, ESQ.
19 Ltd., CLO Holdco, Ltd., and Bell Nunnally & Martin LLP
Neutra Ltd.: 3232 McKinney
Suite 1400
20 Dallas, TX 75204

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Colloquy

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1 THE CLERK: All rise. United States Bankruptcy Court
2 for the Northern District of Texas, Dallas Division, is now in
3 session, the Honorable Stacey Jernigan presiding.

4 THE COURT: Good morning. Please be seated.

5 IN UNISON: Good morning.

6 THE COURT: Long time no see. All right, the record
7 will reflect we're starting day three of the trial on the
8 involuntary bankruptcy petition of Acis Capital Management,
9 L.P. and Acis Capital Management GP, LLC. Do we have all the
10 lawyers we need?

11 UNIDENTIFIED SPEAKER: Yes, Your Honor.

12 THE COURT: Okay, so for the record, we've got Ms.
13 Patel, Mr. Shaw, and Ms. Chiarello for the petitioning
14 creditors (sic). We've got Mr. Warner --

15 MR. WARNER: Good morning.

16 THE COURT: Good morning. -- and Mr. Cruciani's back
17 there; Mr. Fritz and Mr. Usatine; all here for the companies.
18 And then our proposed intervenors -- Mr. Larson and Ms. Jobe,
19 are you all back there?

20 MR. LARSON: Mr. Larson, ma'am. (Indiscernible).

21 THE COURT: Okay. All right, well, thank you. Do we
22 have any housekeeping matters before we start?

23 MR. FRITZ: We do, Judge.

24 THE COURT: Okay.

25 MR. FRITZ: You'll recall the debtors introduced some

Colloquy

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1 exhibits yesterday. We have copies for the Court and the
2 Court's clerk. If I may approach?

3 THE COURT: You may.

4 MR. FRITZ: Judge, here; it belongs with all of
5 this --

6 THE COURT: Thank you. Okay. So my list here --
7 this is the Demonstrative 6 that we have the marked-up version
8 of page 32 -- or, wait. Yes. Okay, so I need to call this
9 Demonstrative 6, right?

10 UNIDENTIFIED SPEAKER: Yeah.

11 THE COURT: Okay. This is the marked-up version of
12 page 32 of Demonstrative 5. Okay. So Demonstrative Aid 6.

13 (Marked-up version of page 32 of Demonstrative 5 was
14 hereby marked for identification as Demonstrative's Exhibit 6,
15 as of this date.)

16 THE CLERK: Is there a demonstrative of the charts
17 that (indiscernible)? I (indiscernible).

18 THE COURT: Okay, well, let --

19 THE CLERK: Yeah, it's here if we need to look for
20 the --

21 THE COURT: Just what are those, so we have them
22 marked and --

23 THE CLERK: These are demonstrative replacements for
24 the notebooks, for Demonstrative 1 -- these books.

25 THE COURT: They're replacement pages for --

Colloquy

6

1 THE CLERK: Yes. Updated charts from --

2 THE COURT: Okay. I gotcha. Okay, I just wanted to
3 make sure we have everything correctly.

4 THE CLERK: I have everything here.

5 THE COURT: Okay. Very good. We're clear. We're
6 good. Thank you.

7 All right, anything else?

8 MS. PATEL: Your Honor, just from a scheduling
9 perspective; I know that there was discussion yesterday about
10 what days we're going to come back next week.

11 THE COURT: Um-hum.

12 MS. PATEL: Just so everyone can start putting it on
13 their calendars and blocking those days, in the event other
14 things get put on there in the interim, if we could sort of
15 rejigger the conversation with respect to just what days we're
16 going to come back next week?

17 THE COURT: All right, well, pending overnight, we
18 had: are we coming back Monday morning? So I cannot remember
19 whose potential conflict it was.

20 MR. CRUCIANI: That was Mr. Ellington's conflict --

21 THE COURT: Okay.

22 MR. CRUCIANI: -- on Monday. I think Tuesday is
23 available for everybody, I believe --

24 THE COURT: Okay.

25 MR. CRUCIANI: -- for a half a day, I believe we

Colloquy

7

1 have.

2 THE COURT: Yes.

3 MR. CRUCIANI: What we were hoping for, given the
4 Easter --

5 THE COURT: Um-hum.

6 MR. CRUCIANI: -- break and Ms. Patel's --

7 THE COURT: Um-hum.

8 MR. CRUCIANI: -- conflict is, if -- perhaps on our
9 end at least, that following Monday, if the Court had time
10 that date, that would work on our side. I don't know about
11 the Court or opposing counsel.

12 THE COURT: That's a terrible day for us, I'm sorry.
13 We --

14 MR. CRUCIANI: Okay.

15 THE COURT: We already knew that was a terrible,
16 terrible day. Yeah, I am just -- now, right, I'm showing
17 Wednesday, March 28th is a good day, unless something has
18 changed.

19 MR. CRUCIANI: That was your --

20 MS. PATEL: That was -- Your Honor, that's when I'm
21 in Judge Jones' court on contested cash collateral and --

22 THE COURT: Oh, wait. Wait.

23 MS. PATEL: -- a variety of other things.

24 THE COURT: Wait, wait, wait. Okay, so I'm -- so
25 it's Monday, April 2nd that's terrible, right?

Colloquy

8

1 THE CLERK: Yeah. I --

2 THE COURT: Okay.

3 THE CLERK: Oh, wait, you have a (indiscernible)

4 on --

5 THE COURT: Okay, that's -- yeah, we could do the 3rd
6 or the 4th.

7 MR. CRUCIANI: Of all places, I am in Hawaii arguing
8 before the Hawaii Supreme Court.

9 THE COURT: Okay.

10 MR. CRUCIANI: And you could check it.

11 THE COURT: Rough duty.

12 MR. CRUCIANI: Yeah.

13 THE COURT: Yeah.

14 MR. CRUCIANI: But Your Honor, here's what I would
15 suggest: if we could -- given that that Monday doesn't work,
16 we just may need to try to make some choice on our end whether
17 it's Mr. Ellington -- I know Mr. Warner can't be here on
18 Thursday, but potentially, if we're just doing closing and I'm
19 doing it, he may not need to be here. So that's a possibility
20 to potentially do Tuesday and Thursday. But as I recall, you
21 might have a tight schedule on Thursday?

22 THE COURT: Well, I had a tight schedule until about
23 2:30, right, or 3.

24 That was the day we had a long 1:30 docket.

25 Well, was Ellington going to be a witness or he

Colloquy

9

1 just -- because he's general counsel.

2 MR. CRUCIANI: Well, it was both, depending upon --

3 THE COURT: Okay.

4 MR. CRUCIANI: -- these witnesses -- he potentially
5 was batting cleanup. If I need him as a witness, then for
6 sure I would want him here. I don't yet know that, because it
7 depends on how today's testimony goes in court.

8 THE COURT: Um-hum.

9 MR. CRUCIANI: So we would have liked to have been
10 here as a general counsel, but I understand; with conflicts,
11 we're prepared to dispense with that if necessary.

12 THE COURT: Okay. All right, so here's what we'll
13 do: we'll definitely come back Tuesday for a half a day --

14 MR. CRUCIANI: Um-hum.

15 THE COURT: -- 9:30 to -- I've got a long afternoon
16 starting at 1:30. So 9:30 to 12:30ish. We could start
17 earlier; 9.

18 MR. CRUCIANI: That's fine.

19 THE COURT: We'll start 9 to kind of get in a little
20 more time. And then I will see what Traci can do about
21 clearing up some time Thursday. I know our 1:30 docket's
22 terrible, but maybe the morning docket we can -- I just don't
23 remember what the --

24 THE CLERK: (Indiscernible) so we push the morning --

25 THE COURT: Push the morning.

Colloquy

10

1 (On phone) Traci, we are going to come back on Acis
2 at 9 o'clock Tuesday morning, and so we'll give them 9 to
3 12:30. But we're probably going to need a little time at
4 least for closing arguments, if not more. And I want to see
5 if we can free up some time Thursday morning. I can't
6 remember what's set. I know we've got a huge 1:30 docket, but
7 are the 9:30 matters possibly going to go away or can we maybe
8 move them to the afternoon? Maybe contact those attorneys and
9 see can they come at 2:30. Um-hum. All right. Thank you.
10 Bye-bye.

11 All right, so we'll know a little later if our
12 Thursday morning will clear up. I think we'll be able to do
13 that.

14 MR. CRUCIANI: Thank you.

15 THE COURT: Okay? All right. So with that --

16 MS. PATEL: And Your Honor, Monday -- did you have
17 all day if we can work through the issues for Monday? I'm
18 just trying to block out my calendar before people start
19 putting things on it unbeknownst to me.

20 THE COURT: Monday morning.

21 MS. PATEL: Morning? Okay, I --

22 THE COURT: Yeah.

23 MS. PATEL: I'm just going to tentatively block it
24 off. I'm not going to let anything get scheduled --

25 THE COURT: Okay.

Colloquy

11

1 MS. PATEL: -- so that we don't have a later
2 conflict. Thank you, Your Honor.

3 THE COURT: All right. Well -- okay. With that,
4 are -- okay, I believe Petitioning Creditor had rested,
5 subject to the ability to -- on Mr. Dondero, to treat him as
6 both a witness you're cross-examining as well as direct
7 testimony that can be beyond the scope of --

8 MS. PATEL: I don't think we said we rested, because
9 it's subject to this interesting Dondero thing. But I -- so I
10 just want to be --

11 THE COURT: You technically don't want that --

12 MS. PATEL: -- the record to be clear. Right.

13 THE COURT: Okay.

14 MS. PATEL: Exactly.

15 THE COURT: What we all agreed that means is that
16 when Dondero is called as Acis' witness, your cross can go
17 beyond the scope of direct.

18 MS. PATEL: Exactly, Your Honor.

19 THE COURT: All right. So with that, I will turn to
20 Acis. You may call your first witness.

21 MR. FRITZ: We call Mark Okada.

22 THE COURT: All right. Mr. Okada, welcome. If you
23 could approach our witness stand; I'll swear you in.

24 Please raise your right hand.

25 (Witness sworn)

Mark Okada - Direct

12

1 THE COURT: All right, please take a seat.

2 DIRECT EXAMINATION

3 BY MR. FRITZ:

4 Q. Good morning, sir.

5 A. Good morning.

6 Q. Could you please state your name for the record?

7 A. Mark Okada.

8 Q. Where are you employed?

9 A. Highland Capital Management.

10 Q. Okay, what is your position at Highland Capital
11 Management?

12 A. I'm the co-founder and co-chief investment officer.

13 Q. You say you're the co-founder. Can you tell me about
14 Highland's founding?

15 A. Yeah. We formed -- "we" meaning Protective Life and Jim
16 Dondero and myself, formed the firm in April of '93; so it was
17 about twenty-five years ago. And Highland had a different
18 name then; it was Protective Asset Management. But we -- we
19 changed that name, bought out our parent -- or our partner in
20 Protective Life in -- in '97 and moved the company to Dallas
21 in '94. So, yeah, that -- that's sufficient?

22 Q. Yes. Could you please explain to the judge what business
23 Highland's in?

24 A. So we are an investment manager, which means that we
25 manage funds that investors can invest in, and our -- our role

Mark Okada - Direct

13

1 is to, really, provide the -- the investment-management
2 services and the risk management for those investors, in
3 different markets.

4 Q. What types of funds does Highland manage?

5 A. So we manage a -- a wide variety of funds, everything
6 from hedge funds to private-equity funds, mutual funds, ETFs,
7 private-equity funds (sic). And then the largest asset class
8 we manage is structured-credit funds, called CLOs or
9 collateralized loan obligations.

10 Q. And what's been Highland's experience with CLOs?

11 A. So we really were there at the founding of the industry.
12 Back in 1996, we did our first CLO. And back then, we -- we
13 probably did the first investor-led transaction in the space.
14 Today the -- the industry is, gosh, about 600 billion. It's a
15 very large industry. But when we started, we were the first
16 people to do one for -- from an investor standpoint. And,
17 yeah, that was in 1996.

18 Q. And you said before, you were the chief investment
19 officer?

20 A. Yes.

21 Q. And as chief investment officer, do you have any personal
22 experience with CLOs?

23 A. Yes.

24 Q. Could you explain that?

25 A. So I mean, I -- I've been involved in everything from

Mark Okada - Direct

14

1 structuring and managing to restructuring to -- to raising
2 funds for -- for CLOs and analyzing them since really 1995
3 when we started the process. So it's been twenty-three years
4 I'm now involved in the industry and as it's evolved since
5 then. So I've been very involved in -- in the entire space as
6 a manager, as -- as somebody who's helping, you know, lead
7 our -- our -- our teams in the space. But, yeah, I've been
8 very involved in -- in the CLO business for as long as
9 anybody, really.

10 Q. And with respect to the CLO business at Highland, do you
11 still take part in active management of that?

12 A. Yeah; the team directly reports in to me. I -- I -- I --
13 I supervise and oversee the -- the -- the activities of -- of
14 our -- our CLO team, which includes originating and -- and
15 managing CLOs, but also our -- our investing in -- in the --
16 in the -- the marketplace of -- of investing in CLO bonds and
17 equity, and then also interfacing with investors in explaining
18 market risks and opportunities and -- and -- and things like
19 that.

20 Q. You see Mr. Terry's in the courtroom today?

21 A. Yes.

22 Q. While Mr. Terry was at Highland, did he report to you?

23 A. Yes, he did.

24 Q. Now, we've talked about Highland's management of CLOs.

25 Are you familiar with an entity called Acis Capital

Mark Okada - Direct

15

1 Management, L.P. and Acis Capital Management GP?

2 A. Yes.

3 Q. And Acis is also an asset manager for CLOs, correct?

4 A. Correct.

5 Q. And are you familiar with the Acis-managed CLOs at
6 Highland?

7 A. Yes.

8 Q. Let me back up and ask you some general questions about
9 CLOs. What's the purpose of a CLO?

10 A. So a CLO is a structured product, or a securitization.
11 What that basically means is you're taking a -- a pool of --
12 of investments, or in this case they're -- they're called bank
13 loans, the corporate bank loans that are issued by -- by
14 companies. And you're -- you're funding a pool of those in
15 using CLO bonds and equity.

16 And so a CLO is a structure that is formed to -- to house
17 the investments, and it's funded by issuing CLO bonds and CLO
18 equity. And then as it's -- as it's -- it has a -- a -- a
19 reinvestment period and a maturity as -- these deals are
20 anywhere from eight to twelve years long; they're -- they're
21 fairly long-life transactions.

22 But the purpose of a CLO is -- is -- is -- as in all
23 securitizations, is to yield to -- tranche the risk of that
24 pool, so that the pool of loans will have a certain type of
25 risk based on the market and the -- but the bonds that you

Mark Okada - Direct

16

1 issue and the equity that you issue will have different types
2 of risk.

3 So you can -- you -- you can allocate the risk to
4 different types of investors that want to fund into markets,
5 taking different types of risk. And that's -- that's how
6 securitizations are structured. And the -- and so a CLO is
7 formed to do that in -- in the ARM (ph.) market.

8 Q. Can you explain to the judge who are the various parties
9 of a CLO?

10 A. Sure. So as -- as we were talking about, there's -- Acis
11 would be -- are -- are the CLO manager. So what managers do
12 is -- is they're -- they're out looking to form transactions
13 to raise the capital and then help structure them and
14 distribute them but also manage them on a go-forward basis.

15 With a CLO, the -- the -- the -- the investment manager
16 is going to be managing the pool of assets -- or loans or
17 assets in -- in -- in the portfolio, during the reinvestment
18 period, and then managing those assets during the -- the --
19 the wind-down or liquidation at the end.

20 So that -- that's the manager's role. And we -- this is
21 all driven by an indenture. Indenture is the document that
22 the trustee administers, that talks about really all the rules
23 of how the CLO is governed and how -- how things can be
24 traded, and also lays out all of the -- the covenants and the
25 structure for the -- the deal.

Mark Okada - Direct

17

1 So there's a trustee -- an independent third-party
2 trustee that will manage the -- the structure for the benefit
3 of the bondholders and the equity. They -- they -- they
4 create a monthly report, called the trustee report, that
5 really details all the activity within -- within each
6 individual CLO.

7 And then we have an underwriter. So every deal that is
8 done has a -- an underwriter, and these would be your -- your
9 big Wall Street banks like -- like a Merrill Lynch or a B of A
10 or a JPMorgan or a Goldman Sachs. They -- they have the
11 salesforce and the -- the -- the -- the wherewithal to go and
12 pool the investors together and help you structure and raise
13 a -- a transaction. So there's always an underwriter.

14 And then we obviously have the -- the bondholders and the
15 equity investors. So the CLO bondholders, as I mentioned
16 earlier, are -- this is a -- it's about a 600-billion-dollar
17 market. So the people that invest -- or the -- the investors
18 that invest in CLO bonds would be anything from, gosh, large
19 pensions, sovereign-wealth banks, insurance companies.

20 But they're -- they're investing in this market because
21 these bonds are rated for a certain type of credit risk. We
22 have everything from B all up to AAA sorts of risk. And so
23 they're looking at, gosh, I can invest in these bonds at a --
24 a certain rating and a certain risk versus a certain price.
25 And that's -- that's what the bondholders are doing. And

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1 they -- they have the indenture that it's governed -- what
2 they're doing.

3 And then on the other side, you have the -- the equity.
4 The equity sponsor or the equity investors in the transaction,
5 they're -- they're taking the most risk in the transaction.
6 They put the -- the money in that -- that comes out last.
7 They're taking the risk of all that -- the -- the bank-loan
8 pool of -- of what happens to it over time, and all the loans
9 in there. And -- and as the -- the transaction goes forward,
10 the -- the -- they'll be rewarded with -- with -- with the net
11 income off the portfolio.

12 So those are the basic -- there's lawyers, obviously,
13 involved in these things, and -- and -- but that -- those are
14 the -- the major players in a CLO.

15 Q. We were talking before about Acis Capital Management
16 LLC -- L.P., and Acis Capital Management GP. For the purposes
17 of this examination, can we just refer to those as "Acis"?

18 A. Yes.

19 Q. With respect to Acis, do you know approximately how many
20 CLOs Acis manages?

21 A. Right now, about five. Yeah, five.

22 Q. Does Acis have any employees?

23 A. No.

24 Q. If Acis doesn't have any employees, how does Acis manage
25 those CLOs?

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1 A. It has a -- a shared-service contract with Highland
2 Capital Management.

3 Q. Does Acis own any equity in the CLOs it manages?

4 A. No.

5 Q. Is Acis a bondholder in any of the CLOs it manages?

6 A. No.

7 MR. FRITZ: Omar, could you put up slide 2, please?

8 UNIDENTIFIED SPEAKER: (Indiscernible) the input.

9 Q. If you look on your screen, Mr. Okada, you see the titles
10 "ALF's equity investments" and "All Acis CLOs". You see that?

11 A. Yes.

12 Q. Could you please describe for the judge what's being
13 shown in this slide?

14 A. So this is a -- a chart that shows the -- believe the
15 original amount of -- of CLO equity that was invested in the
16 Acis CLOs. So those -- the 1940 (ph.), the 51, 53, and 52
17 million dollars would be the original amounts of equity that
18 were invested into each of those CLOs; we call them 1, 3, 4,
19 5, and 6, for -- for reference.

20 And then there's this unfunded commitment. ALF is a --
21 a -- a vehicle that has additional cash in unfunded --
22 unfunded commitments to invest in further equity of -- of CLOs
23 and -- and CLO securities.

24 Q. Near the top of this chart, you see there's a circle with
25 the term "ALF" in it. You know who ALF is?

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1 A. So that is a Highland -- that's our -- that's our
2 Highland Loan Funding -- formerly known as Acis -- as Acis
3 Loan Funding; we refer to it as ALF, kind of a sticky name
4 which you -- which you hear at once.

5 But -- but yeah, that -- that's a -- a vehicle that is
6 set up to invest in the equity of -- of -- of CLOs and also
7 invest in -- in the -- the secondary market of CLO securities.

8 Q. So just so the record's clear, this entity is currently
9 known as Highland Loan Funding Ltd. but was formerly known as
10 Acis Loan Funding?

11 A. That's correct.

12 Q. For simplicity's sake, just to be consistent with kind of
13 what we've been using, will we refer to that entity as "ALF"?

14 A. Yeah. Sure.

15 Q. Mr. Okada, you see there's another diagram up, the screen
16 there? You see that "ALF" in the middle?

17 A. (No audible response).

18 Q. Can you please describe to the judge the various parties
19 you see identified on this chart?

20 A. So what this is is it shows who the investors are in ALF
21 that hold the -- basically hold the equity of this CLO 3; this
22 is the third CLO that has -- had an original amount of about
23 forty million dollars of equity. So there's -- there's two
24 institutional investors that hold the majority; each have
25 about forty-nine percent of the transaction -- or of -- of --

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1 of ALF. And then there's Highland employees that have a -- a
2 small amount of -- of investment in the -- the ALF vehicle.

3 Q. When you say the Highland employees have two percent,
4 could you please describe that a little bit more?

5 A. So if you -- one of the things that we -- we -- we think
6 is important for our investors to understand is that our
7 employees are aligned with them. So we -- we give the
8 opportunity for the employees of the firm to invest alongside
9 of our investors so that they have the same experience and
10 they're aligned. It's kind of like eating your own cooking.

11 So that two percent would represent a direct investment
12 into the transact -- into the ALF fund, by various Highland
13 employees; I'm one of them. Various people on the team are --
14 that are involved in managing our CLOs have their own equity
15 invested -- or their own capital invested alongside the -- the
16 equity investors here.

17 Q. Now, is this -- when you say "their own equity", is this
18 money that they actually take out of their pocket, put in, or
19 is it contributed by --

20 A. No, no, no. It's -- it's -- it's their own capital.

21 Q. So they actually invest their own product (ph.)?

22 A. Yes.

23 Q. We have two other entities there that each own forty-nine
24 percent. There's one up there that says, "third party"; do
25 you see that?

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1 A. Yes.

2 Q. Is that an independent third party?

3 A. Yes.

4 Q. Now, there's another one: the charitable foundation.

5 Can you describe generally what that charitable foundation is?

6 A. So the charitable foundation is a -- a donor-advised fund
7 set up to provide charitable donations to -- you know, like
8 any foundation, in -- in various charities around the country,
9 really.

10 Q. Now, during the course of this hearing, we've heard the
11 term -- or the entity "CLO Holdco Ltd." Do you know who that
12 is?

13 A. Yes.

14 Q. Can you please tell the judge who that is?

15 A. So CLO Holdco Ltd. is the vehicle that houses the
16 charitable foundation's investment in the equity of the CLOs.
17 So it -- it could be, like, their brokerage account or their
18 checking account that -- that holds the -- the -- the CLO
19 equity investment. It's just a holding vehicle that houses
20 the actual CLO equity.

21 Q. So that CLO equity for the charitable foundation, that
22 would be the charitable foundation's money?

23 A. Yes.

24 Q. Obviously, this charitable foundation, I assume, makes
25 donations?

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1 A. Yes.

2 Q. Who controls what donations the charitable foundation
3 makes?

4 A. So it's -- it's -- it's a donor-advised fund but it's --
5 it's administered by The Dallas Foundation, and -- and --
6 and -- primarily. And -- I'm not sure if you're familiar
7 with -- with -- with what I -- The Dallas Foundation does, but
8 they -- they provide all of the operational and -- and
9 structural management for a donor-advised fund.

10 And -- and -- and -- and the way these things are set up,
11 they'll have a staff that help you write the -- the -- the --
12 the different grants that you're going to make, determine who
13 to donate the money to, evaluate those -- those different
14 charities, and help you plan out how -- how the charity is --
15 is -- is to go about its -- its -- its donations.

16 Q. Is The Dallas Foundation an affiliate of Highland?

17 A. No.

18 Q. With regard to this charitable foundation, who decides
19 how the charitable foundation invests its money?

20 A. So the -- the investments within the charitable
21 foundation ultimately are -- are managed by a -- a trustee;
22 his name is Grant Scott. And so we have a independent trustee
23 that -- that -- that oversees the -- the investing activity
24 of -- of the charitable foundation.

25 Q. Is Mr. Scott a friend Highland?

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1 A. Yes. He -- he and Jim go way back; twenty, thirty years.

2 Q. You also mentioned he was an independent trustee?

3 A. Yes. He's a -- he's a lawyer and that -- that's his
4 role: to -- to -- to be the -- the independent trustee for
5 the transaction.

6 Q. Do you understand if Mr. Scott owes any duties to the
7 foundation?

8 A. Well, yeah. I mean, as the trustee, he has a fiduciary
9 duty to the -- to the foundation.

10 Q. And do you have a general understanding of what the
11 fiduciary duty is?

12 A. Well, he's -- he's supposed to make sure that the -- the
13 foundation's interests are -- are -- are put first, ahead of,
14 you know, anybody else in the -- in the -- in his dealings,
15 and to make sure that it's -- it's administered in a -- in a
16 fair and lawful way.

17 Q. Is Mr. Scott an employee of Highland?

18 A. No.

19 Q. Has he ever been?

20 A. No.

21 Q. Does Highland own any of the assets in the charitable
22 foundation?

23 A. No, they do not.

24 Q. What about Mr. Dondero?

25 A. No, he does not.

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1 Q. Does Highland or Mr. Dondero have access to any of the
2 funds held by the charitable foundation?

3 A. No.

4 MR. FRITZ: Omar?

5 Q. I want to talk kind of about the Acis-managed CLOs in the
6 time period of 2014 to 2017; would that be okay?

7 A. Yes.

8 Q. So if I own equity in a CLO -- and let's use CLO 3 as an
9 example -- how do I make money?

10 A. Okay, so let me explain this chart to you, because it --
11 think of it -- this is a balance sheet, the way this is set
12 up; so you have assets and liabilities. The assets here are
13 these -- a loan portfolio. This is made up of anywhere
14 between 100 to 200 individual loans to corporations. The type
15 of corporations we're talking about here are large; they have
16 a -- an average of about a billion dollars of -- of overall
17 size and total capitalization. So we're talking about
18 American Airlines, big companies that issue within this loan
19 market that we're investing in.

20 But think of those as our assets. Right? So that --
21 that market that we're investing in, this loan-portfolio
22 returns, these are the assets that are going to generate the
23 income that is -- that is structured into -- that goes into
24 paying the -- the liabilities of the structure.

25 So the -- the manager is going to be -- Acis is going

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1 to -- or Highland is going to be managing this loan portfolio
2 during the reinvestment period, and during that period we can
3 be trading it, we can buy and sell -- buying things and
4 selling them. We want to avoid things that are going to end
5 up here in the bankruptcy court, because we don't want them to
6 default, per se.

7 THE COURT: We talked about Toys "R" Us a lot
8 yesterday.

9 THE WITNESS: Yeah, okay. Okay. Yeah, that --
10 that's a good example of something that -- that we -- that can
11 end up in one of these -- these pools.

12 A. And the --

13 THE COURT: Um-hum.

14 A. -- manager's role is to determine is that a good
15 investment, that's going to pay off based on its collateral,
16 et cetera, et cetera.

17 So the income -- this -- this top box up here is supposed
18 to represent the -- the quarterly interest income. So these
19 loans are yielding LIBOR plus something, and they're going to
20 pay every quarter, on average. And that -- that's the
21 variable income that's coming out of the loan portfolio.

22 And how it's applied is the -- is -- is the next chart
23 here on the right. So when we look at the -- the liability
24 structure, when I talked about the bondholders -- the CLO bond
25 debt that -- that you issue in the equity, this is how it's

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1 represented here. So you have AAA, AA bonds; they're all
2 rated different ratings. They're -- they're issued in the
3 marketplace.

4 And the reason it says "fixed payment" is because their
5 coupons are determined at the day that you issue the bonds and
6 you -- you -- you fund them. So the -- the -- when you have a
7 pricing and when you go do a deal, you price your AAAs at a
8 certain price; LIBOR plus something. And that's fixed --
9 those payments are fixed so everyone knows what the liability
10 costs are going to cost you when you do a transaction.

11 So the way this -- the way this works is each quarter you
12 take your -- your income, you subtract what you have to pay in
13 the form of your expenses, which would be your bond coupon,
14 your bond-interest payments, your management fees, to the --
15 the CLO manager. There's trustee fees and expenses that come
16 out of the transaction; those are all paid. And then
17 whatever's left over, given -- if the thing -- if -- if the
18 transaction is -- is operating normally, would flow out to the
19 equity in the form of a dividend or a net income.

20 So your -- your question was how do you make money in a
21 CLO. You can see that the bondholders are making a -- a -- a
22 coupon return based on the types of risks -- the -- the rating
23 that they're -- risks that they're taking. And then the
24 equity investor here is getting that quarterly distribution.

25 And then at the end of the transaction, whether you

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1 either call it or -- or wind it up, the -- the principal
2 amount of these loans is used to pay off the debt in the order
3 that it's on here; so the AAA gets paid off first, AA, A.
4 That's why these are very -- the -- the -- very highly rated,
5 high-quality assets because they get paid off first and the
6 equity gets paid off last.

7 So the -- the -- the way you make money in a CLO is --
8 is, if you're the equity, right, you want to maximize your
9 variable income coming off your loan portfolio or your assets,
10 versus the amount of fixed payments you have to pay, because
11 if you have -- if you have a higher income coming off a
12 portfolio than what you have to pay for your liabilities for
13 the CLO bonds, then you have higher dividends. That's --
14 that's how the structure works.

15 Q. Are you familiar with essentially the returns on the
16 Acis-managed CLOs from 2014 to 2016?

17 A. Yes.

18 Q. Can you please describe for the judge what type of return
19 the Acis-managed CLOs saw in -- between 2014 and 2016?

20 A. So the dividends expressed in, like, an annual return are
21 anywhere from fourteen to sixteen, seventeen percent; so
22 pretty high returns for that period.

23 Q. Has that changed recently?

24 A. Yes. That -- that's coming down.

25 Q. Could you please explain that to the judge?

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1 A. So what's -- what's happened as the economy's gotten
2 better, as the -- the markets have -- have improved, the
3 overall pricing within this loan asset class has compressed.
4 So -- so borrowers are refinancing their debt at lower yields.
5 As -- as more people are looking to invest in these loans,
6 there's more demand for them. As the economy's been good,
7 that -- that amount of return that we're getting in this loan
8 portfolio is -- for the entire industry, is coming down.

9 So that -- that variable income coming off the
10 portfolio -- let's -- let's just make an example. Let's say,
11 before, we were making six percent on the portfolio and we
12 were paying four percent for all of our liabilities and two
13 percent was coming out every quarter. That's how we were
14 getting to our nice returns that we discussed earlier. Today,
15 2017, that six percent might have dropped to five percent.

16 And so now you have five percent coming off the
17 portfolio. You're still paying the same amount, that five
18 percent, the -- the -- the four percent for the liabilities,
19 all -- the cost of your debt. And so now you only have one
20 percent left over.

21 So you can see how that -- as -- as -- as loan income
22 drops, because you have these fixed payments for your -- your
23 liability structure, you're going to compress the amount of
24 net income that's coming out to be equity. And that's what
25 happened to this -- this CLO specifically in -- in 20 -- 2017.

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1 Q. If the return to equity keeps diminishing, does the
2 market have a response for that?

3 A. Yeah. So -- so one of the -- the things that's happened
4 within the marketplace in a pretty big way is -- is something
5 called a reset, or a refinance. And what a reset is is you go
6 and you reset the transaction. That involves repricing all of
7 these bonds to -- to current market prices.

8 So -- so now your costs of debt will now reflect the
9 current environment versus what it used to be. Think about
10 refinancing your home mortgage; you're going -- you're going
11 to get a lower rate now because all rates have come down.

12 So a reset would be you go back and you remarket all of
13 these bonds, you reprice them to current market prices and,
14 because those are lower -- think of our example before where
15 we went from six and four -- six minus four, it gets to two,
16 and then we went from five minus four, it gets to one. Now it
17 might be five minus three or three and a half, and that would
18 get us back up to a higher equity return.

19 The other thing that happens in a reset is you're going
20 to extend the reinvestment period for the -- for the -- the
21 CLO, and you're going to reset a lot of the covenants. We
22 didn't talk about the covenants within a CLO; it gets kind of
23 complicated because there's -- there's a lot of things
24 governing how these payments work in a structure.

25 But suffice it to say, you -- you reset the covenants,

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1 which can be -- free up the manager to be able to invest in
2 more things, because as the deals get closer and closer to the
3 end of their reinvestment period, it becomes more restrictive.
4 The bondholders is -- these bonds that are listed here, they
5 want to have certainty of getting paid. So they -- they
6 restrict to what the manager can invest in, as you get closer
7 and closer to the end of the reinvestment period.

8 Q. Mr. Okada, if part of a reset is, for example, reducing
9 the coupon rate to the bondholders, why would the bondholders
10 ever go along with it?

11 A. So as -- as in all bond -- all investors are going to
12 look at an -- an investment based on what their alternatives
13 are. So when we would go out to do a reset, we'd be offering
14 these bonds in a -- in a -- a -- a new offering, and they
15 would have to be attractive versus where the markets are.

16 The -- the -- the existing investor that's in the bond --
17 that holds the bond today is -- is the primary person that
18 you're going to, to talk about the reset. They can either --
19 they can either roll, meaning they can be -- they can -- they
20 can be -- they can stay in the bonds and just take a lower
21 coupon, or they can be replaced by other investors. So if
22 there's other investors that want to hold that risk at the
23 current marketplace, they'll just get paid off and their --
24 their returns would go away.

25 So it's a competitive dynamic of -- in the reset, where

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1 you're repricing things to market, and the investor who's --
2 who's looking at that, the AAA, the AA, A, will be looking at
3 other alternatives of where CLO bonds or other similarly rated
4 debt is trading, and say, well, that makes sense and I want to
5 do that, I want to invest in -- in the transaction.

6 Q. Are you familiar with how many resets have occurred in
7 2017, approximately?

8 A. It's -- there's a lot. I -- I think the numbers are,
9 like -- I -- I would be guessing, but something like thirty,
10 forty billion dollars. A lot of -- of resets. Maybe even
11 more than that. So a -- a lot of it.

12 Q. Relatively speaking, compared to other years, how does
13 that compare in terms of the number of resets you saw in 2017?

14 A. I'm not sure I understand your question.

15 Q. In other words, did you see an uptick as compared to
16 2013, 2014 --

17 A. Yeah; resets are a fairly new phenomenon. They -- they
18 really started in -- at the end of '16 and '17 and -- through
19 2017. And -- and I think we've done ten or fifteen billion
20 in -- in January alone. So there's a lot of these happening
21 in the marketplace right now.

22 Q. When you say "we", who are you referring to?

23 A. The -- the entire CLO industry. When I refer to that six
24 hundred billion, that's -- there -- there are -- there are
25 probably several hundred different CLO managers that are

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1 managing CLOs in that space, and a lot of them are taking
2 advantage of the CLO resets to lower their costs of debt,
3 their costs of financing, and their transactions, to match --
4 to better match what -- where the -- the market has gone and,
5 therefore, improve their equity returns and then extend the
6 deals to make them easier to manage.

7 Q. With respect to the Acis-managed CLOs, have those been
8 able to be reset?

9 A. One of them.

10 Q. Did it actually execute?

11 A. Well, we priced it. We -- we -- we had a -- we -- we had
12 an underwriter, Mizuho, and we went out to market for this
13 transaction specifically. We priced all the bonds. And then
14 this proceeding occurred and that stopped that from happening.

15 Q. Mr. Okada, do you recognize what's been put up on the
16 screen and labeled as Acis Exhibit 194?

17 A. Yes, I do.

18 Q. Could you please explain to the judge what this is?

19 A. So this is an analysis of that equity return that we
20 talked about earlier for the May 1st period for CLO 3, before
21 and after the reset. So the top part is kind of the state of
22 the -- of the transaction as it sits, and the bottom part is
23 what will happen once the reset that we priced went into
24 effect.

25 So it shows what happens to both the -- the variable

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1 income, the -- the income that's coming off the portfolio, on
2 the left side, and then what changes to the -- the costs of
3 the bonds and the fixed payments that you have to pay on the
4 other side, and it shows the net income that's going to come
5 out to the equity in the form of net income. And this is just
6 for one quarter for that May period.

7 Q. Which CLO does this apply to?

8 A. CLO 3.

9 Q. Now, in the upper right-hand corner, I see a number
10 around 4.5 million dollars. What number is that?

11 A. So that's -- that's the interest projection of how much
12 those -- those loan portfolio -- those 100 to 200 loans are
13 going to pay in coupon income for that quarter. So we --
14 the -- the -- there's a internal accounting system called Wall
15 Street Office that will -- that has all the loans in it, all
16 the coupons, and we project out what will be paid in that
17 quarter, based on the current coupons.

18 So that's what that totals. That 4.583 totals the total
19 amount of -- of interest income that's coming into the
20 transaction as of that date, for that quarter.

21 Q. And I see underneath that number there's a lot of numbers
22 in parentheses. Can you describe for the judge what those
23 numbers are?

24 A. So this would be, when we talked about the fixed payments
25 on the liability structure, what has to be paid in that

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1 quarter. So there's the fees, the -- that goes to the CLO
2 manager; that's called senior fees; that's the 147. The
3 expenses, those are the trustee fees and other fees that --
4 that occur during the quarter.

5 Then there's a -- staying on the fees line, there's a sub
6 fee that also comes out to the manager down there, at 246.
7 You see that?

8 And then there's the -- the coupons that are being paid
9 to those bondholders for the quarter, and these -- these
10 amounts show the number of days that it's calculated, based on
11 the -- the LIBOR base rate and then the -- the overall all-in
12 coupon based on the spread and the amount. And that's just
13 calculated into those numbers. So that million-664 is what
14 the AAA bondholders are going to get as far as their coupon
15 return for that quarter.

16 And as we said before, these really don't change in a
17 CLO. At -- at least the -- the -- the way it's calculated
18 don't (sic) change. The LIBOR will change, but -- but the way
19 the -- the coupons are -- are calculated stays the same.

20 And then on the bottom we have some more expenses that
21 come out, at the bottom.

22 And then -- so this 565, think of it as your net income.
23 So you had your -- your income coming out the portfolio, you
24 pay all your expenses, and then you have your net income.

25 What's a little different about this demonstrative here

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1 is -- and this structure, is there's a test that was tripped.
2 There's something called an OC test, an overcollateralization
3 test, that has -- has different forms; one is the diversion
4 test. So once you trip the diversion test, now something
5 happens to this net income. It doesn't flow out to the
6 equity. The dividends don't get to the equity investor. Half
7 of them are diverted and they go back into the -- the loan
8 pool. So they're -- they're reinvested back in the deal.

9 The -- the -- the purpose of the -- of the diversion
10 is -- is to improve the value or the -- the size of the
11 portfolio or the collateral that all these bondholders are
12 depending on, if it -- if it goes down. So maybe we had a --
13 a Toys "R" Us or something where we have a default, and you
14 may trip this -- this diversion test, as CLO 3 has, and then
15 so that -- that 2 -- 282 would be half of the -- the income
16 that would have gone to the investors; instead, it's going to
17 be reinvested and go back into the transaction and go into the
18 loan pool to be reinvested. So that's why this ultimate 282
19 is what -- what is coming out to the equity investors for this
20 quarter.

21 Q. Can you please describe to the judge what this section of
22 Exhibit 194 describes?

23 A. So this is a projection of what the CLO would be
24 returning to the equity and -- and the -- the bondholders
25 under the -- the transaction that we had priced in the reset.

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1 So once we reset the deal and priced it, now we know what all
2 the new coupons are. We refinanced all of our debt to these
3 new prices that are lower than the ones up top. And so
4 we're -- we're going to apply that over time, in this period,
5 and then we're going to have the expenses and the fees stay
6 the same in the transaction.

7 Up top, we have a higher -- you can see the -- the income
8 coming off the portfolio's a little bit higher. CLO 3 --
9 because it's at the end of its reinvestment period, it's hard
10 to invest all the cash in the portfolio. There's -- there's
11 these tests that say you can't own debt that has maturities
12 beyond a certain amount of time, and that restricts our -- the
13 pool of investments that we can make for this CLO.

14 By resetting it, we improve the -- we -- we make the
15 market bigger for us to invest in more loans. And so having
16 more loans in the portfolio will increase the amount of income
17 that -- that comes off in that quarter.

18 So we're pro-forming (sic) that we would be spending some
19 of our cash into loans and that pickup -- and that interest
20 income is what's reflected on the top here, in that 4.8
21 million versus the 4.5 we had earlier.

22 So what you're seeing here now is we -- we have our
23 income. We pay our expenses and the fees and the bond
24 interest to the -- the new bondholders in the reset that we
25 priced. And then what's coming out at the bottom is this

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1 million-three. There's no diversion test now because we've
2 reset all the tests in the transaction. So that -- that --
3 that -- that diversion test that got tripped before, it's
4 not -- it's -- now it's fine because we reset that in the
5 transaction. And so the entire amount of 1.3 million dollars
6 would flow out to the equity in this -- this quarter.

7 And so on the bottom, you see the difference between
8 the -- the payment that we had projected and what will happen
9 after we do the reset.

10 Q. And Mr. Okada, earlier you said this is for one quarter?

11 A. Yes.

12 Q. Do you have any idea of what'll happen in quarters to
13 come if -- both if and -- if the CLO is reset and the CLO is
14 not reset?

15 THE CLERK: (Indiscernible).

16 MR. FRITZ: Yes, ma'am. Sorry.

17 A. So in the case where we -- we can't do the reset, what
18 will happen is -- is the amount of income coming off the
19 portfolio will go down, because there's fewer loans that we
20 can invest in, because of the restrictions in the -- the
21 transaction. So that's going to come down. Our fixed
22 payments will stay the same, and so that diversion test --
23 that OC test will still be the same.

24 So that amount to the equity will go down and down and
25 down, and it could go to zero. And so that -- that's a bad

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1 thing. We -- we don't -- we don't want that.

2 In a reset, because we've reset the transaction, you'll
3 get similar sorts of payments like this each quarter. So --
4 so there's a -- this -- this million-dollar increase in -- in
5 income actually will grow, in the two different scenarios
6 where we do the reset.

7 In this scenario, we'll -- we'll -- we'll have very nice
8 income each quarter, assuming that the world doesn't blow up.
9 But -- but -- but if -- if not, because of the -- the fact
10 that the -- the income will be coming down in the transaction
11 and we have to pay all the expenses, at some point, we're
12 going to have to -- we're going to have to call -- the -- the
13 equity will decide to call the deal and -- and wind it up,
14 because we're not going to make any money coming out of the
15 portfolio -- you shouldn't -- you -- you're not going to want
16 to have the -- the -- the -- the structure in place.

17 MR. FRITZ: Omar, could you pull up 193?

18 Q. Mr. Okada, I've asked Omar to pull up Exhibit 193. Are
19 you familiar with this document?

20 A. Yes.

21 Q. Could you explain to the judge what this document is?

22 A. So you saw "Mizuho" on the front page; that's our
23 underwriter for the reset. This is the pricing document that
24 shows what we -- we -- what we were successful in -- in
25 placing in the market on January 26 and were set to fund and

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1 close on February 1st for CLO 3. And you can see it has the
2 amounts of the -- the debt, the new pricing, the new coupons
3 that we had placed in the marketplace, the amounts, the
4 ratings. And then they have new CUSIPs because they're --
5 they're new bonds. So that -- that's -- that's what you see
6 here.

7 And -- and -- so this was -- this was priced; this was
8 done. We had third-party investors that had spoken for all of
9 these bonds in the marketplace, and we were ready to go with
10 our reset.

11 Q. So this wasn't hypothetical; this wasn't --

12 A. No, no. This is done. We -- we had trade tickets and we
13 were priced and we were in the process of -- of trying to
14 close the transaction.

15 Q. Did the transaction close?

16 A. No, it did not.

17 Q. Why did it not close?

18 A. Because of -- Mr. Terry filed Acis for involuntary
19 bankruptcy proceedings.

20 MR. FRITZ: Omar, could you go to Exhibit 192?

21 Q. Do you recognize the document that we put up on the
22 screen? It's Exhibit 192.

23 A. Yes.

24 Q. What is it?

25 A. So this is the -- the -- well, I spoke earlier about the

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1 trustee and what they do. This is -- would be a -- a monthly
2 trustee report that they performed for CLO 3 for that -- for
3 the month -- for the -- the -- the month of February. I'm not
4 sure what month this actually is, but -- but it's dated
5 February 21st.

6 MR. FRITZ: Omar, would you go to page 5, please?

7 Q. Mr. Okada, do you recognize the chart that's on page 5?

8 A. Yes.

9 Q. Could you tell the judge what that chart is?

10 A. So it lays out all those bonds of the existing CLO, as
11 they stand, with -- with the amounts, and the coupons that --
12 for the original pricing, and their -- their original rating
13 and their current rating, and -- and the amounts. And then it
14 has -- at the bottom it -- it shows the amount of -- of
15 assets, term loans, and different assets of the CLO and the
16 number of them; so there's 189 individual loans here that
17 total 378 million dollars.

18 And then there's these -- these different tests. There's
19 the -- the coverage test, the quality test, the -- these are
20 the things that are in the indenture that the trustee is going
21 to tell you whether you're passing or failing them, in that
22 month.

23 Q. Does the trustee have any involvement in deciding whether
24 or not to reset a CLO?

25 A. No -- well, I mean, they're -- they're going to --

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1 they're going to have to administer the new CLO, the new
2 bonds, once it's -- it's reset.

3 Q. Who does the trustee report to?

4 A. The trustee reports to the transaction itself, to the
5 fund.

6 Q. "To the fund" meaning the CLO?

7 A. Yes, the CLO.

8 MR. FRITZ: Could you turn back to Exhibit 194?

9 Q. So we just saw two exhibits: the Mizuho -- that -- the
10 data chart, and then also the U.S. Bank trustee report. Does
11 the information you saw there correlate with the information
12 that's in Exhibit 194?

13 A. Yeah, that's -- that's where these -- the -- the
14 information came from to make this -- this chart here.

15 Q. So in essence, the information in the top chart came from
16 U.S. Bank, which is an independent trustee? Correct?

17 A. Yes.

18 Q. And who did the -- who provided the information in the
19 bottom chart?

20 A. Mizuho, for the -- the -- we were talking specifically
21 about the -- the pricing, the amounts of the bonds, for up top
22 versus the bottom.

23 Q. And remind the judge who Mizuho is.

24 A. Mizuho would be the underwriter of the transaction.

25 Q. Is Mizuho a Highland-related entity?

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1 A. No. They're -- they're an investment bank.

2 Q. What about U.S. Bank? Is that a Highland-related entity?

3 A. No. That's -- they're an independent trustee.

4 Q. And it's -- there's -- and it's those two entities whose
5 members are driving what you see here in Exhibit 194?

6 A. Yes.

7 Q. So Mr. Okada, we've discussed CLO 3 in detail in Exhibit
8 194. Do you know if, for example, the million-dollar loss we
9 see equity facing if the CLO's not reset -- do you know if
10 something similar will affect the other Acis-managed CLOs?

11 A. Yeah; they're all in the -- the same sort of situation
12 as -- as -- as CLO 3. And our plan was to reset all of them.

13 Q. And why haven't the other Acis-managed CLOs been reset?

14 A. Oh, because we -- we're here and we can't do that with
15 this proceeding going on.

16 Q. And is there any way you see that million-dollar loss for
17 Acis CLO actually being reduced over the coming quarters?

18 MR. SHAW: I'm going to object to spec -- it calls
19 for speculation.

20 THE COURT: Overruled. He can answer.

21 A. So as I said before, what will happen as -- as these
22 deals age, as they get older, right, the -- the tests become
23 more restrictive; it's harder for us to invest the portfolio.
24 So the amount of income that we can get each quarter is going
25 to go down.

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1 And so without the reset and the benefit of the reset, we
2 don't get to reinvest a lot of cash, so it sits there earning
3 nothing and/or very small amounts. But we still have to pay
4 those fixed income -- those fixed coupons every quarter. So
5 the income's going to just fall for each -- all these
6 transactions, with time. And so that's -- that's why the plan
7 was to reset them.

8 Ultimately, if it gets bad enough, the -- the
9 controlling -- the investors in the transactions will call the
10 deal, they'll -- they'll wind them up. And -- and in that
11 scenario, we -- we -- we'll pay it, we'll -- we'll liquidate
12 the whole portfolio and we'll pay off all the bonds. And
13 what's there left over, it will go to the equity investor
14 and -- and the deal's gone; there's no more fees to -- to the
15 manager; the -- the deals just kind of go away.

16 But in that scenario, you're -- you're cementing the loss
17 for the equity. They don't get to see any more current income
18 and they have to -- they have to take their losses or gains,
19 whatever they are, based on the value of the portfolio as you
20 liquidate it. So there's no more interest income and it's --
21 it's different -- net income on a quarterly basis that we saw
22 before, when you call a deal.

23 Q. You said you call -- that is called a call?

24 A. That -- yeah. When -- when a deal is called.

25 Q. If there's a possible loss associated with a call, why

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1 would an investor call a deal?

2 A. Because if -- if there's no net income coming off the
3 portfolio, you're -- you're not -- it makes no sense to be the
4 investor, and it really -- I mean, you -- you -- you
5 wouldn't -- you'd want to take that equity that's sitting
6 there and you want to reinvest it in something that's earning
7 something. So if you're not going to earn anything, you
8 might -- you'll be better off taking -- calling the deal,
9 taking whatever equity you have left over, and maybe
10 reinvesting it in a new CLO and then starting to get earned
11 income again.

12 So in the -- in an event where a transaction can't be
13 reset at some point -- and this is in the normal course of all
14 CLOs; they all get called at some point. And that -- that's
15 what'll happen here; you -- your -- your assets aren't earning
16 enough to justify the cost of your liabilities, and that net
17 income is not high enough to justify continuing to pay the
18 management fees and trustee fees and -- and having that risk
19 in the marketplace, so deals get called.

20 Q. And I think you said, and correct me if I'm wrong, but
21 investors make the decision to call a deal?

22 A. Yes.

23 Q. Specifically which investors?

24 A. It's going to be the controlling-share class, which is
25 normally the equity.

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1 Q. And what would happen if a deal is called to the asset
2 manager?

3 A. Their fees just go away. You stop getting your fees.

4 Q. Because what is -- remind me what a manager's fee --
5 what's it based on?

6 A. So the -- the manager gets -- as what you saw in that
7 demonstrative where we had the senior fees and the sub fees,
8 you get a fee that -- that's based on the total size of the
9 portfolio. So this case, we had about a 380-million-dollar
10 portfolio. You'd get a -- a small senior fee, which is ten or
11 twelve basis points.

12 And then you get a sub fee after -- and the sub fee's --
13 pays out after -- after the bonds get paid. So that's why
14 it's called a sub fee. That -- that -- that fee -- those two
15 fees would go away in a call, because the deal's wound up;
16 there's no more -- no more management of the loans. And so
17 you're not -- you're not paid that -- that.

18 And fees, on average, they total about anywhere between
19 fifteen and fifty basis points, on average. So they'd come
20 down a bit, so the -- the -- today they're probably averaging
21 in the thirty-, thirty-five-basis-point fees in total.

22 Q. Mr. Okada, if a deal is called by the investors, can an
23 asset manager stop that from taking place?

24 A. Well, it -- it -- there -- there's -- a call has to
25 happen in the -- based on what the indenture says the rules

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1 are. So as long as the call is -- is -- is in compliance with
2 the indenture, no, the -- the manager needs to carry out the
3 call.

4 Q. Do you know, based upon your experience in the industry
5 and your particular experience with Acis, does Acis have a
6 fiduciary duty to the investors in, for example, the Acis-
7 managed CLOs?

8 A. So we have an investment-management agreement that's part
9 of the -- the -- the -- the documentation for a CLO, and --
10 and -- and we provide the investment-management services
11 for -- for all of the -- the bondholders and the equity
12 holders in the -- in the deal, and we owe them a fiduciary
13 duty.

14 Q. And for example, does that fiduciary duty include making
15 sure that the investors receive the largest return on their
16 money?

17 A. Risk-adjusted, right? We -- we want to make sure that --
18 that we are managing the -- the CLO as best as we can to
19 optimize the returns and the recovery for the bondholders and
20 the equity holders over time.

21 Q. Mr. Okada, are the Acis CLO equity holders being harmed
22 by this involuntary bankruptcy?

23 A. Absolutely.

24 Q. Could you please explain that to the judge?

25 A. Well, as we just saw, I mean, even in this one example,

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1 right, there -- there's five CLOs within the Acis complex.
2 But this one example in this one quarter -- there's a million
3 dollars of income they're missing out on, and that's only
4 going to grow. Plus -- so if you -- Acis -- ALF has -- I
5 think, has invested about 200 million of -- of face of -- of
6 equity in all these transactions.

7 So you -- if you can't reset them, you're materially
8 reducing the amount of -- of that net income coming to the
9 equity investors, every quarter. It's -- it's -- it's -- it's
10 already happened. And we've already created the losses,
11 because we haven't been able to refinance the debt.

12 We -- we would have already been in the market with CLO 4
13 and 5 and 6 by now. That was our plan to already kind of be
14 in the market and reset those deals too so they had lower cost
15 of debt.

16 And so the -- the -- the equity investors here are being
17 materially harmed, because they -- they're getting much lower
18 equity returns as a result of not being able to reset
19 transactions in the marketplace.

20 Q. Mr. Okada, based upon your experience in the industry, if
21 the equity holders are not allowed to reset their CLOs,
22 specifically the Acis-managed CLOs, do you know what their
23 solution is?

24 A. They're probably going to call the deals. I mean, at --
25 at some point, the arbitrage, or the difference between the

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1 income and the expense, is going to go down so much that
2 there's going to be no need to have it structured together, so
3 they'll call all the deals.

4 Q. And will -- with respect to the Acis-managed CLOs, will
5 equity take any losses on those calls?

6 A. Yes. I mean, there -- there's been -- in all of these
7 transactions, because they were done in 2014, there's been
8 defaults in the portfolios and -- and -- and -- and some
9 reduction in the overall amount of -- of the -- the loan pool.
10 And so that'll be realized when you call the deal, because you
11 have to sell the whole portfolio and pay off all the
12 bondholders, and what'sever (sic) left over is -- so you're --
13 you're going to crystallize losses on a mark-to-market basis,
14 for the equity investors when you call a deal.

15 Q. And do you have any idea, based upon your experience
16 particularly with the Acis-managed CLOs, with respect to those
17 losses that equity sustains? Will they hold someone
18 responsible?

19 A. Yes, I believe so.

20 Q. Who?

21 A. Mr. Terry.

22 MR. FRITZ: No other questions, Your Honor.

23 THE COURT: All right. Let's figure out do we need a
24 break. About how long do you think the cross will take?

25 MR. SHAW: I think forty-five minutes.

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1 THE COURT: Okay. Let's take a ten-minute break,
2 then.

3 THE CLERK: All rise.

4 (Recess from 10:40 a.m. until 10:52 a.m.)

5 (Audio begins mid-sentence)

6 MR. USATINE: -- if I may. Can I offer my
7 demonstratives as a demonstrative exhibit?

8 THE COURT: All right. Yeah, the ones that you've
9 been using --

10 MR. USATINE: Yes, ma'am.

11 THE COURT: -- this morning are not -- yes, you may
12 approach.

13 MS. PATEL: Thank you.

14 THE COURT: I was flipping through your PowerPoint at
15 one point; where are these pages in there marked.

16 Okay, so we're marking this Demonstrative 8.

17 (PowerPoint was hereby marked for identification as
18 Demonstrative's Exhibit 8, as of this date.)

19 THE COURT: All right. There you are.

20 Mr. Okada, if you could resume your spot. And you
21 are of course still under oath.

22 Mr. Shaw, you may proceed with your cross.

23 MR. SHAW: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MR. SHAW:

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1 Q. Mr. Okada, you were discussing with Mr. Fritz this
2 proposed reset transaction; you recall that?

3 A. Yes.

4 Q. I noted one omission in your exchange with him, with
5 regard to the transaction, and that is that not only was this
6 a reset but it was also a reset coupled with a change in the
7 manager of the CLO from Acis, the alleged debtor to a Highland
8 affiliate. That's true, correct?

9 A. Yes.

10 Q. What attempts did Acis make to go out and get value -- or
11 value those collateral-management agreements that's
12 contemplated to be transferred in this reset transaction?

13 A. I'm not sure I understand your question. Could you
14 repeat it, please?

15 Q. Well, Acis was not getting anything for this reset
16 tran -- this proposed reset transaction that would have
17 transferred the collateral-management agreement from Acis to a
18 Highland affiliate, right?

19 A. That's correct, I believe.

20 Q. And you've been involved in the sale of collateral-
21 management agreements while you were at Highland, right?

22 A. Yes, I have.

23 Q. And for example, the Carlyle transaction where Highland
24 sold collateral-management agreements to Carlyle, right?

25 A. Yes.

1 Q. Did Acis make any effort -- as opposed to agreeing to
2 transfer the management of this CLO to a Highland affiliate,
3 did Acis make any effort to go out and say, let's get some
4 value for this collateral-management agreement that we are
5 transferring to this Highland affiliate?

6 A. Well, Acis wouldn't qualify for the management for the
7 reset, so that's not possible.

8 Q. So did Acis go out and try to get value for the
9 collateral-management agreement that's at issue?

10 A. No, because Acis wouldn't be the manager under the reset.

11 Q. Does Acis have a duty to the investors in this particular
12 CLO to transfer its collateral-management agreement to a
13 Highland affiliate for no consideration?

14 A. The -- the duty is to -- to the investors, ultimately, as
15 fiduciary right, to -- to make sure that their interests
16 are -- are met. So the -- as we described in the reset,
17 the -- the transaction's refinanced so that the equity would
18 continue to get better payments over time.

19 So that -- that's -- that's the nature of the -- of the
20 transaction.

21 Q. So you believe that Acis had a duty to the investors in
22 the underlying CLO to agree to transfer and no longer be the
23 collateral-management -- collateral manager under these
24 particular CMAs?

25 A. They're -- they're CLOs. Don't --

Mark Okada - Cross

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1 Q. Under the CMA, the collateral-management agreement. I'm
2 sorry.

3 A. Okay. I'm sorry. But the -- the transaction's going
4 away under the reset, because Acis is not a qualified investor
5 for -- for a reset. Resets have to be done with a manager
6 that the market will accept. And given all the things going
7 on with Acis, the -- the market is -- will not accept Acis as
8 a manager. And plus, the -- the deal has to be risk-
9 retention-compliant, and Acis does not have the capital to be
10 a risk-retention-compliant manager.

11 Q. Now, Acis was risk-retention-compliant at one point, was
12 it not?

13 A. For one transaction, it -- it did have the capital to do
14 that.

15 Q. And then subsequent to the arbitration award that was
16 entered on October 20th, 2017, a transaction occurred which
17 made Acis nonrisk-retention-compliant, correct?

18 A. No, I -- I don't agree with that characterization.

19 Q. You're familiar with the sale of Acis' interest in ALF,
20 correct?

21 A. "Sale of Acis interest in ALF". No.

22 Q. You're not familiar with that transaction?

23 A. No.

24 Q. Now, you understand that Mr. Terry did not have an issue
25 with Acis resetting this CLO, is that correct?

Mark Okada - Cross

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1 A. I haven't talked to Mr. Terry about that. I don't -- I
2 don't know what he's okay with or not.

3 Q. Are you familiar with this bankruptcy proceeding and
4 what's occurred in the bankruptcy proceeding?

5 A. Only today. I mean, I -- I know that there's a -- he's
6 filed for an involuntary, the -- on Acis.

7 Q. What efforts -- has Acis filed anything in this court to
8 request permission to go forward with this reset or refi?

9 A. You're going to have to ask the lawyers that. I'm not --
10 I'm not aware of -- of what we've filed or not.

11 Q. Are you aware of Goldman Sachs passing on participating
12 in the reset of this particular CLO?

13 A. We did -- we were working with Goldman as -- as a
14 potential underwriter for CLO 3.

15 Q. And they didn't proceed with doing the underwriting for
16 this particular deal, right?

17 A. No, they did not.

18 Q. And do you know why?

19 A. Well, they had -- they had concerns with the transaction,
20 but I -- I don't know specifically what those concerns were.

21 Q. Have you seen any of the email traffic with regard to --
22 between Acis and Goldman Sachs?

23 A. Not that I -- no, I don't believe I saw those emails.

24 Q. So you're unaware of the fact that Goldman Sachs had an
25 issue with the transfer of the collateral-management agreement

1 or that this successor collateral-management -- collateral
2 manager would be a Highland affiliate, as opposed to Acis?

3 A. I know that they had concerns with the -- with the -- the
4 transaction and chose not to go forward.

5 Q. Now, let's go back to kind of a little bit of a -- I'm
6 going to back up and talk about your role with Acis. Now, up
7 until December 19, 2017, you were a limited partner in Acis,
8 right?

9 A. I -- I'm -- I'm not familiar with that date or that data,
10 but that -- that sounds correct. I mean, I could be -- I
11 don't remember that date in my head, so -- but sounds good.

12 Q. You were a limited partner in Acis up until at least the
13 issuance of the arbitration award in the underlying
14 arbitration, right?

15 A. I -- I -- I don't -- I haven't looked at those dates, so
16 I -- I don't want to answer that, because I -- I'm not -- I
17 don't -- I haven't looked at that.

18 Q. Let's go to Exhibit 184.

19 MR. SHAW: Omar, if you don't mind pulling that up
20 for me.

21 Q. Mr. Okada, this is an assignment, transfer, and amendment
22 agreement. Do you recognize that document?

23 MR. FRITZ: Your Honor, if I may, I just point out
24 that if Mr. Okada would like him to scroll through the
25 document so he can read the entire thing, that we're happy to

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1 do that.

2 THE COURT: Okay.

3 MR. SHAW: Maybe go on to the signature page. Would
4 it be helpful to show where Mr. Okada's signature is?

5 MR. FRITZ: And Mr. Okada, there's a binder with hard
6 copies, if you would rather look at those, to the right of the
7 witness box.

8 THE WITNESS: Okay.

9 MR. SHAW: One more, please, Omar.

10 A. There I am.

11 Q. And that's your signature, correct?

12 A. Yes. Yes, it is.

13 Q. And that document is dated December 19th, 2017?

14 MR. SHAW: If you go to the first page, Omar.

15 A. Yeah, that's what it says.

16 Q. So does that refresh your memory as to when you ceased
17 becoming a limited partner in Acis?

18 A. That's correct. That's what this is: the assignment,
19 transfer, and amendment agreement.

20 Q. Now, so we know that at one point until December 19,
21 2017, which was the day after the judgment was entered in the
22 44th District Court, you were a limited partner in Acis. Do
23 you have any corporate-governance role in Acis?

24 A. "Corporate-governance role".

25 Q. And maybe I can ask a better question. Are you an

1 officer or director of Acis L.P. or Acis GP?

2 A. I don't know. Maybe.

3 Q. Do you know that Mr. Dondero is the president of Acis GP?

4 A. That sounds correct.

5 Q. And is there anybody higher in the organizational chart
6 for Acis, than Mr. Dondero?

7 A. I don't have that chart in front of me. I'm -- you
8 mean -- by "higher" -- what do you mean by "higher"?

9 Q. More senior than Mr. Dondero.

10 A. No, I -- I don't believe so.

11 Q. Now, your day-to-day role with Acis -- I think you
12 described it a little bit that you have some role with risk
13 analysis, et cetera; is that true?

14 A. Yes.

15 Q. Now, before Mr. Terry was terminated, he, in effect, ran
16 the day-to-day operations for Acis, right?

17 A. He was the -- the head of the team. Yes.

18 Q. So he was -- he and his team were making the decisions on
19 what loans to buy and sell and other of those kind of
20 investment decisions?

21 A. In conjunction with our investment policies, our
22 committees, and the oversight of myself and the rest of our
23 partners, that's correct.

24 Q. You weren't involved in that, kind of, day-to-day
25 minutiae, though, correct?

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1 A. Well, I'm -- I -- I chair the investment committee and so
2 any loan that goes into the CLOs is -- is something that has
3 to go through those -- those committees. And so I -- I -- I
4 do handle some -- some of the minutiae, even though I'm --
5 have a beard and I'm old.

6 Q. Well, you recall that you testified at the arbitration
7 hearing in the underlying arbitration? You remember that?

8 A. Yes.

9 Q. And you remember that you were under oath during that
10 arbitration proceeding, just like you were before today --

11 A. Yeah --

12 Q. -- correct?

13 A. Yes.

14 Q. Do you remember kind of describing yourself, with regard
15 to your role with Highland and Acis, as the "outside guy",
16 quote-unquote?

17 A. I -- I don't -- I don't recall what that is -- was
18 referring to. I mean, when I -- when I -- when I refer to
19 myself as the outside guy, I'm -- I'm the -- between Jim and
20 I, I'm the extrovert, he's the introvert. And so I spend time
21 with investors, I -- I go on TV, I do a lot of external
22 activity for the firm.

23 So -- I don't remember specifically what you're referring
24 to, but that's probably what that means.

25 Q. Right, and you do things like going and speaking at

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1 conferences, is that right?

2 A. Yes, I do.

3 Q. And describe to me, if you will, the difference between
4 what you do for Highland and what Mr. Dondero does for
5 Highland.

6 A. So -- so Jim -- Jim is the -- the president and -- and a
7 majority partner for the firm, so he -- he manages the firm,
8 he -- he's helping us try to figure out what -- where --
9 where -- where -- where risk lies and where opportunities are,
10 how businesses should be managed. And -- and he also has, as
11 I do, specific fund-management roles. He's portfolio manager
12 for specific funds, and so he'll -- he'll manage those.

13 But the -- the -- the difference between our activities
14 is he's my boss, and then I tend to have more investor contact
15 and -- and, sort of, media contact than he does.

16 Q. So Mr. Dondero's your boss; he's also the majority owner
17 of Highland ultimately, correct?

18 A. He and his trusts and -- yeah.

19 Q. And when I'm referring to Highland, I'm referring to
20 Highland Capital Management, L.P. If I say -- if we talk
21 about another entity that's got the Highland name in it, I'll
22 make sure to make that distinction. Can we agree on that?

23 A. Okay.

24 Q. Now, did you read the arbitration award that was issued
25 in the Terry arbitration?

Mark Okada - Cross

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1 A. Some of it.

2 Q. And you're aware that Highland issued a press release
3 after that arbitration award became public?

4 A. Yes.

5 Q. Were you -- did you play any part in drafting that --

6 A. No, I did not.

7 Q. -- press release? And just if you can; I know sometimes
8 you can anticipate my question but, if you will, just -- that
9 makes the record a lot clearer.

10 A. Sorry.

11 Q. Did you approve of the issuance of that press release?

12 A. It -- it wasn't something that I was involved in
13 specifically.

14 Q. Now, are you familiar with the fact that there have been
15 several transactions that have occurred after the arbitration
16 was entered on October 20th, 2017, with regard to Acis?

17 A. What do you mean by "transactions"? I'm sorry.

18 Q. Well, let's go through those and I think I can probably
19 help you out there. Can we go to Exhibit 173. Have you ever
20 seen this document, Mr. Okada?

21 A. No.

22 Q. And this is the transaction I was talking about before
23 with regard to ALF, Acis Loan Funding, where Acis was selling
24 its interest in ALF back to ALF. Do you see that there? If
25 you look at the top Acis Loan Funding is defined as "the

Mark Okada - Cross

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1 company," so anywhere the terms "the company" is used means
2 ALF.

3 MR. FRITZ: Your Honor, I just wanted to ask Mr.
4 Okada, would it be easier if we got you a hard copy to scroll
5 through rather than the screen?

6 THE WITNESS: Yes.

7 THE COURT: You may.

8 MR. SHAW: 173.

9 (Pause)

10 Q. Let me just ask you this question, have you ever seen
11 that document before?

12 A. No.

13 Q. So I take it you were not involved in the underlying
14 transaction that is contemplated there?

15 A. No.

16 Q. All right. At the time that this document was executed
17 four days after the arbitration award you were still a limited
18 partner in Acis, right? Remember you transferred your Acis
19 interest --

20 A. When you --

21 Q. I'm sorry.

22 A. You said Acis, you're referring to the manager, Acis
23 Management?

24 Q. Yeah. When I say Acis -- I think you had the agreement
25 with Mr. Fritz, that if we say Acis we're referring to Acis

Mark Okada - Cross

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1 Capital Management L.P., and Acis Capital Management --

2 A. Right.

3 Q. -- GP, LLC, can we have that agreement?

4 A. Yes.

5 Q. And so at the time that you executed this -- or at the
6 time this document was entered into you were still a limited
7 partner in Acis, right?

8 A. I believe that's correct.

9 Q. But you had no advance notice, and no knowledge regarding
10 this transaction?

11 A. I had no knowledge.

12 Q. All right. Let's go to Exhibit 16, please.

13 MR. SHAW: May I approach, Your Honor?

14 THE COURT: You may.

15 THE WITNESS: We're killing a lot of trees.

16 MR. SHAW: It's the nature of our business
17 unfortunately.

18 A. All right, 16.

19 Q. And if you would, just look through that real quickly,
20 let me know if you have any familiarity with that document?

21 (Pause)

22 Q. Mr. Okada, I've got the signature pages up there on the
23 screen if you look right there. Your signature's not there,
24 correct?

25 A. No.

Mark Okada - Cross

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1 Q. Have you seen this document before?

2 A. Not that I remember.

3 Q. Now, let's go back to the first page there if you would.

4 Are you aware of an October 2016 transaction, wherein Acis
5 sold certain participation interests in CLOs that it managed
6 to Highland in exchange for a promissory note?

7 A. I don't recall that.

8 Q. Are you aware of the fact that Acis had on its balance
9 sheet as of October 20th, 2017 a promissory note that had
10 about nine million dollars left to be paid on it from Highland
11 Capital Management?

12 A. I don't -- I'm not familiar with that.

13 Q. So you never had any conversations with Mr. Dondero
14 before he signed Exhibit 16?

15 A. Not that I can recall.

16 Q. And, again, you were a limited partner of Acis on
17 November 3rd, 2017, correct?

18 A. Yes, I believe that's correct.

19 Q. Do you know who -- there's an entity here referenced
20 Highland CLO Management Limited in the first paragraph on the
21 first page. Do you see that there?

22 A. Yes, I see that.

23 Q. Okay. And that's a Cayman Islands exempted company. Are
24 you familiar with Cayman Island exempted companies?

25 A. I'm familiar with Cayman Islands companies, I'm not sure

Mark Okada - Cross

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1 what an exempted company is, but --

2 Q. Do you know who Highland CLO Management Limited is?

3 A. Not off the top of my head.

4 Q. Is it a Highland affiliate?

5 A. I don't know.

6 Q. Do you have any ownership interest in Highland CLO
7 Management Limited?

8 A. I don't know.

9 Q. All right. Exhibit number 16, if you go down to the
10 third whereas paragraph. It says, "Whereas HCM has notified
11 Acis that HCM is unwilling to continue to provide support
12 personnel and other critical services to Acis with respect to
13 the CLOs," you see that?

14 A. Yes.

15 Q. Were you involved in the decision on behalf of Highland
16 to inform Acis that it was unwilling to continue to provide
17 personnel in other critical services to Acis?

18 A. No.

19 Q. And, again, you were a limited partner as of November
20 3rd, 2017?

21 A. Yes.

22 Q. And you see the paragraph 4 -- I'm sorry, the paragraph
23 3, the third whereas. It says, "Whereas has determined that
24 the effect of the notification is that it cannot fulfill its
25 duties as portfolio management of the CLOs. And in order

Mark Okada - Cross

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1 ensure the continued operation of such CLOs and protection for
2 its stakeholders it must assign its rights as portfolio
3 manager in the CLOs to a qualified successor portfolio manager
4 pursuant to the CLO documents." You see that?

5 A. Yeah, I read what you just read.

6 Q. Okay. And the next paragraph talks about that HCLOM is
7 going to agree to be this qualified successor manager, right?

8 A. Yeah, that's what that says.

9 Q. Now, just in general Acis is an asset manager, right?

10 A. Yes.

11 Q. It's not a CLO, it's an asset manager, it manages CLOs,
12 correct?

13 A. Yes.

14 Q. And an asset manager of CLOs, where does it derive its
15 revenue from?

16 A. From the fees that it receives from managing assets.

17 Q. And where -- what document governs or entitles the asset
18 manager to those fees?

19 A. It's usually and investment management or a management
20 agreement.

21 Q. Right. So sometimes it's called a collateral-management
22 agreement. Sometimes it's called a portfolio-management
23 agreement. But those are essentially the same things; is that
24 right?

25 A. Yes.

Mark Okada - Cross

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1 Q. Okay. And that is the source of the revenue for Acis?

2 A. Yes, in general, that's correct.

3 Q. And this November 3rd transaction Exhibit number 16, did
4 Mr. Dondero consult with you before he executed this document
5 on November 3rd?

6 A. No.

7 Q. All right. Let's look at Exhibit number 184, that's the
8 Neutra document that we were discussing before. I'm sorry to
9 go back and forth between exhibits. You didn't know you were
10 going to get a workout.

11 Now we know you signed Exhibit 184, we looked at that
12 before.

13 MR. SHAW: Omar, if you don't mind pulling that up
14 too, go to his signature page.

15 A. Yes.

16 Q. Right. Who provided this document to you to sign?

17 A. Our internal legal counsel.

18 Q. And who in your internal legal counsel provided you that
19 document to sign?

20 A. I think it was Thomas Surgent.

21 Q. Why were you transferring your partnership interest in
22 Acis to Neutra one day after the judgment was rendered in the
23 44th District Court?

24 A. Because my counsel advised me to.

25 MR. FRITZ: Your Honor, I just would like to make

Mark Okada - Cross

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1 sure to instruct the witness don't answer a question if to do
2 so would require you to disclose communications with your
3 counsel.

4 THE COURT: Okay. You understand?

5 THE WITNESS: Yeah.

6 THE COURT: Um-huh.

7 Q. Do you have any other basis other than the advice of
8 internal counsel at Highland for you to sign this agreement?

9 A. No.

10 Q. And was Mr. Surgent, who's the chief compliance officer
11 for Highland, correct?

12 A. And the I believe deputy general counsel.

13 Q. And he's also the chief compliance officer for Acis, is
14 that right too?

15 A. I'm not certain, but that probably makes sense.

16 Q. Now, was he representing you in your individual capacity?

17 A. I'm not sure I understand your question.

18 Q. Well, you're a partner in Acis Capital Management
19 personally, correct?

20 A. Yes.

21 Q. Do you know whether or not Mr. Surgent was representing
22 you, Mark Okada, individually, or was he representing
23 Highland, or was he representing Acis, or was he representing
24 Neutra, do you know?

25 A. I'm not sure I understand your question.

Mark Okada - Cross

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1 Q. Now, over the course of your partnership interest in
2 Acis, started in 2011 and lasted until December of 2017, you
3 received distributions from Acis, right?

4 A. I believe that's -- it happened.

5 Q. Right. Let's just look at Exhibit 23, page 3, if you
6 could, just to refresh your memory. And it will come up here,
7 and I don't think you're going to -- you probably won't need
8 to look at it. If you can just look at it on the screen, I
9 think this won't be easy?

10 MR. FRITZ: Mr. Okada, please free to look at the
11 entire document in hard copy if you need to.

12 MR. SHAW: Can you zoom in on that.

13 Q. And you see there under the listing for equity there's
14 Mark Okada draws, you see that there?

15 A. Yes, I see that there.

16 MR. FRITZ: We want to make sure you capture -- is
17 there anything else? Thank you, Mark.

18 MR. SHAW: Can you zoom in -- or do you want to look
19 at both pages, or --

20 Q. I mean, you don't have any reason to dispute that you've
21 received distributions in excess of two million dollars from
22 Acis from 2011 to 2017, do you?

23 A. I don't -- I don't -- I didn't -- I haven't seen this
24 before, so, but it could be right.

25 Q. You've received distributions from Acis over the course

Mark Okada - Cross

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1 of 2011 to 2017, right?

2 A. Is that what this document represents?

3 Q. Well, I'm just asking the question, independent of that
4 you've been a limited partner and you've received
5 distributions from Acis over the course of its existence,
6 right?

7 A. Yes.

8 Q. Now, do you own any of this Neutra entity, that's a
9 Cayman entity?

10 A. I don't know.

11 Q. Did you discuss this transaction that's reflected in
12 Exhibit number 184 with anyone other than counsel at Highland?

13 A. No.

14 Q. And your rationale -- I just want to make sure the
15 record's clear, your rationale for executing this agreement is
16 -- was solely based on advice of counsel?

17 A. Yes.

18 Q. And you understand, you have the right to invoke your
19 attorney-client privilege on those particular communications,
20 right?

21 A. Yes.

22 Q. And you're -- and I'm going to ask you the question, what
23 did Mr. Surgent tell you about the rationale for entering into
24 Exhibit number 184?

25 A. I'm not going to answer that.

Mark Okada - Cross

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1 Q. Thank you.

2 MR. SHAW: All right. Can we go to slide number 3.

3 You guys were discussing slide number 3. And I think it
4 should be big enough on the screen there.

5 Q. Now, you've been throwing around the term equity with
6 regard to CLOs, right?

7 A. Yes.

8 Q. And that's also referred to in some circles as
9 subordinated notes?

10 A. Yes.

11 Q. And when we talk about equity we're not talking about
12 equity in Acis, the asset manager, right?

13 A. Correct.

14 Q. We're talking about the equity in the underlying CLOs?

15 A. Yes.

16 Q. Now, we have this chart here with the third-party forty-
17 nine percent, you see that?

18 A. Yes.

19 Q. And you're familiar with the identity of that third
20 party?

21 A. Yes.

22 Q. When did that third party make its investment in the
23 equity of CLO-3?

24 A. Sometime in 2017, I don't remember the exact dates.

25 Q. After the litigation between Mr. Terry, and Highland, and

Mark Okada - Cross

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1 Acis started, right?

2 A. Correct.

3 Q. And was that third-party investor notified regarding the
4 pendency of the arbitration in the various litigation?

5 A. What term did you use, pendency?

6 Q. The existence of it?

7 A. I believe so.

8 Q. And they knew coming in that there was this existing
9 litigation, and they decided to invest nevertheless, right?

10 A. Yes.

11 Q. Now, under that is this charitable foundation that we've
12 been referencing, this forty-nine percent. We've called that
13 the DAF -- I know that there's another entity called CLO
14 Holdco Limited, can we just call that the DAF; is that fair
15 enough?

16 A. It's fine with me.

17 Q. Okay. And that's kind of loosely what Highland refers to
18 is -- in shorthand is the DAF, right?

19 A. That's right.

20 Q. And that stands for donor advised funds?

21 A. Yes.

22 Q. All right. Who advises the donor advised fund?

23 A. To do what?

24 Q. Well, on investment decisions?

25 A. So the donor advised fund has a management contract with

1 Highland to manage its investments.

2 Q. And does Highland manage all the donor advised fund's
3 assets?

4 A. I don't know if it's all of them.

5 Q. The original underlying assets that are -- that comprise
6 the donor advised fund, what was the source of those assets?

7 A. Could you -- could you narrow that down a bit for me.
8 What do you mean by "source?"

9 Q. What was the seed investment, the capital that initially
10 capitalized the DAF, where did that come from?

11 A. It was a donation from Highland.

12 Q. And what type of assets were donated by Highland to the
13 DAF?

14 A. They were primarily CLO equity, equity some debt.

15 Q. And that CLO equity and debt has performed well
16 subsequent to that initial contribution, right?

17 A. I think it's done well. I don't know what you mean by
18 "well" but that's a fair word.

19 Q. You're pleased with the performance of those -- those
20 assets have increased in value from the time that they were
21 originally contributed until now?

22 A. They have increased.

23 Q. Now, the DAF has what you call -- what you refer to as an
24 independent trustee, right?

25 A. Yes.

Mark Okada - Cross

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1 Q. And that is Mr. Grant Scott, correct?

2 A. Yes.

3 Q. And Mr. Scott is Mr. Dondero's college roommate, correct?

4 A. I don't remember whether they were college roommates or
5 not, but they -- he's known him for a long, long time.

6 Q. We talked about the charities that benefit from the DAF.

7 You mentioned The Dallas foundation, but also the Santa
8 Barbara Foundation as well, do you recall that?

9 A. Yes.

10 Q. And those foundations then make donations to various
11 charitable organizations, is that right?

12 A. Yes.

13 Q. Now, one of the charitable foundations or organizations
14 that the DAF assets eventually flow down to is the Dallas Zoo,
15 correct?

16 A. We've made donations to the zoo.

17 Q. And when you say "we" are you talking about the DAF --

18 A. The DAF.

19 Q. -- or you talking about Highland?

20 A. The DAF.

21 Q. Now, when you go to the zoo, because I went to the zoo a
22 few weeks ago with my son and wife, there is signage that says
23 the zoo has been sponsored by Highland Capital Management, is
24 that correct?

25 A. Yeah.

1 Q. And you're familiar with that signage and you're familiar
2 with the fact that that is around the Dallas Zoo, right?

3 A. Yes.

4 Q. And Mr. Ellington I believe serves on some kind of board
5 capacity with the Dallas Zoo as well?

6 A. I believe that's the case, I'm not sure if he's still on
7 the board. But, yeah, in the past he has. I'm aware of that.

8 Q. And there's no mention of the DAF, or CLO, Holdco, or Mr.
9 Scott, as somehow being a sponsor of the Dallas Zoo, right?

10 A. I don't think that's what the signs say.

11 Q. Same question for the Perot Museum. The Perot Museum is
12 one of the ultimate beneficiaries of charitable contributions
13 from the DAF, right?

14 A. Yes.

15 Q. And the signage there at the Perot Museum says Highland
16 Capital Management, right?

17 A. Yes.

18 Q. Recently I saw a press release regarding a contribution
19 made to the George Bush Presidential Library, are you familiar
20 with that contribution?

21 A. Yes, I am.

22 Q. And that is held out as a contribution by Highland
23 Capital Management; is it not?

24 A. I believe it's characterized in the same way as the other
25 two examples that you brought up.

1 Q. But the money from that contribution came from this
2 charitable foundation, this forty-nine percent, that owns ALF,
3 or owns forty-nine percent of ALF, right?

4 A. Yes.

5 Q. Now, the DAF invests in a lot of Highland funds and
6 various Highland vehicles, correct?

7 A. That's part of the things that they're invested in,
8 that's correct.

9 Q. So the DAF is used, for example -- or had been used to
10 invest in an entity or fund called CLO Value Fund, right?

11 A. I don't understand what you mean by the term "used?"

12 Q. The DAF invested in CLO Value Fund, right?

13 A. Yes, I believe so.

14 Q. All right. And that was a fund that was -- the portfolio
15 manager of which was Acis Capital?

16 A. Yes.

17 Q. Now, going back to the first thing we talked about, which
18 was this contemplated reset or refi transaction, now that
19 transaction would require the equity to make an investment in
20 order for that reset to happen, right?

21 A. Are you referring to the -- we didn't talk about, but
22 there's a need to create a risk-retention-compliant management
23 agreement. So the manager has to have equity in the new
24 transaction, that's correct.

25 Q. And that risk-retention requirement that you're referring

1 to does that derive from the Dodd-Frank legislation?

2 A. I believe it's part of that.

3 Q. Are you familiar with a recent case out of the district
4 or the court of appeals in the District of Columbia that says
5 that CLO managers do not have to comply with that risk-
6 retention requirement?

7 A. That's in process. There's been a ruling, and it's
8 being -- we'll figure out if it's going to be appealed. But
9 that's going on right now.

10 Q. So that issue is in flux at the moment?

11 A. Yes.

12 Q. Now, you said that there was a -- with regard to CLO 3
13 that there was an interest diversion test failure, do you
14 recall that?

15 A. Yes.

16 Q. All right. There are things that the asset manager can
17 do in order to fix that failure, right?

18 A. I don't know how you make a statement like that, but
19 you're not an investment manager.

20 Q. I am not an investment manager, and you know much more
21 than I do. And I know that Mr. Terry does as well. But, for
22 example, if you were failing that interest diversion test, you
23 can trade -- the asset manager can trade underlying assets,
24 those loans, in order to meet that test, correct?

25 A. Maybe, possible.

Mark Okada - Cross

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1 Q. And while we're at it, Mr. Terry -- you worked with Mr.
2 Terry for how many years, eight years?

3 A. It's quite a long time, yes.

4 Q. And Mr. Terry has quite a vast knowledge with regard to
5 the CLO market, do you agree with that?

6 A. He's knowledgeable.

7 Q. Very smart guy, right?

8 A. Yes.

9 Q. I mean, he rose through the ranks of Highland. He
10 started in a fairly low position and ended -- when he was
11 terminated he was in a fairly high position at Highland,
12 correct?

13 A. That's correct.

14 Q. Now, you talked about the controlling share class calling
15 the deal, calling the CLO if a reset or refi did not occur, do
16 you recall that?

17 A. I said that that's they hypothetical of what would
18 probably happen, that's correct.

19 Q. Are you aware of that occurring with any of these CLOs
20 that are of the vintage that we're talking about in the
21 market?

22 A. I'm not aware of -- if your question is do I know what's
23 happened with all the 2014 managed deals, whether they can
24 call the reset back, I don't have that knowledge.

25 Q. Well, I mean, can you name one CLO that has been -- of

Mark Okada - Cross

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1 that vintage that has been called by the equity?

2 A. We had one, Acis CLO 2, that's been called.

3 Q. And when did that occur?

4 A. I think that happened in '17. But I don't remember the
5 exact dates.

6 Q. And who was the controlling class in that particular CLO?

7 A. It was the equity.

8 Q. And the equity, is that the same split that we have here,
9 this third-party investor in the charitable foundation, or who
10 owned the equity?

11 A. That was outside of ALF.

12 Q. And was it outside of the DAF as well?

13 A. Yes.

14 Q. And who owned that equity?

15 A. I don't -- other institutional investors. I don't -- and
16 I'm not -- I don't remember exactly who the equity holders are
17 of that -- were of that transaction.

18 Q. Now, you are an employee of Highland Capital Management,
19 right?

20 A. Yes.

21 Q. Does Highland Capital Management oppose this bankruptcy
22 proceeding?

23 MR. FRITZ: Objection, Your Honor. That may or may
24 not call for communications with counsel. So to the extent
25 Mr. Okada's going to answer that question based upon

Mark Okada - Cross

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1 communication of counsel, I'll ask him not to answer.

2 Instruct him not to answer.

3 THE COURT: All right. So answer the question if you
4 can without revealing conversations with counsel.

5 A. And your question again, can you repeat that for me one
6 more time?

7 Q. I lost my train of thought because I was looking at my
8 notes.

9 A. Okay.

10 Q. Does Highland oppose this bankruptcy proceeding, without
11 revealing any attorney -- anything that your attorneys have
12 told you?

13 A. I don't know if I can answer that. This is all a legal
14 proceeding in my mind, so everything that's happening here has
15 been in conjunction with discussion with the lawyers. And
16 you're asking about Highland Capital, I'm one of the partners
17 there, but I don't control Highland. So it's a diff -- I
18 don't know how to answer your question specifically. I mean,
19 if you can ask it differently, I can give you a different
20 answer.

21 Q. All right. You don't control Highland, who does?

22 A. In -- on average, it's Jim, in general.

23 Q. Now, going back to this reset/refi issue, there are a lot
24 of CLOs out there of the 2015 vintage that have not yet refi'd
25 or reset, isn't that true?

Mark Okada - Cross

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1 A. I have no idea.

2 Q. Who would know that?

3 A. I guess maybe industry research people, like Wells Fargo,
4 Morgan Stanley, somebody like that.

5 Q. I mean, there are people at Highland that have more
6 knowledge with regard to the current state of the CLO market
7 than you, right?

8 A. I'm not sure what you're getting at there.

9 Q. Well, for example, Mr. Covitz, he's on the structured
10 products team, right?

11 A. Yes.

12 Q. And he has taken over some of the responsibilities that
13 Mr. Terry had while he was the portfolio manager at Acis,
14 right?

15 A. Yes.

16 Q. And Mr. Covitz is in the "trenches" day in day out,
17 right?

18 A. He has a more detailed day-to-day involvement than I do,
19 if that's what you're getting at.

20 Q. Right. Mr. Covitz is not going on CNBC, he's not going
21 to conferences, he's not -- he hasn't played that role, he's
22 more in the operational day-to-day operations of Acis and the
23 structured products team at Highland, right?

24 A. He goes to conferences.

25 Q. He does go to conference, sure. But he doesn't speak at

Mark Okada - Redirect

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1 conferences like you do, he's not the public face of Highland
2 or of Acis like --

3 A. He speaks at conferences.

4 Q. Okay.

5 MR. SHAW: We pass the witness.

6 THE COURT: All right, redirect.

7 MR. FRITZ: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. FRITZ:

10 Q. Mr. Okada, I want to ask a clarification question. In
11 response to one of Mr. Shaw's questions, I think you said, and
12 correct me if I'm wrong, that the reset couldn't go forward
13 because Acis wasn't qualified. Can you please expound upon
14 that?

15 A. So there's two things that have to happen when you do a
16 reset. You got to reprice the bonds, you got to redistribute
17 them in the marketplace. So the marketplace is going to make
18 a determination of who the manager is and whether they find
19 that manager acceptable. Acis does not qualify given all the
20 noise around the legal disputes.

21 And then the other thing that has to happen, and because
22 of the risk-retention regulation, is that Acis would have to
23 come up with the capital to be able to invest in the new
24 transaction if it was going to be the manager. Otherwise that
25 deal is not risk-retention-compliant. And you can't issue

Mark Okada - Redirect

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1 the -- you couldn't do the reset per the law.

2 Q. Did Acis -- I'm sorry, go ahead.

3 A. Per the law.

4 Q. Did Acis ever have the capital to make that commitment?

5 A. For CLO 3, no.

6 Q. Over --

7 MR. FRITZ: Hold on one second.

8 Q. I want to get back to this charitable foundation issue
9 real quick if we could.

10 So Highland was essentially the seed money for the DAF
11 for this charitable foundation?

12 A. Yes.

13 Q. Once Highland committed that money, could it take it
14 back?

15 A. No.

16 MR. FRITZ: So if you would go to slide 4, Omar.

17 Q. And are these some of the charities that the DAF has
18 provided funds to?

19 A. Yes, they are.

20 Q. And when Highland provided the seed money to the DAF, the
21 DAF then invested it and made that money grow; is that
22 correct?

23 A. Yes.

24 Q. When Highland gave that seed that money to the DAF was it
25 ever intended to be an anonymous donation?

Colloquy

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1 A. No.

2 MR. FRITZ: And with that on behalf of my six and
3 eight-year-old as a co-founder of Highland, thank you for your
4 donations to the Perot Museum and the Zoo. Pass the witness.

5 THE COURT: Recross?

6 MR. SHAW: Nothing further, Judge.

7 THE COURT: All right. Thank you, Mr. Okada. You
8 are excused.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: All right. It is 11:45. I said we'd
11 stop at noon. Who is your next witness?

12 MR. CRUCIANI: Your Honor, we have two short
13 videotapes to -- we reached an agreement with counsel rather
14 than to call them, just to play their videotapes. I think
15 they're about fifteen to twenty minutes each. And then after
16 that will be Mr. Dondero.

17 THE COURT: All right. So shall we do one of those
18 videotapes, and then --

19 MR. FRITZ: That makes sense.

20 THE COURT: -- we'll break. I mean, I -- if you all
21 don't mind going a little past noon, I don't know if it messes
22 up lunch plans, we can do both of the videos then break.

23 MR. FRITZ: We're indifferent, whatever the Court
24 would prefer.

25 THE COURT: Everyone's indifferent?

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1 MS. PATEL: Your Honor, we get lunch on the sixth
2 floor, so it will probably be better because there won't be a
3 rush.

4 THE COURT: Okay. All right. So we'll go ahead and
5 do both videos and then break for an hour for lunch. Okay.

6 MR. FRITZ: 303.

7 THE COURT: Everybody hear that?

8 MR. FRITZ: Thank you, yes.

9 THE COURT: Okay.

10 (Video deposition of Brian Patrick Shaw played at
11 11:46:32, transcribed to the best of the transcriber's
12 ability)

13 Q. Please state your name for the record?

14 A. Brian Patrick Shaw.

15 Q. Mr. Shaw, how long have you been a practicing attorney?

16 A. Since 2006.

17 Q. Why did Mr. Terry put Acis into involuntary bankruptcy?

18 A. I can't answer the question without violating the work-
19 product or attorney-client privilege.

20 Q. You publicly disclosed those reasons, didn't you? Did
21 you not publicly disclose the reasons you put -- Mr. Terry put
22 Acis into involuntarily bankruptcy?

23 A. I don't understand your question.

24 Q. Do you recall telling Judge Goldstein why you did that?

25 A. I do not.

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1 Q. Trial Exhibit 2. Do you recognize this, Mr. Shaw, as
2 being transferred from the January 31, 2018 hearing in front
3 Judge Goldstein?

4 A. It appears to be.

5 Q. Look at page 8, if you would, Mr. Shaw. Can you see per
6 the transcript you begin speaking on line 13, do you see that,
7 sir?

8 A. Correct.

9 Q. All right. And then on line 20 you represent to Ms.
10 Goldstein -- Judge Goldstein "We have filed them into an
11 involuntary bankruptcy. We did so because on Monday we
12 received a sworn affidavit from Acis regarding their net
13 worth." You see that --

14 A. I do.

15 Q. -- representation? Was that truthful representation you
16 made to Judge Goldstein?

17 A. Was my statement on the record truthful?

18 Q. Yes, sir.

19 A. Yes.

20 Q. I'm handing you Mr. Klos' declaration, Exhibit 3. And
21 the balance sheet attached to that, which is Exhibit 4. And
22 would you just look at the transcript from January 30th where
23 you refer to the sworn affidavit from Acis regarding your net
24 worth, and that would be Mr. Klos' declaration to which you
25 were referring, which has been marked as Exhibit 3, correct?

1 A. Correct.

2 Q. And what was it about that affidavit that caused Mr.
3 Terry to put Acis into involuntary bankruptcy?

4 (No audible response)

5 Q. Now, you had requested that -- you argued to Judge
6 Goldstein that basically everything would be hunky-dory as
7 long as someone, including Highland, put out the eight-
8 million-dollar bond, do you recall that?

9 A. I don't -- your characterization of everything is going
10 to be hunky-dory if somebody puts up a -- the bond --

11 Q. Um-hum.

12 A. -- did I say that, I don't know. I mean, the transcript
13 speaks for itself. I believe -- yeah, I made that argument,
14 sure.

15 Q. Okay. What did you mean by that?

16 A. I can't answer that question without revealing my mental
17 impressions, work-product, attorney-client.

18 Q. Well, I was just ask -- well, these are words you spoke,
19 I want to know what you meant when you said everything would
20 be hunky-dory?

21 A. I do not believe I ever said the word "hunky-dory." But
22 if I did, I did.

23 Q. Well, okay. Do you have an understanding of what "hunky-
24 dory" means to you?

25 A. Hunky-dory means everything is going to be fine.

1 Q. Okay.

2 A. I do not recall using the term "hunky-dory," it's not
3 something that I use very often. If I said the term "hunky-
4 dory," then I said the term "hunky-dory."

5 Q. Fair enough. And if you said it you would have intended
6 to mean what you just said, "That everything would be fine,"
7 correct?

8 A. I can't answer that question. It also invades the
9 attorney-work-client and work-product privilege. This is what
10 happens when you depose an attorney, you're going to get a
11 lot of instructions not to answer based upon attorney work-
12 product and attorney-client privilege.

13 Q. You're familiar with the list of creditors and everything
14 on the two supplemental lists filed with the bankruptcy court,
15 correct?

16 A. I am.

17 Q. Okay. And have you communicated with any of those
18 creditors?

19 A. I have.

20 Q. So what I'm interested in is any discussions you had with
21 them on any topic other than just that. For example, whether
22 they were interested in joining Mr. Terry as the movants in
23 connection with the involuntary?

24 A. Sure. So the only purported creditors listed in Exhibit
25 number 5, for which I had discussions beyond transmitting

1 discovery and getting responses back is CSI Global Deposition
2 Services, and the TASA Group Inc.

3 Q. So tell me about your discussions with CSI Global
4 Depositions Services, who did you speak with or communicate
5 with there?

6 A. Communicated with Brent Dobbs at CSI.

7 Q. Okay. And what position does he hold with that company?

8 A. I don't know what his title is.

9 Q. Did you know him by name prior to reaching out, or did
10 you reach out and you were provided his --

11 A. Knew him by name.

12 Q. How did you know him by name?

13 A. We do -- we use CSI Global Deposition Services, my firm.

14 Q. Okay. And did you have a phone call or email or meeting
15 with Mr. Dobbs?

16 A. I had a phone call with him.

17 Q. When was that?

18 A. Sometime after you guys filed your list of creditors. I
19 don't know exactly when.

20 Q. What was the --

21 A. And you're talking about with regard to this Acis matter,
22 right?

23 Q. Yes, sir.

24 A. Okay.

25 Q. Tell me what was discussed in that phone call.

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1 A That they were listed as a purported creditor of Acis.

2 Q. Okay.

3 A And we made inquiry as to whether they would -- if they
4 ended up -- if the Court ended up finding that they were
5 indeed a creditor of Acis, if they would care to join in the
6 involuntary bankruptcy.

7 Q. What did they say?

8 A They said that they would.

9 Q. Okay. Have they?

10 A They have not so -- for so far.

11 Q. Why not?

12 A I don't know.

13 Q. You then spoke with a lawyer, as I understand it, within
14 the TASA Group?

15 A I did.

16 Q. Okay. Who was that?

17 A His name is David Seltzer. I think it's S-E-L-T-Z-E-R.

18 Q. And what was -- and did you ask him if he'd be willing to
19 join Mr. Terry as a petitioning creditor?

20 A. I asked if his client, TASA Group, was interested in
21 joining in as a potential creditor.

22 Q. What did he say?

23 A. I heard from him yesterday. He said that after
24 discussing with their client, that they were -- were not
25 interested in joining into the bankruptcy.

1 Q. Okay. Separate topic. Have you received substantive
2 responses from one or more of the parties to whom you've
3 served written deposition questions?

4 A. Received responses from CSI, but that were incomplete
5 because we didn't have their -- they had not been served
6 with -- or didn't receive their cross-questions. So I have
7 received responses from CSI, but we're awaiting their cross-
8 questions.

9 Q. Do you know whether those have been provided to Acis, the
10 CSI responses?

11 A. I don't know.

12 Q. Did you provide them to Acis?

13 A. I did not.

14 Q. Do you know whether CSI provided them to Acis?

15 Q. Is there a reason that you have discovery responses that
16 you've received from one of the deponents that you've not
17 provided those responses to Acis?

18 A. Yeah, that's -- it would be work product.

19 Q. Handing you Plaintiff's Application For Turnover Order
20 and Appointment of Receiver I've marked as Exhibit 8. You
21 filed this on January 29th in the state court?

22 A. Yes.

23 Q. And this went out under your firm's signature?

24 A. Yes.

25 Q. And you asked at the bottom of -- actually, page 4, you

1 say, "Mr. Terry requests the Court exercise its broad
2 discretion to appoint a receiver over Acis to provide for the
3 orderly and arm's-length liquidation of Acis' assets
4 sufficient to satisfy the judgment, the cost to pursue this
5 receivership and receivership fees.

6 The asset subject to sale include, but are not limited
7 to, one or more of the management contracts. To the extent
8 necessary to preserve the value of Acis, the receiver should
9 also be empowered to obtain substitute shared-services and
10 subadvisory providers in arm's-length transactions.

11 Mr. Terry requests the receiver be empowered to do all
12 things reasonably necessary to preserve the value of Acis and
13 satisfy the judgment and any other amounts that are
14 appropriate under applicable law."

15 Did I read that correctly?

16 A. Yes.

17 Q. And is that the relief that you, in fact, were seeking
18 from the state court?

19 A. The relief that we were requesting is contained in
20 Exhibit 8.

21 Q. And you proposed a trustee, Kelly Crawford at Scheef &
22 Stone?

23 A. Correct.

24 Q. Who is that person?

25 A. He's an individual that I spoke with that's a -- that has

1 served as a receiver in other cases.

2 Q. Do you know him?

3 A You know, I have run in to him on -- in to -- on one
4 case, on the Life Partners bankruptcy that was in the Fort
5 Worth Division. He represented some other defendants in an
6 adversary case.

7 Q. What capacity did he serve in that case?

8 A. Counsel for a defend -- a co-defendant.

9 Q. Okay. Can you tell the Court -- you told the Court that
10 "Mr. Crawford is supremely qualified to serve as a receiver in
11 this matter."

12 Why did you believe that?

13 A. Based upon comments that I'd received from other lawyers
14 with regard to his abilities as well as his curriculum vitae.

15 Q. And you say that "Mr. Terry anticipates that Mr. Crawford
16 will engage professionals, including an investment bank, to
17 market one or more of the management contracts or other assets
18 of Acis in a manner designed to ensure the highest potential
19 price for those assets."

20 Do you see that?

21 A. I do. What page are we on?

22 Q. Yes, sir. It's -- it's the page 5 of 66, right above
23 "Conclusion."

24 A All right. I'm with you.

25 Q. Okay. Did you have a discussion with Mr. Crawford about

1 that? Or on what basis did Mr. Terry anticipate Mr. Crawford
2 would do that?

3 A I don't know that I talked to Mr. Crawford about the
4 necessity to engage an investment bank.

5 Q. On what basis did you represent to the Court that you
6 anticipated that's what Mr. Crawford would do? Was it based
7 on anything you discussed or was it on some other basis?

8 A I don't know that I can answer that question without
9 revealing attorney work product, my mental processes with
10 regard to my legal strategy and my legal opinion on that
11 issue. So I don't know that I can answer that question. And
12 also, attorney-client privilege.

13 Q. Well, you're not asserting any privilege vis-à-vis Mr.
14 Crawford, are you?

15 A No. But to the extent that that statement was based upon
16 attorney-client privileged information, then I can't answer
17 the question.

18 Q. Just tell me about any discussions or communications you
19 had with Mr. Crawford in connection with this matter.

20 A. I told him generally about the case. I believe I sent
21 him a copy of our TRO and had him run conflicts to make sure
22 that he was able to serve, and I think that's it.

23 Q. How many conversations did you have with him?

24 A. Probably three to four.

25 Q. Okay. Well, you filed the receiver application on

1 January 29th. So with that, can you try to place the dates of
2 those conversations?

3 A. Prior to that time?

4 Q. Okay. Did you have any subsequent to filing the
5 receivership application?

6 A. Yes.

7 Q. Okay. So let's -- tell me about the -- the dates, as
8 best you can recall, the conversations you had prior to
9 January 29th.

10 A. I reached out to him. I think I just minimally provided
11 him with party information so that he could run a conflicts
12 check. Once conflicts passed, we then had a substantive
13 discussion with regards to what he or what his role would be
14 if the Court appointed him. Obviously the Court has no
15 obligation to appoint any particular person. They can appoint
16 whoever they want. So we were making the suggestion as a
17 proposed receiver, but that was simply a proposal.

18 I believe that once I told him about the substantive
19 representation, you know, I think that he looked at the TRO
20 and said, "Wow, these are some pretty audacious transfers that
21 are happening right after the arbitration award," and that he
22 would be willing to serve if the Court appointed him as a
23 receiver.

24 I think his assistant sent me his CV, and -- and that is
25 the extent of our communications prior to the filing of the

1 receivership. I don't know whether I sent him a file-marked
2 copy of the receivership motion after I filed it -- or
3 application after I filed it -- or not. I may have.

4 Q. Because for him to -- he was reviewing apparently a draft
5 of what -- of the receivership application you were planning
6 on filing that led him to believe these were some audacious
7 transfers?

8 A. I sent him a copy -- I think a file-marked copy of the --
9 of the request for a temporary restraining order. So that
10 sets out the facts --

11 Q. Okay.

12 A -- with regard to the transfers, which, you know, I think
13 anybody would consider them audacious. But -- so, yeah,
14 that's -- I think -- I'm pretty sure that's the document that
15 he -- that I gave him initially, kind of, as background once
16 he cleared conflicts.

17 Q. So you filed that on January 24th, the TRO. Do you
18 recall that?

19 A. Yes, I do.

20 Q. So you would have sent that to him -- that -- that
21 substantive conversation would have taken place on or
22 subsequent to January 24th?

23 A To the extent that -- that the application for a TRO was
24 indeed the document that I sent to him, yes, it would have had
25 to have been subsequent to me filing.

1 I guess, you know, I'm thinking back upon other filings
2 that were made that could have provided a similar background,
3 which, you know, as you're aware, there are several that have
4 a similar fact pattern. So it could have been any one of
5 those, but I do believe it was the application for a temporary
6 restraining order.

7 Q. Okay. So you had an initial preliminary discussion
8 really more for conflicts purposes, identifying the parties.
9 Then you had a second discussion that you've just testified to
10 that sounds like it likely would have occurred sometime
11 between January 24 and January 29th.

12 Is that fair?

13 A. I think that's fair, yes.

14 Q. Okay. Any other conversations with Mr. Crawford prior to
15 the filing of the receivership application?

16 A. I -- not that I recall.

17 Q. Okay. And he indicated, based on that second substantive
18 discussion, that if the Court were to appoint him, he'd be
19 willing to serve?

20 A. Yes.

21 Q. Okay. And he had already indicated to you his views that
22 these were audacious transfers. Was that his words or your
23 paraphrase?

24 A. That's a paraphrase. So he was -- he certainly did not
25 respond with "What's the big deal," and my recollection is

1 that he was complimentary of the drafting that was done and
2 said that -- that it looked bad, the transactions looked bad,
3 you know, the Cayman transfers, the fact that it was
4 transferred days after the arbitration award, the fact that,
5 you know, that they were transferring substantially all of the
6 assets of the entity, you know, all the facts that you've
7 heard that support the fraudulent nature of the transfers.

8 Q. And these were all -- this was the discussion you had
9 with him prior to filing the receivership application on
10 January 29th?

11 A. Correct.

12 Q. So you knew, when you were proposing Mr. Crawford, that
13 he was favorably disposed of your view of the case --
14 audacious transfers and looked bad, et cetera, et cetera,
15 correct?

16 A. I don't -- I don't know what was in his mind. I know
17 what he -- he told me, and that's what I just recited. So
18 that's to the extent of what I'm going to say.

19 Q. And it's a fair summary what he recited to you, that he
20 was favorably disposed towards your view of the case of bad
21 conduct, the fraudulent transfers, correct?

22 A. I don't know how to answer that question. All I can tell
23 you is what he told me. And in order for me to characterize
24 what his view was, that he was favorably -- favorably disposed
25 to our side of the case, I can't tell you that.

1 Q. But what you've told me is truthful so far, correct?

2 A. Correct. And you can -- you can -- you can draw your own
3 conclusions, but I'm not going to draw it for you.

4 (End of video deposition excerpt of Brian Patrick Shaw)

5 MR. CRUCIANI: That concludes the deposition excerpt
6 for Mr. Brian Shaw.

7 THE COURT: All right.

8 MR. CRUCIANI: And we now have Ms. Rakhee Patel.

9 And, Your Honor, we do have a transcript that it
10 would probably make sense for the record if we could mark that
11 as an exhibit and submit that into the record as a
12 housekeeping matter later.

13 THE COURT: Okay. Any objection to that? Okay.

14 UNIDENTIFIED SPEAKER: No objection, Judge.

15 THE COURT: We'll look for it later.

16 (Video deposition of Rakhee Patel played at 12:06:42,
17 transcribed to the best of the transcriber's ability)

18 Q. So other than that one email that gave you the list of
19 entities from which you could run your informal conflict
20 check, you had not been provided with any documents as of the
21 time of this phone call on January 25th or 26th?

22 A. That's -- that's correct.

23 Q. And you had not spoken to Mr. Terry at that time?

24 A. That's correct.

25 Q. Now, had you -- by the time you -- you arrived at the

1 meeting, had you read all the documents that you were sent on
2 January 29th or did you wait until January 30th to read them?

3 A. I -- by the time I arrived at the meeting, I had read all
4 of the documents, but I read them early morning on the 30th.

5 Q. Okay. So you didn't start reading anything until the
6 morning of the 30th pre-meeting?

7 A. That -- that's correct. My best recollection is that the
8 reason why we had to have a meeting on the morning of the 30th
9 is because I was otherwise disposed the entire day of the
10 29th.

11 Q. Okay. And so while things were collecting in your
12 mailbox on the 29th, you didn't actually open and start
13 reading them until prior to the meeting on the 30th?

14 A. Well, I -- I may have read it the eve -- late evening of
15 the 29th, but -- or it may have been first thing in the
16 morning on the 30th.

17 Q. So you're in a meeting on January 30th that started
18 sometime around 9:00 or 9:30 in the morning. How long did the
19 meeting last?

20 A. A few hours. At least until the lunch hour.

21 Q. And when -- in terms of the purpose of the meeting, had
22 the decision to file an involuntary been made by the time they
23 came to meet with you or they -- or was that a potential path
24 of action that was to be discussed? In other words, did they
25 say we need to file an involuntary, let's hire Rakhee, or did

1 they say let's go see what Rakhee thinks we should do. You
2 understand the distinction I'm drawing?

3 A. Yes. I do not believe that a decision to file had been
4 made. I believe that the purpose of the meeting was to get my
5 advice and counsel with respect to whether an involuntary
6 would be appropriate under the facts and circumstances.

7 Q. Now, at the time you -- you all sat down in the morning
8 of January 30th, you weren't retained yet; is that right?

9 A. That's correct.

10 Q. Okay. When did that happen?

11 A. Later that afternoon.

12 Q. Your conclusion that for purposes of Section 303
13 eligibility, Mr. Terry could be a sole petitioning creditor
14 because Acis -- both Acis entities has less -- had less than
15 twelve creditors was based solely on your review of documents
16 on January 30th; is that correct?

17 A. Yes. And I'll also add as the documents that -- that
18 underlie my opinions here, as the -- the -- I'll call it
19 the -- the arbitration in the state-court pleadings that I
20 reviewed that day.

21 Q. Right. That's -- that's included in the universe of
22 documents?

23 A. Included in the universe of documents.

24 Q. At some point on January 30th, based on everything you
25 reviewed and based on everything that was discussed, did you

1 advise Mr. Terry to file the involuntary petitions?

2 A. The fact is the involuntary petitions were filed on
3 January 30th. I think that probably provides your answer.

4 Q. I want to -- it does, but I'm -- I'm more interested in
5 when. When did -- when did --when -- when on January 30th was
6 the decision made to file?

7 A. I don't recall a specific moment that the decision was
8 made to file, because as with all things, there's work
9 performed in the -- in the run up to it. And as with all
10 things, again, anyone could change their mind until the moment
11 that we filed. But shortly before the filings, it was
12 definitive that -- that we were filing.

13 Q. Okay. Let me -- let me back up. Was a decision made to
14 file before Mr. Terry and Mr. Shaw left your office?

15 A. No.

16 Q. Okay. Was a decision made to file --

17 MR. USTAIN: Strike that.

18 Q. What time of the day did you get your engagement letter
19 signed?

20 A. Oh. Engagement letter, it was midafternoon. I don't
21 remember the exact time.

22 Q. Was a decision made to file by the time you got your
23 engagement letter signed?

24 A. I think by the time the engagement letter was signed and
25 returned to the firm, it was more assured than not that the

1 involuntaries were going to be filed.

2 Q. So when -- I mean, did you -- did there ever come a time
3 on January 30th where you expressed to Mr. Terry or Mr. Shaw
4 or both of them -- hey, I'd like to have more time before we
5 make the decision to file. I've got a lot of stuff I've got
6 to review. I've got to look at some issues. I'd like more
7 time.

8 A. Could I see the transcript from Mr. Terry's deposition
9 yesterday? I'd like to --

10 MR. USTAIN: It's okay with me.

11 A. -- re-read the questions

12 MR. USTAIN: I think --

13 A. -- that the privilege was waived to.

14 MR. USTAIN: I mean, it's -- yes. The answer is
15 yes, you could. They're highlighted somewhat there, but I'm
16 not sure it's going to give you a perfect understanding.

17 MR. CAMPBELL: Just to be clear, the witness is
18 reviewing a binder that contains a rough draft --

19 MR. USTAIN: Correct.

20 MR. CAMPBELL: -- of Mr. Terry's deposition. It's
21 not been marked as an exhibit.

22 MR. USTAIN: Also correct.

23 A. Okay. I -- I don't think these are the questions that --

24 Q. You've got to flip through wherever the tabs are.

25 A. You're right. Okay. I --

1 Q. They kind of exist in a few different places.

2 A. I took -- I was reading the highlighted as you had
3 indicated but -- okay. Here we go. All right. Got this.
4 Okay. That was the first one.

5 (Witness reviewing document.)

6 A. I will -- I don't believe that the response to the
7 question falls within the scope of the waiver. So I will
8 answer with my mental impressions, which was just that --

9 Q. Okay. That was my next question anyway.

10 A. -- I didn't believe that in my mind -- I didn't believe
11 in my mind that time was an -- was something available for me
12 to request. It would be akin to me just walking out on the
13 street and saying, Can I please have an Aston Martin?
14 There's -- it wasn't -- it's just not an option.

15 Q. Why is that?

16 A. Well, because -- well, we -- the transaction was closing
17 on February 1st, and again, in any mind, I wanted -- I thought
18 it most prudent to file the involuntaries, seek immediate
19 303(f) relief and address -- address the situation on that
20 path. So and -- I could have -- I could have said at any given
21 point, I'm sure, like, can I have another hour or two. But
22 did I think to myself, oh, well, let's see if we can't deal
23 with this in a -- in a week or two, that just wasn't something
24 that necessarily was in my mind.

25 Q. Because you didn't think it was just available under the

1 time line that you were facing?

2 A. I just didn't think it was available under the time line.

3 Q. Did you advise Mr. Terry that the law on the special
4 circumstances exception was uniform throughout the country?

5 Or did you tell him that there was a split, that some courts
6 apply it and some courts don't? What did you tell him in
7 terms of the state of the law of the special circumstances
8 exception such as it is?

9 A. I told him that that's the law in this district.

10 Q. Binding precedent in this district is that there is a
11 special circumstances exception to both numerosity and
12 generally not paying their debts as they become due?

13 A. I -- the cases say that there is a special exception, and
14 I believe the language is that special except -- special
15 circumstances exception is a exception to the technical
16 requirements of 303.

17 Q. I get what it says. My question is did you tell him that
18 was the law and -- and this judge had no wiggle room, she had
19 to apply it? Or did you tell him that some bankruptcy courts
20 apply it and maybe some courts don't?

21 A. I don't think I opined on that either way.

22 Q. Okay. Fair -- fair enough.

23 A. The case law is the case law.

24 Q. The case law is the case law. So let's talk about
25 where -- what are the case where the special circumstances

1 exception lives. Norris?

2 A. Right. I believe I referenced them.

3 Q. Moss?

4 A. Norris, Moss.

5 Q. Smith?

6 A. Smith.

7 Q. Okay.

8 A. In this district.

9 Q. Okay. Now, are any of those --

10 A. And there may be -- there may be unreported opinions as
11 well, but I'm not --

12 Q. Okay. Are any of those cases binding on this judge?

13 (Pause)

14 A. I don't know definitively.

15 Q. Well --

16 A. But I think perhaps not.

17 Q. Okay. Because they're authored by sister or brother
18 bankruptcy courts, right?

19 A. Yes.

20 Q. Okay. And Judge Jernigan herself hasn't written on this
21 issue; is that correct?

22 A. Not as far as I am aware today, subject to the caveat
23 that, again, there may be an unpublished opinion of which I am
24 unaware.

25 Q. Okay. Putting that -- accepting that caveat, okay, did

1 you advise Mr. Terry that there was a risk that while you
2 might have grounds for special circumstances, for example, if
3 you were in Judge Hale's court, okay, that Judge Jernigan may
4 say I don't believe in the special circumstances exception?
5 Did you so advise Mr. Terry?

6 A. No.

7 Q. Have you ever in your career filed an involuntary
8 petition on the same day that you were retained?

9 A. Other than this matter, I can't recall. And I'm happy to
10 explain that -- why I can't recall, because I've only ever
11 filed or been a party to a filing of one other involuntary.

12 Q. Do you know what Mr. Shaw told the creditors?

13 A. I do -- only by virtue of my conversations with Mr. Shaw,
14 which I believe would still be covered by the work product.

15 Q. Did he tell you what he said? Did he say, Ms. Patel,
16 here's what I told the creditors?

17 A. I don't know if he told me everything that he told the
18 creditors, but he has advised me as to at least some of the
19 substance of his conversations he had with some creditors.

20 Q. What did he tell you he said to the creditors?

21 MR. CAMPBELL: You can answer that one.

22 THE WITNESS: I can answer that one?

23 A. Well -- well, he at least advised them that -- of the
24 consequences of -- of joining the petition under Section 303,
25 and that --

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1 Q. And what --

2 A. And that there's a pending claim by Acis for bad faith
3 and attorneys' fees and costs and that by joining that -- that
4 any joining creditor will potentially subject themselves to
5 the same claims.

6 Q. Okay. And based on that, no surprise, no one has joined
7 today?

8 A. As -- as we sit here today, no one has joined.

9 Q. Okay.

10 (End of video-deposition excerpt of Rakhee Patel)

11 MR. CRUCIANI: That concludes the deposition of
12 Ms. --

13 THE COURT: All right. We will recess. Come back at
14 1:20. Okay?

15 UNIDENTIFIED SPEAKER: Thank you, Judge.

16 THE COURT: All rise.

17 (Recess from 12:21 p.m. until 1:22 p.m.)

18 THE CLERK: All rise.

19 THE COURT: Please be seated. We are going back on
20 the record in the Acis trial. Are you ready to call your
21 witness?

22 MR. CRUCIANI: Yes, Your Honor. Just, perhaps, a
23 quick housekeeping matter. I have Mr. Shaw's transcript. It
24 will be Exhibit 195 and Ms. Patel's Exhibit 196. If I may
25 hand up to you?

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1 THE COURT: You may approach.

2 THE CLERK: Was that Shaw 195?

3 MR. CRUCIANI: Yes.

4 THE CLERK: Patel 196?

5 MR. CRUCIANI: Um-hum.

6 THE COURT: All right.

7 MR. CRUCIANI: We call Mr. Jim Dondero to the stand.

8 THE COURT: All right. Mr. Dondero, if you could

9 approach our witness stand I'll swear you in.

10 Please raise your right hand.

11 (Witness sworn)

12 THE COURT: All right. Please be seated.

13 DIRECT EXAMINATION

14 BY MR. CRUCIANI:

15 Q. Good afternoon, Mr. Dondero. Could you please state your
16 name for the record?

17 A. James David Dondero.

18 Q. And who is your employer?

19 A. Highland Capital Management.

20 Q. What is your title with Highland Capital?

21 A. I'm president.

22 Q. Can you give us just some background on where you grew up
23 kind of, family members and all. Just tell us a little bit
24 about yourself, if you would.

25 A. I was born in Hoboken, New Jersey. Went to high school

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1 in Bergen County, Northern New Jersey. Went to University of
2 Virginia. Graduated in '84. Beta Gamma Sigma, Beta Alpha Psi,
3 top four percent of the class at Virginia. Got my CPA, CFA,
4 CMA exam. Worked for Morgan Bank, American Express, and in
5 Protective Life for a while before setting up Highland in '93,
6 '94.

7 Q. Okay. And Mr. Okada gave us a little bit of a history of
8 Highland, and so we can dispense with that. We already have
9 that in the record.

10 Tell us, in your capacity as president of Highland,
11 generally speaking, what are your duties?

12 A. To provide oversight, guidance, coordination, strategy,
13 in terms of different business initiatives.

14 Q. Okay. Now, the subject matter of this proceeding
15 involves, among other things, the CLOs. How significant of a
16 player is Highland in the CLO industry?

17 A. We were one of original founders. We did one of their
18 first CLOs back in the mid-nineties. We were very large
19 players prior to the crash. The crash created some
20 complexities in the business. The -- our portfolios were
21 over-weighted in some bad Credit Suisse deals, which ended up
22 having more volatility and -- more volatility than CLOs in
23 general, which hampered our ability to do CLOs post the crisis
24 and under the Highland brand, so we rebranded under Acis.

25 Q. And are you experiencing that same dynamic now in terms

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1 of back then you rebranded from Highland to Acis, and now
2 you're rebranding from Acis back to Highland?

3 A. Yes. Almost exactly. The old Highland deals have
4 phoenixed back, and the Acis brand is tainted largely by
5 litigation and Josh Terry publicity, you know, and to a lesser
6 extent, you know, the performance of the Acis deals has been
7 average.

8 Q. Okay. All right. Now, what we've seen a lot of
9 references to offshore entities throughout this proceeding,
10 Cayman Islands and elsewhere. Why is that? What is it about
11 the CLO industry that causes that phenomenon?

12 A. The entire CLO business, ninety-nine percent of it, is
13 based in the Cayman. They're structured vehicles that depend
14 on niches in the tax code that allow you to create,
15 essentially, a synthetic bank in the Cayman Islands, with the
16 entity itself not paying taxes but being a pass-through,
17 essentially, a PFIC or whatever. But it's -- it grew up in
18 the Cayman Islands, and virtually a hundred percent of the
19 business is in the Cayman Islands.

20 Q. And we may use some jargon, and just to have a clear
21 record, you said a PFIC and a "synthetic bank". Just so we
22 know what you're referring to, can you tell us what either of
23 those are?

24 A. Sure. Passive foreign income. That's a section of the
25 Tax Code, you know, that you have to be -- you have to be

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1 compliant. You have to buy loans that are existing, et
2 cetera. But essentially you buy a pool of loans, and then you
3 finance them with a series of securities, you know.

4 So you buy a hundred million dollars of loans, and then
5 you finance it with ninety million of debt and ten million of
6 equity. And then the debt is -- the ninety million of debt is
7 tranching into a AAA tranche or a AA tranche, a A or a BBB
8 tranche.

9 Q. Okay. And again, just for your edification, and I think
10 Mr. Okada, kind of, went through that whole structure, so just
11 for the sake of not being repetitive I'm not going to go over
12 that with you in any detail. Are there other types of either
13 industries, other types of financial products that Highland
14 has -- is a material player in -- besides the CLO industry?

15 A. Oh, sure. Institutional and retail products in a variety
16 of -- we have a reinsurance company in Bermuda and the Cayman.
17 We have a corporation that does largely marketing and business
18 development in Singapore. We do retail funds in the U.S. We
19 do some hedge funds in the U.S. We do real estate and REITs
20 in the U.S., and we do institutional money management in the
21 U.S. also.

22 Q. And you mentioned institutional and retail. Can you
23 explain a little bit what the distinction is there?

24 A. Retail products are generally '40 Act funds, and, you
25 know, some of them are REITs or real estate investment

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1 trusts -- operate under a different section of the Code. But
2 they're products geared for retail investors, you know, mom
3 and pop investors making 5, 10, 50,000 dollar investments, you
4 know, liquid listed on exchanges. That's our retail business.

5 And then the institutional business is more sophisticated
6 qualified investors in private accounts.

7 Q. Okay. All right. And I know that the ownership and
8 organizational structure is complex, but can you explain,
9 generally speaking, who owns Highland Cap?

10 A. Sure. Mark and I have been seventy-five/twenty-five
11 partners since the beginning, essentially. There were times
12 pre-crisis we brought in minority partners for ten percent of
13 the business, but since then we've bought out those partners
14 and they've retired.

15 About three years ago we sold Highland to a --
16 essentially what's a charitable remainder trust is a good way
17 to describe it. We sold it for noncash. Mark and I both got
18 a note that Highland has to pay back over time, and Highland's
19 been making payments on it. The note is principal and
20 interest.

21 It pays Mark and I over a fifteen-year period, and then
22 after that fifteen-year period the value of Highland or the
23 remainder amount goes to charity.

24 Q. So after fifteen years, what exactly happens to your
25 ownership or Mr. Okada's ownership in Highland?

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1 A. Well, we've already sold our ownership. It's a hundred
2 percent owned by the remainder trust. But, like I said, we're
3 capturing in the payoff of the note most of the value. Once
4 we've been paid off, the charitable remainder trust goes to --
5 and we can add additional charities to it, but right now it
6 defaults to Catholic Charities --

7 Q. Okay. Now, there's been a lot of discussion about
8 Highland affiliates in this matter. Do you have any
9 estimation of the number of Highland affiliates within the
10 corporate family?

11 A. I know we're set up -- I mean, I know our -- I know our
12 K-1s are more than a thousand. We have 1,500, 1,800. Maybe
13 more.

14 Q. And why is it? Why is Highland structured to have so
15 many entities?

16 A. It's by necessity. Each retail fund, each institutional
17 investor, each property, each development project we do when
18 we build something requires its own entity. A lot of times a
19 single entity, oftentimes a holding company entity that
20 captures multiple partners, but for sure a specific entity.
21 And it's driven by the market. I mean, it's, you know, the --
22 if you're, like, we're building a project in Phoenix. The
23 lenders to that project, we're providing a construction loan.
24 They don't want it to be an amalgamation of other things.
25 They want it -- they want an entity that has just that piece

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1 of land, just that project in it, you know, et cetera. And so
2 that becomes an entity.

3 And then we have partners in the equity in that deal, so
4 ended up creating an entity on top of that, which brings in
5 the other partners.

6 Q. So one deal may spawn multiple entities for a single deal
7 or a single project?

8 A. And I think that's typical, yes. You're correct.

9 Q. And are those sometimes called SPVs or special purpose
10 vehicles?

11 A. Yes.

12 Q. Okay. Now, do these Highland affiliates typically have
13 or not have employees?

14 A. It depends. Sometimes they'll -- a lot of times they'll
15 have none, you know, like that development project on
16 Camelback Road in Phoenix. You know, it has no employees, and
17 it's serviced by Highland employees under either direct
18 billing or a shared-services agreement.

19 Sometimes it'll be like our office in Singapore, where it
20 has one employee, but he's doing marketing and business
21 development. And all the other necessary services like
22 accounting and tax and -- are handled via some shared-services
23 agreement via Highland.

24 Q. Okay. And are you typically an officer in these
25 entities?

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1 A. Yes. I mean, ultimately it becomes partnership
2 accounting, but somebody has to sign for the partner, and
3 generally the GP is either Highland, and I'm signing for
4 Highland, or -- yeah, I mean, usually the GP in some form or
5 fashion is Highland, and I'm signing for Highland.

6 Q. And we'll talk about, sort of, signature authority in a
7 little more detail, but as you understand it, who, absent you
8 delegating them permission to sign on behalf of Acis, who has
9 permission to sign on behalf of Acis?

10 A. There's never more than three parties or three equity --
11 or three equity owners of Acis at its maximum: myself, Okada,
12 and Josh Terry.

13 From the very beginning I was the only one that had
14 signing authority when Josh was a member and after Josh was a
15 member.

16 Q. Okay. And so has that always been the case, that you've
17 been the lone person with signing authority, absent your
18 delegating that to someone else?

19 A. Yes.

20 Q. And what about Highland presently? How many individuals
21 have signature authority at Highland, again, absent
22 delegation?

23 A. Two or three.

24 Q. Okay. And is that why we'll often see you signing
25 documents on behalf of Highland and an affiliate?

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1 A. Yes.

2 Q. Okay. With all these thousands of affiliates, do you
3 make it your personal mission to attempt to keep track of the
4 ownership structure of each of these affiliates?

5 A. No.

6 Q. Who or what department is typically in charge of
7 maintaining the corporate formalities and such with respect to
8 the ownership structure?

9 A. Yeah, that's -- that's the important question. It comes
10 from -- what does it take for somebody to hit my desk for a
11 signature? What's the protocol? And everything comes through
12 legal department. I think -- especially post the financial
13 crisis, but post Dodd-Frank and post the regulatory burden
14 increasing for the last ten or twenty years, I mean, a firm
15 like ours has half a dozen people in compliance, you know, and
16 we have a -- and, you know, a firm like Citibank will have
17 floors of people in compliance. But everything runs through
18 compliance nowadays, where compliance is weighting issues
19 between funds, duty and care to investors, and regulatory
20 compliance.

21 Q. Okay. And we'll talk about compliance again in a little
22 more detail as well.

23 But let's turn to Acis. Do you recall approximately what
24 year Acis was formed?

25 A. Post the crisis, 2010, 2011.

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1 Q. And what role did Mr. Terry have in connection with the
2 formation of Acis?

3 A. He was one of the original partners, myself and Mark
4 Okada and him. He was responsible for building the CLOs or
5 getting the CLOs priced, so to speak. You know, getting the
6 liabilities priced and then working with Trey and our
7 investment professionals to put the portfolios together.

8 Q. And we've likewise seen some very complex organizational
9 structure for Acis. What role, if any, did Mr. Terry have in
10 setting up all that complex web of organizations for Acis?

11 A. He worked with outside counsel. It is very complex from
12 post Dodd-Frank, and it's complex from a tax standpoint.

13 Q. And testimony has been that Mr. Terry was the portfolio
14 manager of Acis. Was that correct?

15 A. Yes.

16 Q. And what are the duties of -- what were his duties as
17 portfolio manager?

18 A. Keeping the cash balances spent in the CLOs, because
19 things pay off and different loans will reprice, and keeping
20 the portfolio balanced and diversified, which is part of the
21 collateral-management agreement.

22 Depicting the underlying credits was something that was
23 separate and done by, you know, Trey Parker and the investment
24 staff. We have ten or fifteen people on the investment staff
25 that are mastering different industries and looking at, you

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1 know, individual investments, you know, and there's only two
2 or three people in structured product that would -- that
3 worked under Josh when he was there, so they weren't doing the
4 individual credits. They were just balancing the portfolio
5 and making sure the portfolios were compliant with the CMAs.

6 Q. And you've mentioned structured products. What is the
7 structured products group? What do they do?

8 A. They're the ones pooling the loans together in a pool.
9 You know, putting together, say, 500 million of them, and then
10 working with Mizuho, Goldman, somebody to come up with the
11 ninety percent financing and issuing the AAA securities and AA
12 securities, and the BBB securities.

13 Q. And you mentioned this ninety/ten. Is that, sort of, an
14 industry standard?

15 A. That's typical, yes.

16 Q. And where does the -- in the Highland or its affiliate
17 deals -- where does the ten percent equity come from
18 typically?

19 A. As far as Acis is concerned, virtually all the equity
20 came from either the DAF or from the large institutional
21 investor that we partnered up with a couple of years ago.

22 Q. And who presently are the key Highland managers in that
23 structured products group?

24 A. Well, replacing him on the portfolio-management side has
25 been Hunter and Neil, and then, you know, replacing him on

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1 some of the structuring underwriting side has been Dave Simek.

2 Q. All right. And when Mr. Terry was at Acis, was he a part
3 of that structured products group, or when he was at Highland,
4 was he a part of that structured products group?

5 A. Yes. He led that group.

6 Q. And can you give us a sense of how many loans or
7 industries that that structured products group covers?

8 A. Typically each transaction would be 150 different
9 investments. And if there were 6 or 7 transactions, there'd
10 be overlap between Acis 1, Acis 2, Acis 3, so there'd be some
11 credits that were in all of the deals, so you can't just say 7
12 times 150. You know, probably -- because again, there's
13 overlap -- maybe there were 6 or 700 credits in total. But
14 again, the individual names or the individual credits were
15 being selected and picked by Trey Parker and his group.

16 Q. Okay. And when Highland makes an investment, was it
17 common for Acis to more or less piggyback on a Highland
18 investment?

19 A. Yes. I mean, because again, the competency to select
20 individual loans and pick individual investments was in Trey
21 Parker's area. In the structured product group, nobody in
22 that group other than, I think, Josh had spent a couple of
23 years in credit early in his career, but nobody else in that
24 group had ever analyzed individual investments, and they were
25 piggybacking off of the Highland portfolio selection or

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1 investment selection.

2 Q. And how, if at all, does it benefit Acis to be able to
3 rely on the analysis of the Highland employees in terms of
4 deciding what loans to put into the CLO?

5 A. It's critical. I mean, it's -- the fees that CLO
6 managers have gotten over the years have come down enormously,
7 and if it wasn't for being able to lean on those services from
8 Highland at a relatively cost effective basis, there would be
9 no profitability at Acis if Acis had to hire fifteen or
10 sixteen analysts.

11 Q. And let's talk a little bit about your Acis duties or
12 positions. Do you know what offices that you hold within
13 Acis?

14 A. I believe I was the president there also.

15 Q. And do you have any day-to-day management
16 responsibilities to speak of for Acis?

17 A. No. I didn't then, and I don't now.

18 Q. What, historically, have been, to the extent you have
19 them, the duties that you performed on behalf of Acis?

20 A. Strategy. You know, when to refinance or not refinance a
21 deal, when to price a deal, when the market is attractive to
22 put a pool of loans together. Helping select, you know,
23 underwriters. You know, coordinating our marketing team with
24 the structured products team to try and raise money from
25 third-party investors.

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1 Q. Okay. Now, let's talk about -- we talked about your
2 beneficial ownership and the structure of that ownership in
3 Highland. On a percentage basis, what is the split between
4 you and Mr. Okada on the Acis side from ownership?

5 A. You know, automatically when people leave Highland they
6 give up their interest in any entities at Highland. So when
7 Josh left his interests were split between Mark and I, and
8 Mark and I fell back to that seventy-five/twenty-five percent
9 virtually immediately when Josh left in Acis.

10 Q. So when you have transaction involving Highland on the
11 one end and Acis on the other, do you have any financial
12 incentive to favor one over the other?

13 A. No.

14 Q. Another entity that's been mentioned is the Dugaboy
15 Investment Trust. What is the purpose of that trust?

16 A. It's an estate planning. It's a perpetual Delaware
17 trust. It's -- I'm their trustee as long as I'm alive, and
18 then it spills into my children.

19 Q. And who are the beneficial owners of that trust?

20 A. I am until I die, and then it spills into -- it's -- the
21 primary purpose of the trust is generation -- as far as I
22 understand it, it's generation skipping, and it uses part of
23 your exemption.

24 Q. Okay. Now, given the way that we have these structured
25 and your signature authority, does that give rise to potential

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1 or real conflicts of interest in the ordinary course of
2 Highland doing business through its affiliates?

3 A. Yeah, we touched on this a little bit earlier. I mean,
4 that's why I said, you know, nothing -- nothing gets signed
5 organizationally until it goes through compliance. And
6 compliance is -- again, going back to Dodd-Frank, compliance,
7 and your compliance officer has personal liability for
8 anything that's improper or fraudulent, right? Like, that's
9 what Dodd-Frank did. It stepped up the chief compliance
10 officer to have the same personal liability that C-Suite
11 executives, CEOs and CFOs, have in public and private
12 companies.

13 So the chief compliance officer is very empowered in our
14 organization and every financial services organization. So
15 he's looking at things carefully in their fairness, their
16 spirit. A phrase they use all the time, but whenever someone
17 tries to get too clever, is you can't do something indirectly
18 that you can't do directly, you know. And the chief
19 compliance officer is weighting any conflict between different
20 Highland entities, if we own -- also own debtor equity, making
21 sure it's fair, and really holding tantamount responsibilities
22 we have to investors. Because in the big scheme of things,
23 from a regulatory perspective, regulators don't really care if
24 the mix between a different Highland entity is up by a penny
25 or two. But if anything is done to impair or disadvantage an

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1 investor, they will come after you for that, and you can go to
2 the big house for that. So that's how I would describe their
3 role.

4 Q. And who is that chief compliance officer at Highland?

5 A. For almost a decade now it's been Thomas Surgent. But
6 again, he has a staff of at least -- at least three or four,
7 maybe five people working for him, checking everything.

8 Q. Who does he report to?

9 A. Well, again, in some sense he reports to nobody. I mean,
10 he reports to -- I mean, he -- he has that much power, you
11 know, period, and I don't do anything about running anything
12 without running everything through him.

13 I think as far as staffing and operations, he reports up
14 through legal and reports up through Scott Ellington.

15 Q. What type of access does Mr. Surgent have to you
16 personally?

17 A. Immediate and constant. He's in my office two or three
18 times every day.

19 Q. And in the grand scheme of things, and you perhaps
20 touched on this, how -- you have different departments with
21 Highland: front office, back office, accounting, legal,
22 whatever. How important is the compliance department within
23 Highland?

24 A. Like I said, it's critical. You know, like if we have,
25 like in this case, a former employer that goes to the SEC

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1 three or four times and, you know, complains or makes up
2 stories, you know, he has to be able to dialogue with the SEC.
3 He needs to be able to prepare and coordinate, you know, any
4 responses or any information that they need. It's critical.

5 Anytime we get an institutional client, the first thing
6 they diligence is the soundness and independence of our
7 compliance office. You know, so it's a real job.

8 Q. And I take it that conflicts will typically involve legal
9 issues of some kind?

10 A. Yes.

11 Q. Are you an attorney?

12 A. No, I'm not.

13 Q. Are you, in your mind, qualified to be the one making
14 legal decisions on how to handle conflicts?

15 A. No.

16 Q. Now, you're at the top, I think, of the organizational
17 chart for over 1,000, perhaps over 2,000 different entities.
18 How, in general, are conflicts or potential conflicts handled,
19 given these vast number of entities within the Highland
20 structure?

21 A. Typically, if there's -- there are two sides or two
22 different entities, typically there's an advocate for each
23 side. And they typically, the advocate for each side
24 understands that it needs to be fair. But the advocate for
25 each side ends up presenting or dialoguing with Thomas Surgent

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1 on the final splits. And then he -- he looks at it carefully,
2 and he -- he opines on the -- on any -- anything that overlaps
3 or any final split.

4 Q. Okay, assume that a certain transaction is not in
5 Highland's best financial interest, but is in the best
6 interest of its equity investors. How in general would that
7 type of conflict be handled?

8 A. Yeah, I -- I use the word "tantamount" (ph.). Maybe
9 first priority or -- or trium -- it's -- it's -- it's -- it's
10 not an equal -- it's -- it's a -- it's a clear priority to
11 investors. It -- it's -- it trumps any interests or any
12 competing interests of Highland funds, period.

13 Q. And assume that there was a particular transaction that
14 was not in Acis's financial interest to engage in, but it was
15 in the interest of the investors. How would that be handled?

16 A. The first and foremost responsibility is to -- is to
17 investors, and the liability from clear regulatory statutes
18 and whatever would be on the manager or anybody who
19 didn't -- or moved adverse to the investors.

20 Q. Now, have -- you're familiar with the CLO 3 reissuance
21 that was scheduled to close on February 1st, and for obvious
22 reasons did not; you're familiar with that?

23 A. Yes.

24 Q. Now, did the investors indicate their interest in
25 proceeding with that transaction?

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1 A. Oh yes.

2 Q. All right, now, you understand that Mr. Terry argues that
3 as a judgment creditor of Acis it was not in his interest or
4 Acis interest for that transaction to go forward; do you have
5 that understanding?

6 A. I didn't know he'd be crazy enough to argue that.

7 That'll get you -- that'll get you to --

8 Q. Okay.

9 A. -- to the big house.

10 Q. But just -- just assume for the moment that Mr. Terry's
11 position is because Acis is not getting anything for the
12 transfer of these collateral-management agreements that this
13 transaction should not go forward. Assuming that's his
14 position, how would you reconcile that position with the
15 position of the investors of I want this deal to go through?

16 A. The investor wishes have to be respected, period. And I
17 think the -- what's happened in the market is two things,
18 right. Like, the -- the cost of borrowing to ninety percent
19 has come down monumentally, like, mortgage rates coming down
20 from five, six percent to two or three percent, right.
21 There -- there's that aspect, but the other aspect is the pool
22 of loans that are being financed used to yield LIBOR plus
23 three, LIBOR plus four, five, six, seven percent.

24 But as the economy has gotten better, the rates on those
25 have compressed a lot. So what's happened in the equity

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1 investors are getting squeezed by two things. They're getting
2 squeezed by their funding costs are too high and need to be
3 reset lower, but they're getting eaten alive because their
4 assets don't yield as much as they used to.

5 So every -- every day that goes on where the deals aren't
6 refinanced, the returns to the equity investors are materially
7 less, if not zero, compared to what they would be otherwise.

8 Q. Okay, and we'll probably return to that in just a bit.
9 Let's talk about duties. Do you understand whether Acis owes
10 a fiduciary duty to anyone or any entity?

11 A. I -- Acis as the collateral manager signs a collateral-
12 management agreement with each of the CLOs to do its best
13 managing and optimizing the CLOs. So by not refinancing them,
14 it's not -- it's either directly or indirectly violating or
15 violating the intent or the spirit of that collateral-
16 management agreement.

17 Q. Let's get back to signatures for a minute. Do you have
18 any just ballpark estimate of the number of corporate
19 documents that you sign as officer for Highland or Highland
20 affiliates in the course of a given year?

21 A. A few hundred a week, I probably signed thirty this
22 morning.

23 Q. And describe the process on how that is typically carried
24 out in terms of whether you sign or have someone else sign, or
25 do half, whether you typically read the documents or don't

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1 read them. Just give us a general flavor of the thirty
2 documents you signed this morning, how that was carried out.

3 A. The documents I signed this morning, one was an MOU to
4 partner with a Brazilian latex farmer to form a joint venture
5 on a latex glove company that we have in Brazil that was
6 written in Portuguese.

7 I also signed a letter of intent on a RIA, registered
8 investment advisory firm out of Denver that we're going to
9 (sic) due diligence to try and buy them.

10 I also signed the purchase certificates on a company
11 called American Banknote that the shareholder agreement has a
12 ROFR that allows all the shareholders to buy a piece if any
13 seller sells it, whatever, et cetera. So a different owner
14 sold their piece and we had a right to buy it, so we exercised
15 the ROFR.

16 Yeah, and then I signed some accounting certificates for
17 audits. Year-end audits are being done in a lot of different
18 entities, so just rep letters that say nothing material's
19 happened since whatever.

20 Q. And how long would you estimate it took you to go through
21 and sign these thirty or so documents you signed this morning?

22 A. Three minutes, two minutes.

23 Q. Okay, so you're not generally reading documents when you
24 sign them.

25 A. Right, like I -- like I -- I'm depending upon protocol

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1 and depending upon good and capable people. We have 150
2 people working at Highland in the U.S. and another, whatever,
3 half-dozen around the world, but doing various different
4 deals, getting the deals approved through credit committee in
5 the investment process, but then getting the documentation
6 approved through legal before it hits my desk.

7 Q. And who generally are you relying upon such that you're
8 comfortable signing something without reading it and making
9 sure that it's proper in all respects?

10 A. I'm depending upon the businesspeople in business issues,
11 and I'm depending upon the lawyers on drafting and compliance
12 on anything that has overlap or competing issues.

13 Q. Is it common for you to have a big stack of documents
14 waiting for you on your ledge or on your desk, something like
15 that?

16 A. Yes.

17 Q. Now, let's talk about how you sign. Do you sometimes
18 physically sign documents?

19 A. Yes.

20 Q. And do you ever use a stamp or an electronic signature?

21 A. No. I'll have my assistant sign if I'm not around or I'm
22 not available.

23 Q. Okay, so your assistant will sometimes sign documents on
24 your behalf?

25 A. Yes.

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1 Q. And is there any sort of protocol you have with your
2 assistant by which she knows that she's authorized to sign a
3 particular document?

4 A. Yeah, I mean, unless it's routine accounting forms or
5 something, that's -- that's the only thing I would say she has
6 kind of full discretion on. But -- but everything else,
7 she'll -- she'll ask me, via text or email, and I'll
8 usually -- I'll just tell her yes.

9 Q. So again, we have a lot of documents with your signature
10 on them that are exhibits in this case. Should we draw any
11 conclusions if we see your signature on a document that you
12 were the person who negotiated the agreement, for example?

13 A. Rarely am I involved in any kind of degree on
14 negotiation.

15 Q. And what it be more common or not that you typically, on
16 transactional-type documents, would not even have read the
17 document, but rather relied upon somebody else to tell you it
18 was okay to sign?

19 A. That's right.

20 Q. Okay. Let's talk about authority. I take it you
21 obviously have decision-making authority at Acis.

22 A. Yes.

23 Q. And depending on the issue, do you ever have occasion to
24 delegate authority to others?

25 A. Yes.

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1 Q. In connection with this lawsuit, who have you authorized
2 to make legal decisions or sign legal documents on behalf of
3 Acis?

4 A. Scott Ellington.

5 Q. Okay, and what about Mr. Leventon?

6 A. Yes, I think it's primarily Scott, but yes.

7 Q. And there's been some questions raised in this case by
8 Mr. Terry and his lawyers about whether Mr. Ellington and Mr.
9 Leventon are authorized to sign documents on behalf of Acis.
10 So what's the answer to that?

11 A. Yeah, I mean, they're -- they're representing Acis and
12 Acis's interests since Josh left. You know, I'm -- I -- I
13 don't know. I've been -- I don't know the exact signing
14 protocol or whatever.

15 Q. So maybe a bad question -- is there any -- is it clear
16 that you, in fact, have delegated to Mr. Ellington and/or Mr.
17 Leventon authority to sign documents in this case legal
18 matters?

19 A. Yeah, and it -- well, yes, and to represent Acis and then
20 there's another in-house attorney on anything Acis related to
21 represent Highland, and then -- but everything then filters up
22 through or gets approved by Thomas Surgent in the middle, as
23 compliance.

24 Q. Okay. Let's look at a document that you signed. It's
25 Exhibit 13. It is -- it is a notice of list of creditors that

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1 was filed in this case on January 31st.

2 MR. CRUCIANI: Omar, if we could go to the signature
3 page, please.

4 Q. And can you tell from this signature whose -- whose
5 signature that is?

6 A. I mean, it's my signature. I would have -- it looks like
7 my assistant, but you know, whatever. I -- I'm not
8 saying -- I -- I did authorize her.

9 Q. And that was just a technical question. Whether you can
10 tell from the signature whether it was you signing it or
11 whether it was your assistant signing with your permission.

12 A. My -- my Ds are usually a little bolder.

13 Q. So likely your assistant on this one?

14 A. Yes. Yeah.

15 Q. Okay. Did you do any type of independent investigation
16 into the creditors listed here, the amounts owed that are
17 listed on this sheet, or did you rely upon others?

18 A. Yeah, I relied on others.

19 Q. And who would that have been, what department?

20 A. I'm -- it would've been both the accounting department
21 and the legal department.

22 Q. Okay. Let's look at Exhibit 14, please. And let's go to
23 the signature page, which is 15 of 22. And just for
24 reference, this is an agreement for purchase and sale of CLO
25 participation interests between Acis and Highland dated

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1 October 7, 2016. And is that your signature or your
2 authorized signature there?

3 A. Yeah, I believe that's mine. The D's a little bolder.

4 Q. Okay, let's go to the beginning of the document, so page
5 3 of 22, the recitals. And let's put this in a little bit of
6 context. Timing wise, Mr. Terry was terminated by Highland in
7 June of 2016. Does that sound about right?

8 A. Yes.

9 Q. Okay, and this document -- and again, if you need ever to
10 see the full document hard copy, let me know, and I'm happy to
11 send it up to you. But this document, the agreement for
12 purchase and sale of CLO participation interest, you'll see
13 it's got a proper mark on that page that it is dated October
14 7, 2016.

15 A. Right.

16 Q. Okay, so this is some four months after Mr. Terry was
17 already gone?

18 A. Yes.

19 Q. What -- what in general was taking place in this time
20 period within Acis?

21 A. Okay, again, repeating what I said earlier, immediately
22 after upon leaving, employees or partners give up interest
23 they have in whatever funds. So immediately upon Josh's
24 leaving back in June, the partnership became just Mark and I.
25 So Acis at this point is just Mark and I, 75/25.

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1 What this transaction was and was meant to be and never
2 was anything more was a tax-planning strategy to reduce taxes.
3 Because Acis was a full taxpaying entity and Highland wasn't.
4 You know, the creation of the note of Highland paying Acis a
5 note, that note -- Highland never got any monies for it.
6 Highland never got any value for it, other than a promise for
7 Acis to pay its management fees over time.

8 Right, so essentially, it was a selling of the future
9 value of management fees for a note, and the way the note was
10 structured and recommended from the tax attorneys would shift
11 some of the income-tax expense to a lower taxpaying entity at
12 Highland.

13 Q. I want to make sure we don't gloss over that point. This
14 Is not like I -- for example, I refinanced my house recently,
15 give a note to the bank, but I get cash money at closing from
16 the bank. Are you saying that did not happen here?

17 A. Correct. In October, Highland got nothing other than a
18 promise for Acis to pay. And all the payment schedule -- the
19 amortization on the note was timed exactly to match the
20 expected management fees as Acis got them in.

21 Q. Okay.

22 A. Does that make sense?

23 Q. Yeah, so -- so what was the basic trade here as you
24 understand, or what was Highland giving to Acis and what was
25 Acis giving to Highland?

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1 A. Highland was giving Acis a note, and Acis gave Highland a
2 promise to pay a discrete amount or percentage management fees
3 going forward. And the two numbers almost net out over time.

4 Q. And you mentioned an amortization schedule. Let's go to
5 the last page of the document, Exhibit A, which is entitled
6 "Amortization Schedule". And we see the initial note amount
7 of roughly 12.6 million dollars, and then a paydown to 9.5
8 million dollars in May of 2018, and another paydown of the 4.5
9 million dollars in May of 2019. So tell us what you mean when
10 you're saying this -- this note amortization schedule was tied
11 to the expected service fees from Acis. How did that work
12 exactly?

13 A. There's another agreement. There's got to be another
14 agreement of what Acis promised to pay to Highland, right.

15 Q. Right.

16 A. And if you look at those percentages or those numbers in
17 aggregate, plus/minus some small interest differential, it
18 equals that 12.6 over the same period.

19 Q. Okay and, in fact, let's look at paragraph 1.1, purchase
20 price on page 2. And in this document, the seller is Acis and
21 the purchaser is Highland, for ease of reference. So in
22 consideration of the sale of the Acis participation interests
23 to Highland, Highland shall pay 660,000 dollars in cash and
24 deliver a promissory note with the 12.6 million dollars. Do
25 you see that, sir?

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1 A. Yes.

2 Q. Okay, and then above that, it says the seller, which
3 would be Acis sells to Highland participation interest in the
4 service fees defined as the Acis participation interest in an
5 amount equal to the total servicer fees paid to seller by each
6 of the CLOs, beginning in November 2016 and ending August
7 2019, and in the aggregate for a particular payment date, less
8 the service fee or retention amount with respect to each CLO
9 as shown on Schedule A. Do you see that?

10 A. Yes.

11 Q. Okay, and then let -- let's -- is that what you were
12 referring to earlier?

13 A. Yes.

14 Q. Okay.

15 A. Yes.

16 Q. And then if we go to page 16 of 22, there's another
17 schedule here, Schedule A participation interest.

18 A. Right.

19 Q. And you see there are Acis 1, 3, 4, 5, and 6 in three
20 columns. Can you explain these three columns and economically
21 what this reflects?

22 A. I'm sorry. I wasn't paying attention to that.

23 Q. Sure.

24 A. But -- but -- but essentially, one of those columns
25 reflects the amount that's in the paragraph you were just

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1 highlighting. One of those columns reflects the amounts that
2 are going to be paid to Highland in consideration for the
3 note.

4 Q. And I think this is defined -- we just got done looking
5 at is the Acis participation interest, so for example,
6 on -- on Acis CLO 1, it shows total servicer fees of fifty
7 pips with the servicer fee retained at Acis of twenty pips,
8 and then Acis transferring thirty pips to Highland. Have I
9 accurately summarized how that works?

10 A. Yes.

11 Q. Okay. And do you know why this -- the timing of this
12 went through August 2019 -- from the November 2016 through the
13 August 2019 period in terms of these participation interests?

14 A. Because that's what it took for it to pay off in full.

15 Q. You were trying to match the amount of the note in the
16 600,000 dollars or so of cash?

17 A. Yes. Just to be clear on the context here; internally,
18 we never thought the Josh dispute was ever more than a
19 million-dollar issue. We thought Acis would continue to exist
20 when he -- when he first left. We hadn't at this point been
21 sued for 210 million dollars. We hadn't gone through a rodeo
22 of defamation and other things.

23 This was just a tax-planning strategy. This was just a
24 way how can we reduce taxes by a couple million bucks. That
25 was our tax attorneys coming to us and saying well, you have

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1 this full taxpaying entity, Acis over here. Highland pays
2 less than full tax rates over here. You can shift some of the
3 income by selling forward some of the management fees for a
4 note. And that's what this is.

5 And when you look at all the details like why was there a
6 600,000-dollar cash payment, it's just because the tax
7 attorneys come back and say well, it can't just be completely
8 notes. There has to be at least ten percent, twenty percent,
9 whatever the percentage is that's noncash et cetera. And it
10 has to go out for longer than a year. That's why it's
11 probably three years, whatever. It can't be a hundred percent
12 of the fees. It needs to be -- that's why there's a split
13 between the retention amount, whatever. But all this detail
14 stuff was driven by taxes.

15 Q. And you understand you made reference to Mr. Terry
16 already being gone at this point in time four months earlier.
17 You understand that actually Mr. Terry sued Acis in the
18 arbitration claiming this transaction was a fraudulent
19 transfer.

20 A. I believe so, yes.

21 Q. You understand that particular claim was rejected by the
22 arbitration panel?

23 A. Yes.

24 Q. Did Mr. Terry -- after he was terminated, did he retain
25 any ownership interest of any kind in Acis?

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1 A. No.

2 Q. Let's just look -- again, I think you've summarized
3 what's going on here, but if I could just walk through a
4 couple of the specifics in the recitals. If we can go to page
5 3 of 22.

6 The first recital, first whereas clause -- actually,
7 second whereas clause says, "Whereas, all of the reinvestment
8 periods of the CLOs will have expired by August 2019"; do you
9 see that, sir?

10 A. Yes.

11 Q. And we just got done looking -- you don't have to flip
12 there, but the payments went from November 2016 through August
13 2019. So is that why that end date was chosen?

14 A. Probably, yeah.

15 Q. And what is a reinvestment period, by the way?

16 A. It's a period of time at which the CLO or the pool of
17 loans is allowed to reinvest any loans and payoff, so in other
18 words, it keeps its full balance. After that, it amort -- the
19 balance of the loans is shrinking.

20 Q. You're basically -- after the reinvestment period, you're
21 just selling off loans but not putting new loans into a CLO?

22 A. Yes, loans are paying off and then the money is reused to
23 pay down the AAA first, then AA.

24 Q. The fourth whereas clause says, "Seller has recently
25 engaged an investment bank to actively market a new CLO to

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1 prospective investors." So this was October 2016, which was a
2 full year before the arbitration award; does that sound right,
3 timing wise?

4 A. Yes.

5 Q. So to the extent there was any suggestion in this case
6 that this whole CLO restructure process was motivated by an
7 attempt to avoid Mr. Terry's arbitration award without being
8 bankrupt?

9 A. No.

10 Q. Then -- now, you were -- you and Mr. Okada were actually
11 at this point receiving or entitled to receive your 75/25
12 partnership distributions, correct?

13 A. Correct.

14 Q. And then look at that, it's the third whereas clause from
15 the bottom. It says, "Whereas, seller has determined to stop
16 making annual distributions of excess cash to seller's
17 partners, while efforts are underway to form new CLOs." Do
18 you see that?

19 A. Yes.

20 Q. I think it's been suggested that there was something
21 perhaps untoward that there had been no distributions since
22 2016. Does this explain why that was the case?

23 A. Yes. Yes.

24 Q. Okay, let's go onto another document. Actually, this is
25 the companion document. Let's look at Exhibit 15 signed --

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1 the document signed the same date, October 7, 2016. And let's
2 go to the signature page there of this promissory note. And
3 is that you signing on behalf of Highland Capital Management,
4 L.P.?

5 A. Yes.

6 Q. And I think this is probably obvious, but why are
7 Exhibits 14 and 15 both dated October 7, 2016?

8 A. Because they're paired together.

9 Q. Okay, and we've looked -- I think it was an exhibit to
10 the other one, the amortization schedule. But let's actually
11 go to the note, the amortization schedule at the end here. Do
12 you know -- it's not reflected in the amortization schedule,
13 but do you know whether Highland, in fact, made that initial
14 666,000-dollar payment to Acis?

15 A. I believe we -- we -- we did everything according to
16 schedule, yes.

17 Q. Okay, and then this first payment that reduced the
18 balance from 12.6 million down to 9.5 million, do you know
19 whether that payment was made?

20 A. Like I said, I believe we -- we adhered to everything in
21 the document.

22 Q. Okay. Let's move onto Exhibit 16. This has been the
23 subject of a lot of discussion. It's alleged in this case
24 that this is a fraudulent transfer occurring post-arbitration
25 award. This is an assignment and transfer agreement dated

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1 November 3, 2017. And you'll see at the beginning paragraph
2 the parties are Acis, Highland, and then an entity called
3 Highland CLO Management, Ltd. with a acronym "HCLOM". Do you
4 know the function or purpose of HCLOM?

5 A. Not -- not specifically.

6 Q. And there are a lot of acronyms here, so let me maybe
7 help you out on this one if I may. I believe this was the
8 entity designed to be the successor portfolio manager to Acis.
9 Does that perhaps refresh your memory on it?

10 (Sneeze)

11 A. Bless you. Yes, okay.

12 Q. Okay, and let's go back to the signature page here. And
13 there's your signature on behalf of Highland and on behalf of
14 Acis. And then there's actually another signature here on
15 behalf of Highland CLO Management, Ltd. I'm not sure if you
16 can make out that signature or not. Do you know who's
17 actually signing that? Can you tell?

18 A. No. I imagine it's one of the board members of that
19 entity.

20 Q. And why is it that this Cayman entity has a -- is a -- is
21 signing this agreement; do you know?

22 A. I believe -- I would -- I'm guessing it's a -- a
23 requisite for a Cayman Island entity to have approval of the
24 board member -- or a board member.

25 Q. Okay, and I see this is on behalf of the director, this

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1 signature you see there at the bottom?

2 A. Yes.

3 Q. All right, now, this timing wise was entered about two
4 weeks after the arbitration award. So first question is did
5 you have any role in negotiating Exhibit 16?

6 A. No.

7 Q. What role, if any, did you play in connection with
8 Exhibit 16?

9 A. Just final approval.

10 Q. Do you know -- do you have any understanding about what
11 group of people would have been responsible for putting
12 together the document -- for putting together the document?

13 A. Sure. Yeah, I mean, the general context is we'd been
14 negotiating for months with a large institutional investor out
15 of Boston to come in for approximately fifty percent of the
16 ALF. And the investor came into fifty percent of the ALF
17 based on a schedule of refining -- refining and redoing of the
18 various different Acis transactions.

19 The refi -- the refining the whole operation of the ALF
20 post the investor coming in from Boston was all dependent upon
21 getting as far away from Acis and a new collateral manager as
22 possible. And so this was part of that as far as I
23 understand.

24 Q. To your understanding, was that institutional investor
25 willing to invest if Acis remained as collateral manager?

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1 A. No, the way it was described to me, which I believe and
2 have no reason to disbelieve even at this point, is no
3 investor or no underwriter wanted to have any legacy or
4 reputational exposure to Acis, period.

5 Q. And again, this is sort of coming full circle. Highland
6 had this problem '08, '09 period and now it's Acis having this
7 brand period.

8 A. Yeah, I would describe it as different. I mean, Highland
9 back in the day was performance related to real estate. You
10 know, the Acis problem is terrorism around a former employee
11 trying to reputationally tarnish in the press as much as
12 possible a brand.

13 Q. Okay. Let's look at a couple of the whereas clauses here
14 if we may, on the first page. The third whereas clause says,
15 "Highland has notified Acis that Highland is unwilling to
16 continue to provide support personnel and other critical
17 services to Acis with respect to the CLOs." Did Highland have
18 that right to do that?

19 A. Yes.

20 Q. And why was that Highland's position?

21 A. It -- it's under no obli -- it's under no obligation. As
22 a matter of fact, the -- the only reason why it was at this
23 point was to just facilitate the refinancings, you know, but
24 it -- but it's under no obligation to provide services to a
25 shell.

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1 Q. The next whereas clause says, "Acis has determined that
2 the effect of the notification is that it cannot fulfil its
3 duties as portfolio manager of the CLOs." Why was that the
4 effect of Highland's notification?

5 A. Because there are no employees and no capacity at Acis to
6 manage the underlying CLOs.

7 Q. Those last two whereas clauses say, "Acis is expected to
8 incur significant costs and expenses relating to ongoing
9 claims and litigation." Would that be with respect to Mr.
10 Terry?

11 A. Yes.

12 Q. And also "is expected to have ongoing accounting and
13 administrative expenses." Do you see that?

14 A. Yes.

15 Q. Let's go to the next page, Exhibit 4 -- excuse me,
16 paragraph 4 that addresses these legal and administrative
17 obligations. It says, "In any event Acis delivers written
18 notice to HCLOM that Acis is unable to pay when due any Acis
19 expenses, then HCLOM shall promptly pay to Acis" -- I'm going
20 to paraphrase -- the two million dollars of legal expenses or
21 the one million dollars of administrative expenses. Do you
22 see that?

23 A. Yes.

24 Q. So this, to your knowledge, prior to the bank accounts of
25 Acis being garnished by Mr. Terry and him throwing Acis into

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1 involuntary bankruptcy, was there ever an occasion, to your
2 knowledge, where Acis was unable to pay when due its expenses?

3 A. No, there were none.

4 Q. Therefore, was there ever any occasion to trigger this
5 particular expense and support provision?

6 A. No.

7 Q. Now, if there came a time with litigation costs and other
8 expenses where Acis was unable to pay its expenses when they
9 became due, what was your intent in signing this as to whether
10 or not HCLOM would honor this and make the payment?

11 A. We would -- we would honor it and -- and pay as
12 appropriate.

13 Q. Now, you referred to this three million dollars of
14 expense reimbursement in your deposition. I think you called
15 it a windfall to Acis. Do you recall that?

16 A. Yes.

17 Q. Can you explain to the Court why you view this as a
18 windfall?

19 A. Okay, without repeating myself too much, again --

20 Q. Yeah.

21 A. -- right, the note was created, became an asset and a
22 liability of Acis long after Josh Terry was there. There was
23 an offsetting asset. There was an offsetting liability. It
24 was -- it was created for tax purposes, and it was created
25 assuming Acis was going to be an ongoing entity and ongoing

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1 operating entity.

2 In raising money from new investors, and as the
3 litigation got more heated, it was clear Acis wasn't going to
4 be a ongoing entity in any form or fashion with regard to
5 Acis's 1, 2, 3, 4, 5, 6, 7.

6 The unwinding of the note plus unwinding of the
7 liabilities, which netted each other, which were never an
8 asset of Josh's in any form or fashion and were never really
9 of any net value anyway, the -- giving three million dollars
10 to Acis in terms of expense and fee reimbursement is
11 unwarranted based on the economics and really a gift to Acis,
12 period.

13 Q. Okay. Well, let's look at that netting that you talked
14 about with respect to the promissory note versus the service
15 fees as reflected in the balance sheets of Acis. And if we
16 can go to Exhibit 177, please.

17 MR. CRUCIANI: And Omar, if you'll drop down in the
18 middle there under "Other Current Assets". You see there's a
19 line item for HCM loan participation note of the 12.6 million
20 dollars, roughly? There you go.

21 A. What's the date on this?

22 Q. I'm sorry, this is December 31, 2016, so shortly after
23 the transaction was made and before there was anything.

24 A. Okay.

25 Q. Okay, so there's an asset reflected in the face amount of

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1 the note, correct? Okay, let's go to the second page on the
2 liabilities, again in the middle there you'll see "Due to
3 HCMLP participation fees" 11.9 million dollars. You see that?

4 A. Yes.

5 Q. So we've got the asset not exactly offsetting but roughly
6 offsetting liability, correct?

7 A. That's right.

8 Q. All right, and then the actual spread there if you did
9 the math is about roughly 700,000 dollars it looks like, the
10 way -- if you compare the note, the asset on the balance sheet
11 versus the liability on the balance sheet.

12 A. Yes.

13 Q. All right. Let's go to Exhibit 103, and Exhibit 103
14 should be an August 31, 2017 balance sheet.

15 MR. CRUCIANI: And let's go on the first page, Omar,
16 that will be the same -- same spots on the balance sheet.
17 You'll see -- yeah, thank you for doing that.

18 Q. The HCM loan participation note has now been reduced 9.5
19 million. Do you see that, sir?

20 A. Yes.

21 Q. Then if we go to the next page and look at the
22 corresponding amount -- liability, it's roughly 7.9 million
23 dollars. Do you see that?

24 A. Yes.

25 Q. And that's -- if you do that math, it's roughly 1.6

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1 million dollars. Does that sound about right?

2 A. Yes.

3 Q. And you'll see the total equity there is 3.3 million
4 dollars. Do you see that?

5 A. Yes.

6 Q. So if all you did was focus on the note and only the
7 note, by removing the note from the balance sheet as an asset,
8 that has an effect of reducing the total equity by the amount
9 of the note, 9.5 million. That's all you looked at, right?

10 A. Right.

11 Q. But is that the right way, in your view, to look at this
12 transaction?

13 A. No. They were -- it was -- it was a paired transaction.
14 It always was a paired transaction.

15 Q. And so in that respect, is it your view that you have to
16 consider the 7.9-million-dollar corresponding liability?

17 A. Yes.

18 Q. And by the way, nowhere reflected on here is
19 the -- unless I've missed it -- I don't think I have, is the
20 three-million-dollar windfall that you just got done talking
21 about, that was a receivable to which Acis was entitled,
22 correct?

23 A. Yeah. I believe the accountants viewed it as contingent
24 and therefore not an asset yet. You know, if it -- if it
25 starts being exercised or applied then it would hit the -- hit

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1 the financials.

2 Q. Okay, let's do one more on the balance sheet. If we
3 could go to Exhibit 88, the December 31, 2017 balance sheet.
4 And this is shortly after the November transaction we got done
5 looking at. And if you'll look on the asset side, you'll see
6 there is no promissory note here. The total assets at this
7 point are 2.8 million dollars. Do you see that?

8 A. Yes.

9 Q. But likewise, there is no -- if you go to the
10 liabilities, there's no corresponding liability on the balance
11 sheet either, correct?

12 A. Yes.

13 Q. And we see a total equity of about 863,000, and again,
14 that's not including the three million dollars that we just
15 got done talking about, correct?

16 A. Correct.

17 Q. Okay, let me go back in time for just a minute. I want
18 to return to Exhibit 14. And just so I don't whipsaw you on
19 this, Mr. Dondero, this is the original October 2016
20 transaction that we just got done talking about, okay.

21 A. Yes.

22 Q. All right, so it's been pointed out in this proceeding
23 that -- and let's go to paragraph 3.6. That's at the bottom
24 of page 6 or 8 of 22. And it says at the very bottom, "Should
25 the seller's rights with respect to the service fees be

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1 terminated, such termination shall not affect the purchaser's
2 obligations under the note." Do you see that?

3 A. Yes.

4 Q. And I believe it's Mr. Terry's position and argument that
5 Exhibit 14 does not condition payment by Highland of the
6 promissory note to receipt of service fees from Acis. So what
7 is your response to that contention?

8 A. It was always a -- it was always a paired transaction,
9 and the tying of the two together and a recommendation for
10 unwinding or whatever you want to call it, selling the note
11 came to me from counsel and advisors. I mean, does that not
12 answer?

13 Q. Yeah, well, let me ask you this way. If you just -- if
14 you just stopped here, and what you did was you said okay,
15 Highland, you've paid 600-some-thousand cash up front, and you
16 have to pay the remaining balance on the note, which when
17 coupled with what was paid that would be the 12.6 million face
18 amount. So Highland, you owe Acis thirteen-million-plus
19 dollars, but Acis, you don't need to pay any more fees. And
20 maybe you've paid three or four million dollars in fees to
21 date. Was that the intent behind this transaction?

22 A. No, never, and you know, to the extent that we did
23 anything convoluted to the disadvantage of the equity holders
24 in the CLOs by trying to keep Acis flows alive so that it
25 could pay the Highland note so that -- or pay the Highland

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1 share so that Highland could pay the note, that would
2 be -- that would be looked at -- I don't need to be a
3 compliance guy to know that that would -- that would
4 be -- that'd be bad.

5 That would -- that would -- yeah, if -- if we tried to
6 keep the Acis fees alive by keeping the CLOs as they are with
7 the expensive debt nonrefinanced so that Acis could have more
8 sharing to pay Highland as it's supposed to so that Highland
9 could pay the note, that would have been -- we couldn't go
10 down that path.

11 Q. And there are -- and in both cases, it's not like there
12 are third-party owners of either Highland or Acis. It's
13 essentially 75/25 you and Mr. Okada in both entities, correct?

14 A. Correct.

15 Q. So by -- of the remaining 9.5 million dollars in
16 principal and interest payments that Acis would've received,
17 you would've gotten roughly 7 million dollars of that
18 personally or through your work entities, correct?

19 A. Okay, yeah.

20 Q. So does this transaction benefit you in any way, given
21 that you're seventy-five-percent ownership in each entity, or
22 was it economically a wash?

23 A. It's essentially a wash. They're -- yes, it doesn't
24 matter which pocket it goes into.

25 Q. Okay. Let's move on and talk just briefly about some of

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1 the service agreements, the shared-service agreement and the
2 subadvisory agreement. I'm not going to walk through those,
3 but just generally speaking; are you familiar that there were
4 changes made to the -- to the fee allocations of those
5 agreements from -- over time?

6 A. Yes.

7 Q. And while Mr. Terry was the portfolio manager at -- for
8 Acis, do you know if he played any role in negotiating some of
9 the changes to those -- to those fee allocations as between
10 Highland and Acis?

11 A. Oh yeah. Well, when he was employed --

12 Q. Yes.

13 A. -- every -- every year him and Frank would meet
14 for -- Frank Waterhouse the CFO would meet and discuss for
15 weeks, you know, at the end of the year what was -- and debate
16 what was the appropriate shared-services and portfolio fee.
17 When -- after he was gone, you know, he wasn't involved in
18 that, but after he was gone, Acis was using a lot more
19 resources in the company.

20 Q. And Mr. Terry, while he was there, had a twenty-five-
21 percent ownership interest in Acis, but no ownership interest
22 in Highland, correct?

23 A. Right.

24 Q. So economically, was it in Mr. Terry's advantage to
25 negotiate, to lay off onto Highland as many of those fees as

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1 opposed to keeping them at the Acis level?

2 A. Oh absolutely.

3 Q. And your understanding of the negotiations he had with
4 Mr. Waterhouse, was he vigorous in advocating his position?

5 A. Sure, yes.

6 Q. And did you have any concerns after Mr. Terry was
7 terminated, as you looked at the allocations in these
8 agreements, that his economic interests may have colored how
9 those allocations historically had been made?

10 A. Yes, yeah. I mean, over advocated, but again, what
11 happened is the costs went up monumentally after he left too,
12 so the -- the accountants or whoever were doing the allocation
13 was -- I mean, after he left, he goes to the SEC, makes all
14 kinds of claims. And then the SEC makes a two-million-page
15 document request of Acis. You know what I mean? So it ends
16 up being a burden on Acis, and it ends up being a burden on
17 Highland to meet those requests.

18 Q. So those type of actions that Mr. Terry initiated are the
19 very thing that drove up the underlying servicing costs?

20 A. Post him leaving, absolutely, yeah.

21 Q. Let me go through, and I'm going to do this briefly
22 because Mr. Okada went through this in some detail talking
23 about the equity. But I'm going to approach it from a little
24 bit different angle with you.

25 But let's go to PowerPoint slide number 25 if we can. I

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1 believe the Court has seen this, Mr. Okada, part of this, but
2 I just wanted to focus in.

3 Actually, let's go to PowerPoint slide number 26, for a
4 simple version, where we have the CLO, three basket of loans,
5 the ALF equity, and the bondholders, and this is a super-duper
6 simplified version of CLO 3, correct?

7 A. Yes.

8 Q. All right. And then let's go to slide 27, which again,
9 Mr. Okada talked about this so I'm not going to spend much
10 time on it. But just to orient you, is this your
11 understanding of the equity component of CLO 3, where you have
12 this third-party institutional investor at forty-nine
13 percent -- a charitable foundation at forty-nine percent, and
14 that Highland or some of its employees at two percent?

15 A. Yes.

16 MR. CRUCIANI: Now, let's go to that donor-advised
17 slide, yeah.

18 And Your Honor, I don't think we've used this before.
19 If I could have the next demonstrative number, please.

20 THE COURT: What are we to, 9? Number 9?

21 MR. CRUCIANI: I'm sorry, that was number 9?

22 THE COURT: This will be 9.

23 MR. CRUCIANI: Yes, ma'am, thank you.

24 Q. Okay, so we have in the middle this donor-advised fund,
25 the DAF called -- CLO HoldCo being the entity. Let me just

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1 start without even reference to the structure here. What is
2 the purpose of the DAF?

3 A. We decided about a decade ago to set up a charitable
4 foundation. We initially seeded it with forty or fifty
5 million dollars. We added monies to it over the years. We
6 added thirty, forty million to it last year I think. And
7 between that and appreciation, it's grown to about 350 million
8 dollars. It's one of the larger foundations in Dallas.

9 Q. And just generally speaking, how does it operate? That
10 we see there's four different foundations here. Do you know
11 at what level the funds or the CLOs are actually held?

12 A. Sure. The assets are held directly by the lower boxes
13 there. It's not a quarter, a quarter, a quarter. I don't
14 know what the exact percentages are. The first three I think
15 are larger than the last one. But they hold the individual
16 assets. To be clear, like the foundation or the
17 charitable -- it's monies we've donated. They're -- they
18 don't come back to Highland. They never can come back to
19 Highland. They've been donated for which we got a tax
20 deduction and can never have claim to those assets again. And
21 those assets have to be -- that are now down in these four
22 underlying entities have to be given to qualified 501(3)(c)
23 charitable organizations.

24 Q. Okay, and I think we went through some of those
25 organizations with Mr. Okada, so I won't belabor that point.

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1 Who runs The Dallas foundation?

2 A. Mary Jalonick or -- she just retired. I don't know who
3 she handed it off to.

4 Q. Okay. Who was she with?

5 A. The Dallas Foundation.

6 Q. That's the name of it?

7 A. Yeah.

8 Q. Dallas Foundation?

9 A. It is the name of it, yes.

10 Q. Okay and does -- you may have said this. Does Highland
11 have any ownership interest whatsoever in the DAF?

12 A. No. The closest we come to it is we're an advisor. We
13 can make recommendations on asset purchases and sales, but
14 they have to be approved by Grant Scott, the general partner
15 and trustee.

16 Q. And we see Highland, HCM, up in the top-left corner as
17 advisor. Is that the full trappings of the investment advisor
18 under the security laws?

19 A. Yes. It's a formal advisory agreement.

20 Q. Okay, and do you have any ownership interest in the DAF?

21 A. No.

22 Q. And to the extent it's been suggested or alluded to in
23 this proceeding that this is all really Mr. Dondero personally
24 behind the equity, is that true?

25 A. No.

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1 Q. Was it ever true?

2 A. No.

3 Q. And the general partner there, DAF GP, LLC, (ph.) Grant
4 Scott managing member, trustee -- whatever his exact title is,
5 who is Mr. Scott?

6 A. He's a truly independent trustee. I've known him for a
7 long time. He's a patent attorney by training, but he has the
8 time and inclination and he enjoys being involved with the
9 charities.

10 Q. You said he's independent. In what way is he
11 independent?

12 A. He's never been an employee or relative or whatever the
13 violations of the independence rules are.

14 Q. Okay. And it was asked of Mr. Okada and - today and
15 asked of you in the deposition about certain signage rights
16 that Highland gets for places like the Dallas Zoo or the Perot
17 Museum. Why is that? Why does it not say DAF or donor-
18 advised fund at the Dallas Zoo as opposed to Highland Capital?

19 A. Well, because we gave all the money to the charity,
20 Highland did, I would say as point number one. Plus you could
21 make the signage anything you want. Where anything -- any
22 time we donate money, we can make the signage anything we
23 want, but there's -- DAF doesn't get any benefit for the
24 signage. It helps Highland to be active in the community and
25 charitable in the community, so we generally give the signage

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1 to Highland or NexBank or one of our portfolio companies.

2 Q. Okay. Now, let's talk about Highland's plans to reissue
3 the Acis CLOs. And I think we've talked about -- we read one
4 of the whereas clauses showing that was taking place back I
5 believe in October 2016 when that process was sort of under
6 way, correct?

7 A. Yeah.

8 Q. Okay, now, so did that -- so obviously, that initial
9 decision had nothing to do with the arbitration award by
10 definition, correct?

11 A. Right.

12 Q. All right. What are the -- what are the market forces
13 generally speaking that are driving from an economic
14 perspective Highland and other folks in the CLO industry to go
15 through reissuance?

16 A. The cost of borrowing at ninety percent has come down
17 materially. But also, the yield that you're getting on the
18 portfolio of assets, on the pool of loans has been coming down
19 materially too. In other words, spread compression in the
20 market where everybody's ability to borrow, between fed easing
21 and a better economy is less. The spread that everybody pays
22 is less.

23 So if you have a historic deal, where your financing
24 costs are high, but in the meantime the yields you're getting
25 on your portfolio of loans is coming down, and you don't refi,

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1 you're just killing your equity.

2 Q. All right.

3 A. Does that make any sense?

4 Q. Absolutely.

5 A. I hope.

6 Q. Now, let's talk about sort of the problems with the brand
7 that you touched upon. Now, Mr. Terry as the portfolio
8 manager was more or less the face of the Acis CLOs; was he
9 not?

10 A. Yes.

11 Q. Have you ever heard of anybody other than Mr. -- well,
12 let me step back. You became aware that Mr. Terry had
13 secretly tape recorded about 300 conversations while he was at
14 Highland?

15 A. Yes, I was. Yeah, I was told and for eighteen months I
16 believe too.

17 Q. Including privileged conversations with counsel?

18 A. That's what I was told, yes.

19 Q. Are you aware of anyone else in the CLO industry ever
20 having engaged in such conduct?

21 A. No.

22 Q. And what did that do when that became public knowledge,
23 that the portfolio manager of Acis had engaged in this secret
24 tape recording campaign? What did that do to the Acis brand?

25 A. I mean, that and the commensurate litigation made it

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1 unmarketable. The underwriters wouldn't deal with Acis, but
2 the investors didn't want to have anything to do with Acis
3 either.

4 Q. Okay, let's -- I'm almost there, by the way, Mr. Dondero.
5 Just so you don't get anxious at this point. Roll of the
6 eyes. All right, let's talk again, Mr. Dondero -- excuse me,
7 Mr. Okada talked about this. I don't want to repeat much of
8 this. But I want to talk about the investors' call rights.
9 What does it mean for an investor to exercise a call?

10 A. The investors have the right to -- there's a noncall
11 period of which I believe virtually every Acis CLO is beyond
12 the noncall period, where the investors can just call the deal
13 and just have it liquidated.

14 Q. Did that -- is there any precedent for that having
15 happened with any of the Acis CLOs?

16 A. Yes, yeah, we called a -- Acis 2, I believe.

17 Q. And that was due to what reasons?

18 A. It had -- it was too far beyond its reinvestment period
19 and it shrank too much to reset it or extend it. Once they're
20 beyond their re -- reinvestment period, any payoffs on the
21 loans pay down the debt, so the whole deal shrinks. And it
22 would -- it had -- it was -- it had shrank too much to refi.

23 Q. And do you have any reason to believe what the investors
24 would choose to do if this case remained stuck in bankruptcy?

25 A. There's a point at which they start getting eaten alive

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1 by -- even its first month costs several millions of dollars,
2 but more -- more than a million dollars in just a month. Once
3 you get eight or nine months into it, they're getting eaten
4 alive by their financing costs relative to the yield on their
5 portfolio. And it would be -- towards the end of the year,
6 they'd be in -- in -- indifferent between calling the deal and
7 booking the loss or -- or getting eaten alive.

8 Q. What happens to the CMAs and the associated service fees
9 if the deal gets called?

10 A. The CMAs go away, yeah.

11 Q. Now, if when the Court rules her ruling would release
12 Acis from this bankruptcy, what would you plan on doing with
13 respect to the remaining Acis CLOs?

14 A. We would refinance CLO 3 immediately. It was very -- in
15 the history of Wall Street, it was very rare to price a deal
16 and have it not close. I mean, if that happens once a year,
17 on all of Wall Street, that's unique. But we managed to do
18 that on Acis (sic) 3.

19 But we would immediately go back to all the investors, that --
20 that circle, try and get them reconfirmed, and try and do that
21 within a couple of weeks. And then we would try and do 4, 5,
22 and 6 immediately behind.

23 Q. And if this deal ends up getting called, as a result of
24 Mr. Terry throwing it into bankruptcy, which of the
25 stakeholders ends up bearing the brunt of the economic

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1 damages?

2 A. Oh, the -- the -- the equity holders, the ALF, which is
3 half the charitable foundation, but half a firm out of Boston
4 that will be furious.

5 Q. Why would they be furious?

6 A. Because based on the interference -- and that, I would
7 say, is inappropriate interference -- of Josh Terry, they lost
8 millions of dollars.

9 Q. All right. Last topic, then I'm done with you. I want
10 to talk about this CMA valuation. You're aware that Mr. Terry
11 has asserted, under oath, multiple times in this case, that
12 the five Acis CLOs are worth well in excess of thirty million
13 dollars? Are you aware of that assertion?

14 A. Yes.

15 Q. And he complains that Acis should not transfer the CMAs
16 for no value, but rather should sell them for what the market
17 can get, which he says is thirty million dollars.

18 So let me ask it of you. Based on your seventy-five
19 percent beneficial ownership interest in Acis, do you have an
20 economic interest in -- if you could -- to sell these CMAs for
21 as much as the market could bear?

22 A. Sure.

23 Q. And if Acis was able to sell these CMAs for thirty
24 million dollars, as Mr. Terry asserts they're valued, your
25 seventy-five percent interest would translate into more than

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1 twenty million dollars in your pocket, would it not?

2 A. Right.

3 Q. Do you not want to make twenty million dollars?

4 A. They're not -- they're unsellable. They're -- they're
5 thirty-day contracts. They can be called at any time, for any
6 reason, for -- in -- in thirty days. They -- they have -- it
7 would be like trying to sell your wages.

8 Q. Okay. Well, Mr. Terry complains you haven't even tried.
9 Why haven't you tried to sell these CMAs to someone?

10 A. It's -- there's no longevity to them. They can be called
11 at any time, for any reason. There's no hurdle on thirty
12 days' notice on deals that all need to be refinanced in a --
13 where the counterparty of the CMA is a shell company
14 mirrored -- or mired in contentious litigation. Who's --
15 who's going to but a thirty-day contract and try and transfer
16 the contracts to their name from a company that's mired in
17 litigation, knowing that they could be dragged into it or --

18 Q. If Mr. Terry brought you a buyer and said, Mr. Dondero,
19 here's thirty million dollars; sell me the CMAs, are you doing
20 that deal?

21 A. Yeah. You can have it -- you can have it for five.

22 Q. Five million?

23 A. Yeah.

24 Q. Now, do you have a belief whether you could find a buyer
25 who would pay anything other than negligible value, if that,

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1 for these CMAs?

2 A. No. They -- yeah. If someone wanted to get involved in
3 the litigation, try and do a transfer, spend the legal work,
4 they would present-value a month or two worth of fees.

5 MR. CRUCIANI: I pass the witness, Your Honor.

6 THE COURT: Okay. Why don't we take about a seven-
7 minute break and when we come back, we'll cross?

8 THE CLERK: All rise.

9 (Recess from 2:55 p.m. until 3:03 p.m.)

10 THE COURT: Be seated. All right, and Mr. Dondero
11 was still under oath.

12 Mr. Shaw, your cross?

13 MR. SHAW: Yes.

14 CROSS-EXAMINATION

15 BY MR. SHAW:

16 Q. Mr. Dondero, one of the last things you said in your
17 direct testimony was that the collateral-management
18 agreements, of which Acis serves as the portfolio manager and
19 collateral manager, were terminable for any reason. Do you
20 recall that?

21 A. Yes.

22 Q. And that's not actually true. Those CMAs are actually
23 only terminable for cause. Isn't that the case?

24 A. Well, they can be called for any reason.

25 Q. Okay, but they can't be terminated. The CMAs cannot be

1 terminated without cause, correct?

2 A. I'm sorry if I mixed up that difference. Yes, yes -- I
3 don't know.

4 Q. Highland sold CMAs to Carlyle in 2012, right?

5 A. Yes.

6 Q. And that was a thirty- to forty-million-dollar
7 transaction?

8 A. Yes.

9 Q. Okay. Those collateral-management agreements, similar to
10 the Acis collateral-management agreements, could also be
11 terminated for cause, correct?

12 A. I don't know.

13 Q. I want to make sure I'm clear on this issue. I believe
14 you testified that you had no financial incentive to favor
15 Highland over Acis, is that right?

16 A. Yes, particularly once Josh was gone.

17 Q. And I think you also characterized it as it doesn't
18 matter which pocket it goes into, correct?

19 A. Yes.

20 Q. Does Highland Capital Management, L.P. have an unstayed
21 judgment against it?

22 A. Not that I'm aware of.

23 Q. All right. Has Highland Capital Management been
24 garnished in the last year?

25 A. No.

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1 Q. MR. Terry does not have a judgement against Highland
2 Capital Management, does he?

3 A. No.

4 Q. Are you here today on behalf of Highland Capital
5 Management, as its president, or Acis Capital Management GP,
6 LLC, as its president?

7 A. I -- I always wear many hats. I -- I believe, on here,
8 I'm both.

9 Q. And you acknowledge that Highland -- and when I say
10 Highland, can we have the agreement that I'm talking about
11 Highland Capital Management L.P.?

12 A. Sure.

13 Q. And when I say Acis, I mean the combination of Acis
14 Capital Management, L.P. and Acis Capital Management, LLC --
15 I'm sorry, Acis Capital Management GP, LLC. Can we have that
16 agreement?

17 A. Okay.

18 Q. So you acknowledge that Highland is a creditor of Acis,
19 correct?

20 A. Yes, I believe so.

21 Q. This is a deeply personal dispute with Mr. Terry for you,
22 isn't it?

23 A. Not particularly.

24 Q. Well, I heard you characterize Mr. Terry as a terrorist.
25 Did I hear that correctly?

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1 A. Yes.

2 Q. You said in your direct testimony that you believe that
3 he should go to the "big house". Do you recall that?

4 A. I think he runs the risk of going to the big house.

5 Q. You had your deposition taken on Tuesday, right?

6 A. Yes.

7 Q. You refused to shake Mr. Terry's hand, didn't you?

8 A. Yes.

9 Q. You recall your testimony at that deposition that, "The
10 personalities on both sides are intractable." Do you remember
11 that?

12 A. I -- I just said I know the personalities on both sides.

13 Q. Do you recall saying that the personalities on both sides
14 are intractable, under oath?

15 A. I -- I don't remember that, but that's close enough.

16 Q. Do you recall saying -- and this is under oath -- "We'll
17 be here a decade from now"?

18 A. I -- I thought I said five years. I mean, do you want to
19 know the context or --

20 Q. No. I just want to know --

21 A. Okay.

22 Q. -- whether you said, we'll be here a decade from now.

23 And can we pull up Exhibit 101, please, and go to page
24 26, line 24? I'm sorry, and this is actually a deposition in
25 arbitration.

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1 MR. CRUCIANI: Hold on one second.

2 MR. SHAW: Yeah.

3 MR. CRUCIANI: There is a confidentiality order in
4 place and proffered in the arbitration. I want -- well, I
5 will show it to them. But if it's admitted, then I would just
6 ask that any reference of this be sealed because that
7 arbitration proceeding was supposed to be a sealed proceeding.
8 We have third parties in the room who are copiously taking
9 notes about the protection of Mr. Dondero. And I would not --
10 in fact, I would ask, to the extent that they use this, that
11 they (indiscernible) coordinate with Mr. (indiscernible),
12 who's a former Highland employee, with the pending litigation,
13 as Mr. (indiscernible).

14 THE COURT: Okay. Let me back up. This is a
15 deposition from the arbitration?

16 MR. CRUCIANI: That's correct.

17 THE COURT: And there is some sort of sealing order
18 or confidentiality order from the arbitration?

19 MR. CRUCIANI: That's typical and I'm confident --
20 yeah, I'll let the others who were involved with that address
21 that.

22 THE COURT: Is there any dispute about that?

23 MR. SHAW: No. The limited-partnership agreement
24 provided that everything in arbitration was confidential. So
25 there was no order of the arbitrators, but a contractual

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1 agreement of the parties was that it was confidential. So
2 there's no dispute and we have no issue on sealing this
3 particular exhibit, Judge.

4 THE COURT: All right. Well, then I'll be happy to
5 do a sealing order. I'll leave you all to upload something in
6 the next day or two.

7 MR. CRUCIANI: Right.

8 THE COURT: And it -- this is Exhibit what?

9 MR. CRUCIANI: Exhibit 102.

10 THE COURT: And that one's already been admitted by
11 stipulation?

12 MR. SHAW: It has.

13 THE COURT: All right.

14 THE COURT: So --

15 MR. CRUCIANI: And honestly, Your Honor, that was --
16 I think that was inadvertent. I think it was not appreciated
17 that it was from the arbitration and there was a sealing order
18 there. So --

19 THE COURT: All right. My point is, just for the
20 clerk's office benefit, I'll need you to submit an order, you
21 know, the next couple of days, before the trial is completed,
22 providing that this exhibit will be kept under seal and that
23 the transcript on, you know, March 23rd, from, you know, 3:10
24 p.m. -- whatever time through whatever will be -- a redacted
25 copy will be the publicly available copy of the transcript.

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1 And then we'll have an unredacted copy that's sealed.

2 MR. CRUCIANI: And I would even propose, Your Honor,
3 to the extent that this was sort of like an inadvertent
4 designation of confidentiality, I would assert that now. I
5 did not get the sense that the pending question was anything
6 of any great moment. I think it was five years versus ten
7 years. I think that from the question that he was directing
8 Mr. Dondero to, I would ask, if Mr. Shaw is able to get his
9 testimony without going to the deposition, which should have
10 been sealed, that he would do that.

11 Alternatively, I would ask that this be withdrawn
12 as having been inadvertently put into the record as opposed
13 to -- I appreciate the Court's willingness to seal.

14 THE COURT: Okay. Well, why --

15 MR. CRUCIANI: You know, I don't think this is a big
16 disputed point.

17 MR. SHAW: We want it in the record. Whether it's
18 sealed or not is -- I can make it the question.

19 THE COURT: Okay.

20 MR. SHAW: So --

21 THE COURT: Okay.

22 MR. SHAW: But --

23 THE COURT: You've stipulated; it will be in the
24 record. We'll just have it sealed.

25 Now, there is someone in the courtroom that you want

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1 to exclude?

2 MR. CRUCIANI: MR. SHAW: Yeah. Mr. Daugherty has
3 pending litigation.

4 THE COURT: Is that you? Okay. So the protective
5 order from the arbitration would protect this information from
6 getting in --

7 MR. CRUCIANI: Public domain.

8 THE COURT: -- public domain, period.

9 All right. Mr. Daugherty, it sounds like we have an
10 issue with anyone that a lawyer or a party --

11 MR. DAUGHERTY: I'm fine with --

12 THE COURT: -- to that arbitration hearing some
13 testimony that pertains to what was said in the arbitration.

14 MR. DAUGHERTY: Yeah. If you're asking me to, you
15 know, stand down on that, absolutely.

16 THE COURT: Okay.

17 MR. DAUGHERTY: But I am a potential creditor of
18 Acis.

19 THE COURT: Really?

20 MR. DAUGHERTY: Yes.

21 THE COURT: Okay.

22 MR. CRUCIANI: Oh?

23 MR. DAUGHERTY: The more I learn about what's going
24 on at Acis, I think the money -- that note might have been
25 mine.

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1 THE COURT: Oh, goodness. Okay. The plot thickens.
2 All right. Well for now, I need to exclude you from the
3 courtroom --

4 MR. DAUGHERTY: Fair enough.

5 THE COURT: -- based on what I'm hearing. And I
6 guess as a courtesy, can someone go get him when we're
7 finished with this protected information?

8 MR. SHAW: And it will be very quick. And I don't
9 think anything -- what I'm actually talking about is anything
10 that's sensitive. I mean, it's -- so --

11 THE COURT: All right. Well, I'm not flooded
12 volunteers to do that, but, Mr. Larson, since you're standing
13 up --

14 MR. LARSON: I received your secret code.

15 MR. DAUGHERTY: Your Honor, I'll just return
16 tomorrow.

17 THE COURT: Oh, okay. Well, we won't be here
18 Saturday, but --

19 MR. DAUGHERTY: I'm sorry; Monday.

20 THE COURT: Monday, all right.

21 MR. CRUCIANI: Your Honor, before Mr. Daugherty --

22 THE COURT: See you.

23 MR. CRUCIANI: -- leaves, he made a comment that
24 obviously surprised everybody, that he believes he might be a
25 creditor of Acis. I'd love to know what he thinks he's owed

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1 and what the basis is. I mean, this is just --

2 MR. SHAW: He's not been listed as a witness. We
3 have no notice of this.

4 MR. CRUCIANI: All right. That's fine, Your Honor.
5 I just --

6 THE COURT: Yeah. We're not going to have --

7 MR. SHAW: This is not trial by --

8 THE COURT: Okay. Thank you, Mr. Daugherty.

9 MR. CRUCIANI: Okay, okay.

10 MR. DAUGHERTY: Thank you, Your Honor.

11 THE COURT: Okay. And I don't know what they were
12 rescinding. Did you all completely rule out Monday now?

13 MR. CRUCIANI: I thought we were doing --

14 MR. SHAW: We confirmed Tuesday.

15 MR. CRUCIANI: -- Tuesday and Thursday.

16 THE COURT: Tuesday and Thursday, okay. I didn't
17 know if Monday was still something you all were -- but, okay,
18 Tuesday.

19 All right. You may proceed.

20 MR. SHAW: Let me see if I can get back on track
21 here.

22 THE COURT: Okay.

23 MR. SHAW: Okay.

24 (Portion under seal submitted separately)

25 THE COURT: Okay.

Colloquy

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1 All right, it's 4:16. Who is your next witness?

2 MR. CRUCIANI: That will be Mr. Terry.

3 THE COURT: All right, well, shall we use forty-five
4 minutes, at least? I don't know if you're going to take more
5 than that or not.

6 MR. CRUCIANI: Oh, I'm going to take more than that.

7 Yeah, I haven't gotten an examination of Mr. Terry --

8 THE COURT: Right.

9 MR. CRUCIANI: -- so I'll --

10 THE COURT: Okay.

11 MR. CRUCIANI: -- probably have three hours.

12 THE COURT: Okay.

13 How much time does Acis have left, Laura, just so
14 that -- you had mentioned --

15 MR. CRUCIANI: Oh, we have that much? Okay. Okay.

16 THE COURT: Okay. It -- I mean, shall we go forward?
17 I'm fine with going another forty-five minutes, but I'll --

18 MR. CRUCIANI: Yeah.

19 THE COURT: -- defer to the --

20 MR. SHAW: My --

21 THE COURT: -- lawyers.

22 MR. SHAW: My one concern is if they are going to
23 take a position that we can't consult with our client over the
24 weekend, about strategy, whatever -- they've taken that
25 position before -- then we would prefer to put him on fresh on

Colloquy

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1 Monday or whenever we start again. But I do know -- and I
2 have looked into that issue, Judge, about whether or not the
3 Court can restrict --

4 THE COURT: Right.

5 MR. SHAW: -- a party's --

6 THE COURT: Right, right, right.

7 MR. SHAW: And I -- and from what I've seen, there's
8 no -- there's no clear rule on it. I know in the criminal
9 context that you can't do a full-sale bar --

10 THE COURT: Right.

11 MR. SHAW: -- overnight.

12 THE COURT: It's a balancing thing, right?

13 MR. SHAW: It's a bal --

14 THE COURT: Like I said.

15 MR. SHAW: Exactly --

16 THE COURT: Um-hum.

17 MR. SHAW: -- right. Exactly right.

18 THE COURT: Coaching the witness versus right to
19 assistance of counsel.

20 MR. SHAW: Right, and you have general, you know --

21 THE COURT: Um-hum.

22 MR. SHAW: -- broad discretion --

23 THE COURT: Um-hum.

24 MR. SHAW: -- into how to, you know, effectuate the
25 proceedings and how the trial goes, so obviously, we would

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1 defer to your discretion on that. But that would put us in a
2 bad spot if we can't -- you know, if there's --

3 THE COURT: Okay.

4 MR. SHAW: -- some issue.

5 THE COURT: Mr. Cruciani, do you feel comfortable
6 with the honor code applying? I mean, they can -- they can
7 counsel their client, strategize with their client, talk to
8 their client over the weekend, they just can't -- I don't
9 know. They can't coach him, they can't visit with him: hey,
10 you know that answer you just gave right at the end of the day
11 Friday? Why don't you go change that up Monday morning or
12 Tuesday morning?

13 I mean, it's just -- it's an honor code thing. What
14 can we do except --

15 MR. CRUCIANI: I --

16 THE COURT: -- plow ahead.

17 MR. CRUCIANI: I share your view, Your Honor. I
18 think what they can't do and shouldn't do, and it would be a
19 violation of the honor code, is to specifically discuss his
20 testimony. They could discuss case strategy, PowerPoints,
21 whatever you're going to say in closing argument, but
22 his -- it's the testimony itself that they ought not discuss.
23 Anything else, I don't care.

24 MR. SHAW: Judge, you know, I -- and I -- and we've
25 discussed this before about finishing. I mean, it's almost

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1 4:30. I realize we have finite time, but why don't we
2 just -- we can -- we can eliminate this as an issue. It's
3 Friday. I mean --

4 THE COURT: Well, my --

5 MR. SHAW: -- and come back. I really --

6 THE COURT: Mm. My problem is I can give you -- what
7 did I -- three hours-ish?

8 THE CLERK: We're starting at 9.

9 THE COURT: Oh, we said we were starting at 9.

10 THE CLERK: Three and a half hours.

11 THE COURT: No, we're starting in the morning on
12 Thursday.

13 THE CLERK: Oh, that's right.

14 THE COURT: I mean, if we stop now, we'll finish the
15 evidence, but we won't get to closing arguments. But we might
16 not even --

17 MR. CRUCIANI: Yeah, I think --

18 THE COURT: -- make it.

19 MR. CRUCIANI: -- I think that what the -- in
20 addition to closing arguments, just maybe get to address
21 scheduling, I understood the Court was, to the extent, not
22 somehow mooted, was going to address the stay issue --

23 THE COURT: Oh, and they --

24 MR. CRUCIANI: -- as --

25 THE COURT: -- needed that. Um-hum.

Colloquy

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1 MR. CRUCIANI: -- as well as the intervention issue.

2 THE COURT: Um-hum.

3 MR. CRUCIANI: So that would be some more

4 housekeeping --

5 THE COURT: Um-hum.

6 MR. CRUCIANI: -- to deal with.

7 MR. SHAW: But this forty minutes is probably not
8 going to change -- I mean, make or break us. I don't know.
9 Anyway, that -- my preference would be that we would just call
10 it a week, but obviously, I --

11 MR. CRUCIANI: I'm -- you know, I'm happy to go
12 forward, Your Honor. I'm happy to stop. I mean, either way,
13 whatever the Court's --

14 THE COURT: Let's just get --

15 MR. CRUCIANI: -- preference is.

16 THE COURT: -- in forty more minutes. Stop at 5 like
17 we said we would.

18 MR. CRUCIANI: And --

19 THE COURT: I'm sorry, there's no perfect answer,
20 either --

21 MR. CRUCIANI: That's fine.

22 THE COURT: -- but that's the --

23 MR. CRUCIANI: Can we --

24 THE COURT: -- best one.

25 MR. CRUCIANI: Can we just take, perhaps, five or ten

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1 minutes, just to transition?

2 THE COURT: No problem.

3 MS. PATEL: Wait, Your Honor, if I could just ask a
4 question? Or we can do this when we come back.

5 THE COURT: Five minutes.

6 THE CLERK: All rise.

7 (Recess from 4:21 p.m. until 4:26 p.m.)

8 THE CLERK: All rise.

9 THE COURT: All right, please be seated, those of you
10 here.

11 MR. SHAW: They said they gave up.

12 THE COURT: Yeah. I'm sure that's true.

13 (Off-the-record conversation)

14 THE COURT: All right, well, are we ready?

15 MR. CRUCIANI: Yes --

16 THE COURT: Mr. Terry --

17 MR. CRUCIANI: -- we are.

18 THE COURT: -- I guess I need to swear you in again.
19 It's been a couple of days. Please raise your right hand.

20 (Witness sworn)

21 THE COURT: All right, please be seated.

22 DIRECT EXAMINATION

23 BY MR. CRUCIANI:

24 Q. Mr. Terry, I want to ask you the same questions I asked
25 you substantively on February 6th and see if, with the passage

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1 of time, you have the same or a different answer. You have an
2 eight-million-dollar judgment on the one hand, and on the
3 other hand, you say there are five CMAs at Acis that are worth
4 at least thirty million dollars, correct?

5 A. Yes.

6 Q. All right. So can we all go home right now where you
7 will stipulate on the record that you will release your
8 judgment against Acis and, in return, you can have the CMAs to
9 do with them what you want?

10 A. No.

11 Q. You just won't take yes for an answer, will you?

12 A. Could you --

13 Q. Why wouldn't you --

14 A. -- rephrase your --

15 Q. -- do that?

16 A. -- question, please?

17 Q. Why wouldn't you do that? Isn't that what you want the
18 bankruptcy trustee to do, among other things, if one were to
19 be appointed, is to do an auction process, sell these CMAs,
20 get that into the estate, and use it to pay you and any other
21 creditors?

22 A. Well, number one, I think it would be up to the trustee
23 to decide how to maximize the value of the estate for the
24 benefit of the creditors, and the -- and the entire estate.
25 So one of the paths I believe the trustee could take would be

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1 to auction the CLO contracts off. Another path could be to
2 find new shared-services and subadvisory agreement providers
3 at an arm's-length fee. And then there's a number of other
4 things the trustee could do, as well.

5 Q. I'm focusing on the auction process. I'm focusing on
6 what you say is the only material asset left in Acis, the CMX.
7 If they're really worth thirty million dollars and you only
8 have an eight-million-dollar claim, then it ought to be a snap
9 to be able to sell those through an auction process and get
10 sufficient funds to pay you off, right?

11 A. I believe an auction process within this bankruptcy
12 concept -- context could be facilitated. I wouldn't call it a
13 snap, but I think it could probably facil -- be facilitated in
14 less than six months is my general belief based on my prior
15 experience.

16 Q. Why do we need bankruptcy? Why don't we just agree on
17 who's going to conduct the auction process, we can get out of
18 bankruptcy, and you get the benefit of the auction process?

19 A. Well, because on one hand, the conduct of Acis was to
20 fraudulently transfer, in my view, the contracts to an
21 affiliate for no value. So the only other alternative would
22 be a venue outside of bankruptcy court. And in that
23 situation, if you look at the portfolio-management agreements,
24 you have numerous removal-for-cause provisions in those types
25 of scenarios that I understand are ipso facto clauses within a

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1 bankruptcy context. Such as we talked before about --

2 Q. Um-hum.

3 A. -- the receivership option and that there's a
4 provision -- the removal-for-cause provision in a receivership
5 if a receivership -- if a receiver is appointed over
6 substantially all of the assets.

7 There's also provisions that discuss if substantially all of
8 the -- all of the assets are enjoined, I believe. And so in
9 that situation, a bankrupt -- a bankruptcy venue, my
10 understanding, would be much better for Acis, in order to
11 maximize the value of Acis, as well as good for its creditors.

12 Q. You and I share something in common. Neither of us are
13 bankruptcy lawyers. All right? So do you not understand,
14 though, that the process for VCMAs is there will be a sixty-
15 day period, subject to potential extension, to either -- if a
16 trustee is appointed, to either assume or reject these
17 contracts? Do you have that understanding?

18 A. I don't have that understanding as a nonbankruptcy
19 attorney, either way.

20 Q. Okay.

21 A. I know --

22 Q. And --

23 A. -- there's an assume -- an assumption or rejection
24 process, but the sixty-day time period is outside of my
25 knowledge.

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1 Q. Do you have the understanding that you can rewrite the
2 terms of the CMAs as part of an auction process, and take out
3 those clauses that would impair the value, potentially, of the
4 CMAs? That the -- that the Court has the power to rewrite the
5 terms of the CMAs; is that your understanding?

6 A. There are a few parts to your question, and I want to
7 make sure I answer it.

8 Q. Let me -- sure. You may be right. Is it your
9 understanding that the Court can modify the terms of the CMAs
10 as part of the auction process?

11 A. My understanding is the Court can render certain
12 provisions unenforceable if -- the ipso facto context -- if in
13 a bankruptcy context -- or if there are certain provisions in
14 the contract that are punitive to the estate or punitive to
15 creditors solely because we're in bankruptcy or similar
16 provisions, my understanding is the Court can render those
17 unenforceable. But that's my understanding as a
18 businessperson and --

19 Q. Right.

20 A. -- obviously, not as an attorney.

21 Q. Mr. Terry, you said in the previous testimony that these
22 contracts were worth thirty million dollars as written, with
23 all of the good, bad, and indifferent provisions in the
24 agreements. Do you stand by that testimony?

25 A. Yes, the CMAs --

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1 Q. The answer is yes?

2 A. -- are worth thirty million dollars.

3 Q. But as written?

4 A. Can you explain what you mean by "as written"?

5 Q. You don't know what "as written" means, then?

6 A. You're talking about the CMAs as written?

7 Q. Yes, sir.

8 A. Yes, I agree that they're worth thirty million dollars.

9 Q. With all the rights that you heard Mr. Okada and Mr.
10 Dondero testify to -- all the call rights that the equity has,
11 the thirty-day termination provisions that Highland has, and
12 other provisions -- they're still worth thirty million dollars
13 as written, is your testimony, right?

14 A. I disagree with a lot of their testimony, and -- but the
15 answer is yes.

16 Q. Okay. So you wouldn't need to modify anything as part of
17 an auction process, you wouldn't need to remove some of these
18 provisions you think are -- that can be removed as part as
19 this bankruptcy process. As written, you should be able to
20 sell them for thirty million dollars, right?

21 MR. SHAW: Judge, I kind of let this go, but I mean,
22 he's not -- he's already testified he's not a bankruptcy
23 lawyer, he's not a bankruptcy expert, he's -- they're -- the
24 questions are calling for legal conclusions. So it's just
25 going way --

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1 THE COURT: Okay.

2 MR. SHAW: -- far afield.

3 THE COURT: Sustained.

4 Q. Mr. Terry, do you recall testifying in this hearing
5 that -- because we had this discussion, and this is page 125
6 of your -- and if --

7 MR. CRUCIANI: Why don't you just pull up, I think
8 it's 82, Omar?

9 It's at the bottom of page 25. I'm sorry, page 125.

10 Q. The very bottom, you have this discussion. You say, "and
11 if you give me time, I would gladly set up the asset
12 management that could take over as successor manager in lieu
13 of my eight-million-dollar judgment".

14 Do you see that?

15 A. Yes, I do.

16 Q. Do you stand by that?

17 A. Yes.

18 Q. How much time do you need?

19 A. Well, I've got -- to set up an asset manager or a
20 registered investment advisor, I'd have to look into the
21 process for how long it would take for me, personally, to set
22 up a registered investment advisor and have conversations with
23 fund transaction attorneys and that type of thing.

24 Q. Um-hum.

25 A. So I -- I would have to really give it some thought. It

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1 it's kind of hard to enter that question right now. Maybe six
2 months --

3 Q. Okay.

4 A. -- or so to -- to form an asset manager and put the
5 structure on it to have a registered investment advisor.
6 Maybe longer. Optimistically, we -- in an optimistic
7 scenario, maybe shorter.

8 Q. Okay. So let's just use your six months. If you
9 had -- if we say, here's the CMAs, you have six months, go
10 sell them, you said you're willing to release your eight-
11 million-dollar judgment, right?

12 A. That's -- can you repeat the question? I'm sorry, the --

13 Q. Did -- whatever you testified under oath, you would
14 confirm or you're sticking to it, right?

15 A. Correct.

16 Q. So could we just shut this down, leave early today, say:
17 here's your CMAs, you've got six months, get a successor -- a
18 successor manager, and you -- in return, you release the
19 eight-million-dollar judgment?

20 MR. SHAW: I'm going to object, Judge. It's
21 inappropriate for counsel to try to get the witness to make an
22 agreement to settle the case. Is that -- I mean, is that what
23 he's saying? I think it's inappropriate under 408, it an
24 inappropriate mode of examination to try to get him to make
25 some commitment.

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1 THE COURT: Are you making him a settlement offer
2 right now?

3 MR. CRUCIANI: I'm not quite doing that. I think I'm
4 using the hopeful art of cross-examination to show this is a
5 made-up play. He knows these aren't worth thirty million
6 dollars or else he'd gladly take them, modifies them,
7 (indiscernible) eight-million-dollar judgment. So I'm just
8 seeing if he (indiscernible).

9 MR. SHAW: And I guess the question is would he do
10 that or, you know, would he be concerned about the further
11 dissipation of assets for Acis or would he trust Acis and
12 Highland to do what they said they're going to do? So --

13 THE COURT: Okay, I overrule.

14 MR. SHAW: -- there's a lot of problems.

15 THE COURT: He can answer. Let's move on.

16 A. Could you re --

17 BY MR. CRUCIANI:

18 Q. Yes, sir.

19 A. -- repeat, I'm sorry?

20 Q. Yes, sir. If we say, here are the CMAs, they are yours,
21 we're out of the picture, you have six months to sell them,
22 and in return, you release the eight-million-dollar judgment,
23 are you still prepared to do the deal today that you said on
24 February 6th you were prepared to do?

25 A. I would like to say I'm still prepared to do the deal

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1 today, but what I've learned since I said that on February 6th
2 or 7th is that, apparently, there's these allegations from
3 these investors in the CLOs to sue -- I don't know if it's
4 Acis or I don't know if it's me personally, which is the same
5 equity in the Clos that you would be selling me. So I don't
6 know if I, personally, am -- would still be willing to do that
7 deal, given the allegations that have been lobbed against me
8 outside of the bankruptcy context, which, my understanding,
9 would oversee everything related to the Acis estate.

10 Q. Do you -- do you have any evidence to dispute the damage
11 that you've done to the equity by virtue of your actions in
12 filing this involuntary bankruptcy, the difference in cash
13 flows that Mr. Okada testified to?

14 A. Yes, I could go through the exhibit that you prepared and
15 point out its inaccuracies.

16 Q. Okay. Is Mr. Okada considered one of the sort of lions
17 of the CLO industry?

18 A. I would say he's considered one of the most tenured
19 people within the industry, but it, I -- on the other hand,
20 he's also not really, from my experience, that involved
21 anymore, other than at very high-level discussions.

22 Q. Why did you secretly tape-record about 300 conversations
23 about him?

24 A. First of all, it wasn't about 300 conversations, but to
25 answer your question --

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1 Q. 270-something?

2 A. 187, or --

3 Q. Are you --

4 A. -- something like that.

5 Q. -- sure?

6 A. A hundred percent sure, yes.

7 Q. 187? Only 187?

8 A. Well, the -- yes.

9 Q. Okay. All right. Well, why did you secretly record 187
10 conversations while being paid millions of dollars by Highland
11 over a nineteen-month period (indiscernible) Highland
12 (indiscernible)? Why did you do that?

13 A. Because the conver -- the recording began in March of
14 2015, and at that time, there was heavy regulatory scrutiny on
15 the industry. There was a gentleman that had just pled guilty
16 to fraud to the DOJ that was a well-known CLO trader. And the
17 understanding in the industry was that the DOJ was going after
18 him to get to his boss and to the broader organization. And
19 that brought concern to the industry.

20 There was also regulatory scrutiny on Highland. And at the
21 time, I was being asked to do things that I had concerns over,
22 I thought they were questionable, but I was being told by
23 internal and out -- by internal counsel that internal counsel
24 had blessed them and external counsel had blessed them.

25 And I thought, given Mr. Dondero's historical proclivity to

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1 push the envelope, given the regulatory scrutiny on the
2 industry, given the regulatory scrutiny on Highland, which had
3 just received a cease-and-desist order from the SEC a few
4 months prior, that it would be prudent to have an accurate
5 representation of some of the conversations that took place in
6 the office between me and Mr. Dondero, me and Mr. Surgent, and
7 others.

8 Q. Nobody asked you to record?

9 A. No.

10 Q. You mentioned in-house counsel. I didn't know who you
11 were referring to.

12 You mentioned counsel in that long answer. What --

13 A. Right.

14 Q. What counsel were you referring to?

15 A. Mainly Mr. Surgent. Mr. Thomas Surgent, our --

16 Q. So --

17 A. -- chief compliance officer.

18 Q. So based on things Mr. Surgent, Highland's chief
19 compliance officer, told you, you initiated your tape-
20 recording of him?

21 A. No, that's not -- that's not what I said.

22 Q. Well, are -- do you consider yourself to be an honorable
23 man?

24 A. Yes.

25 Q. Okay. Do you think the honorable thing to do would be to

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1 say: I'm concerned with Mr. Dondero, I'm concerned with
2 Highland pushing the envelope. I quit.

3 Would that not have been the honorable thing to do,
4 instead of making millions and millions of dollars while
5 surreptitiously and secretly tape-recording your colleagues?
6 What would have been the more honorable thing for you to do?

7 A. I would -- it was a difficult scenario. I don't -- I
8 don't know the answer to that question, either way. I really
9 liked my job at Acis. I liked what I did on a day-to-day
10 basis. I liked meeting with investors, I liked the investment
11 process.

12 And so I was really conflicted with having a job that I liked
13 doing every day with then, on the other hand, having some
14 questionable instructions from either Mr. Dondero or -- or Mr.
15 Surgent, the chief compliance officer, related to more
16 Highland-centric act -- activities.

17 And I was caught in between those scenarios, and, you know,
18 I -- I don't know -- I've thought about it a lot. Should I
19 have -- trust me, after -- after being fired and sued and
20 everything that they've put me through, I've thought about it
21 a lot. I wish -- maybe I -- I should have quit. I don't
22 know. Maybe I would have been sued, anyway, if I quit. I --

23 Q. That was a hard moral choice for you? On the one hand, I
24 don't like what's going on here, I'm willing to give up the
25 money I'm making, and I quit, versus continuing to bank

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1 millions of dollars and surreptitiously tape-record your
2 colleagues. That was a hard choice you wrestled with?

3 MR. SHAW: Judge, I'm going to object to the
4 repetitious -- it's also irrelevant. I've let it go, but
5 there's really -- how is that relevant to anything in this
6 bankruptcy --

7 MR. CRUCIANI: That --

8 MR. SHAW: -- proceeding?

9 MR. CRUCIANI: They've just got done pointing out the
10 personal animosity between Mr. Dondero and Mr. Terry. They
11 have certainly opened the door.

12 THE COURT: Overruled.

13 Q. That was a hard moral choice for you? Was -- that's a
14 yes or no. Did you struggle with it?

15 A. Your prior question used "surreptitious". I -- but yes,
16 I -- I did struggle -- I struggled with it over that --

17 Q. Okay.

18 A. -- time period.

19 Q. And it was surreptitious because surreptitious means
20 you're doing it without telling somebody. You didn't tell
21 anybody at Highland that you were tape-recording them, did
22 you?

23 A. Okay, I -- if that's the definition of surreptitious,
24 that's correct.

25 Q. And let's look at Exhibit 42. This is a summary of your

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1 compensation, Mr. Terry. Mr. Dondero helped to make you a
2 rich man, didn't he?

3 A. I think that's fair. I think part of success in life
4 comes from the opportunities one's given, and I think Mr.
5 Dondero did give me an opportunity.

6 Q. Okay, and in your Acis distributions, when he gave you a
7 twenty-five percent limited partnership in Acis, you'll see
8 the distribution starting at 2012 for that, alone, is nearly
9 4.6 million dollars, correct?

10 A. Correct.

11 Q. And then you made another 4.3-million-dollar bonus during
12 that -- during your tenure, and another 2.5-million-dollar
13 base for a total of 13.2 million dollars, correct?

14 A. I obviously haven't verified these numbers. I'll take
15 your word that they're correct, but they look -- they look
16 correct.

17 Q. Okay. Now, did you have a purpose on either taping for
18 potential claims you may have against Highland or did you have
19 a purpose of potentially taping in order to turn Highland or
20 its personnel into the SEC or some other government body?

21 A. No, it -- it was defensive. It -- there was no offensive
22 purpose.

23 Q. But have you ever gone to the SEC?

24 A. Yes.

25 Q. How many times?

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1 A. Subsequent to my termination, there were -- probably
2 roughly five meetings at their request subsequent to my
3 termination.

4 Q. Five separate meetings with the SEC?

5 A. I believe that's correct. And --

6 Q. Yeah.

7 A. -- the DOJ and the FBI also wanted to talk to me about
8 Highland and Mr. Dondero.

9 Q. And what were you trying to spill the beans on Highland
10 and Mr. Dondero? What were you trying to tell them?

11 A. Well, I had filed a whistle-blower complaint after my
12 termination, given the nature of what I was terminated for.
13 Also, given some of the allegations that Highland had made up
14 against me to justify a for-cause reason for my termination,
15 I, among other reasons, filed a whistle-blower complaint with
16 the SEC subsequent to my termination. And subsequent to that
17 whistle-blower complaint, they wanted to talk to me about
18 Highland numerous times.

19 Q. What happened to that complaint?

20 A. That's a question for the SEC. I don't -- I don't know
21 where it stands right now.

22 Q. Is it pending?

23 A. I -- that's a better question for the SEC or, I'm sure,
24 you guys -- I'm sure Highland knows better than I do what the
25 status of that investigation is, but I do understand Highland

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1 is under investigation.

2 Q. What were you blowing the whistle on?

3 A. Well, number one, I was terminated because I was told to
4 engage in a transaction that I thought would violate my
5 fiduciary duty to investors. And it was, in my view, a loan
6 taken from the CLOs to benefit Mr. Dondero and Highland
7 Capital, and I thought it was wrong, and I was fired for it.
8 And so I told the SEC all about that transaction. That was
9 one.

10 Number two, I had been asked to do something called
11 "season trades", which would have the effect of getting around
12 that previous September 2014 cease-and-desist order that had
13 come from the SEC against Highland. I had been told by
14 Highland's compliance team that it was okay. I had kind of --
15 I have questioned it while I was there. I was told again it
16 was okay. Subsequent to my termination, I retained regulatory
17 counsel. Regulatory counsel informed me that it likely was
18 not okay, I probably should have been in the conversations
19 with counsel. But subsequent to that, that was one of the
20 things that I reported, as well --

21 Q. So --

22 A. -- to the SEC.

23 Q. So you -- you've had five meetings. Is that just with
24 the SEC or is it a combination of DOJ, FBI?

25 A. There is at least one meeting that the DOJ had reached

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1 out through the SEC because they heard I was a whistle-blower.
2 The SEC, my understanding is the agency cannot divulge the
3 identity of a whistle-blower without the whistle-blower's
4 consent, so the SEC asked me if I would be open to meeting
5 with the DOJ, the FBI, the U.S. Attorney's Office in
6 connection with the questions they had about Highland.
7 I then said it was okay to set up that meeting with
8 the -- with those offices and to give them my identity. And
9 so we then went out and did -- you know, I answered questions
10 they had about Mr. Dondero and -- and Highland Capital.

11 Q. Do you have a lot of personal, even not (indiscernible)?

12 A. Not any.

13 Q. Okay. None has happened. So let me ask you this. Did
14 you ever say to Scott Ellington: pay me ten million dollars
15 to settle my claim or I will take these papers and give them
16 to the SEC? Did you ever say --

17 A. No, never.

18 Q. You're denying that under oath?

19 A. Yes.

20 Q. And you didn't say that in the presence of Mr. Chalk
21 (ph.)?

22 A. I don't know what you're talking about.

23 Q. You didn't say that in the presence of an SEC enforcement
24 attorney?

25 A. No.

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1 Q. You never said it? You're saying that under oath?

2 A. Yes.

3 Q. Let's -- by the way, I never would have gone here, but
4 your lawyer (indiscernible) by talking about your sexual
5 affairs, and he went into the arbitration award. Do you think
6 that's -- do you think your sexual affairs were relevant to
7 this issue?

8 A. Well, first of all, your statement is incorrect. But
9 second of all, no, I don't think that topic is relevant.

10 Q. Okay, so we can agree, and I will try to be professional
11 because you said that you were terminated because of things
12 such as not doing -- engaging in conduct that you thought
13 might be a violation of the regulatory laws, because I
14 understand that was at least one of the reasons why you
15 thought you were terminated?

16 A. Well, I was terminated because Mr. Dondero was angry that
17 I had disagreed with his --

18 Q. Yeah.

19 A. -- proposal, and it was found by a three-judge
20 arbitration -- by a three-former-judge arbitration panel that
21 that was the case.

22 Q. Okay.

23 A. It's already --

24 Q. Well --

25 A. -- been adjudicated.

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1 Q. But since you've opened the door on this subject, weren't
2 you terminated for having an affair with a junior Highland
3 employee?

4 A. No, I was terminated for refusing Mr. Dondero's wrong-
5 headed plan --

6 Q. Did --

7 A. -- and then he subsequently made up a pretextual excuse
8 so he didn't have to pay me under the Acis agreement. And
9 then that -- and that was determined by a three-judge
10 arbitration panel in October 2017.

11 Q. Did you admit on the record that you had a sexual affair
12 with a Highland --

13 MR. SHAW: Judge, I'm going to object to the
14 relevance. This idea --

15 MR. CRUCIANI: Okay --

16 MR. SHAW: Can I please get my objection out? Thank
17 you, sir.

18 This idea that I opened the door, it's a -- it's a
19 document that's admitted as Exhibit number 1. The point of
20 my -- of my examination was strictly with regard to Mr.
21 Surgent. It didn't get into sexual affairs, it didn't get
22 into anything. It was strictly on Mr. Surgent's credibility.
23 This idea that we're all going to get in here, and we're going
24 to relitigate issues that have already been determined by a
25 three-judge panel, I think is improper and it's harassing, and

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1 it's just inappropriate.

2 MR. CRUCIANI: Your Honor --

3 THE COURT: Response?

4 MR. CRUCIANI: -- he opened the door, and he said he
5 was terminated for a reason other than one of the reasons that
6 Highland gave and other than one of the reasons that, I
7 understand I wasn't there, but he admitted to in the
8 arbitration. It's like I said, I would not have gone there,
9 but for them opening the door.

10 MR. SHAW: It's collateral estoppel and res judicata.
11 I mean --

12 THE COURT: I overrule. A little --

13 MR. CRUCIANI: Yeah.

14 THE COURT: -- latitude, but just a little.

15 MR. CRUCIANI: Well, one -- just one question.
16 Assuming I get a responsive answer.

17 BY MR. CRUCIANI:

18 Q. Did you admit to having an affair with a Highland junior
19 employee, yes or no?

20 A. Yes, I admitted to having an affair --

21 Q. That's all I want.

22 A. -- but she was not a Highland employee, she was an
23 employee of an affiliate, but it was -- it was wrong, and I
24 did it.

25 Q. Okay. And that's all I have on that, sir. Let's go to

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1 Exhibit 50, please, your involuntary petition?

2 You signed this, sir, page 3, correct?

3 A. Yes.

4 Q. And you read the warning that says bankruptcy fraud is a
5 serious crime, on part 4, and can subject you up to twenty
6 years in prison, correct?

7 A. Correct.

8 Q. And you swore that: I have examined the information in
9 this document and have a reasonable belief that the
10 information is true and correct?

11 Do you see that?

12 A. Yes.

13 Q. And you say that the debtor is generally not paying its
14 debts as they become due unless they are the subject with a
15 bona fide dispute as to liability of (indiscernible). Do you
16 see that?

17 A. Yes.

18 Q. Now, you say your debt is not being paid, right?

19 A. Correct.

20 Q. And you know that on -- you filed this at midnight on
21 January 30th, correct?

22 A. Yes.

23 Q. And you knew that on January 29th, Acis filed a motion in
24 the 44th District Court to post a supersedeas bond which would
25 have stayed the enforcement of the judgment, correct?

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1 A. I believe that's incorrect.

2 Q. They filed a supersedeas bond and asked that the Court
3 enter it -- an amount of approximately 500,000?

4 A. Filed a motion?

5 Q. Yes.

6 A. Yes.

7 Q. Right. And if that -- and do you understand -- I know
8 you're not a lawyer, but do you understand that when
9 supersedeas bond is posted, it stays further enforcement of
10 the judgment? So you have that layman's understanding?

11 A. If the judge agreed to that --

12 Q. Right.

13 A. -- amount that Acis was requesting, then yes, I
14 would -- that's my general layman's understanding.

15 Q. And then you would have been a judgment creditor whose
16 claim had -- would have been stayed at that point, correct?

17 A. That's starting to get into legal areas that I don't have
18 any --

19 Q. So other than --

20 A. -- understanding of.

21 Q. -- you -- and you understand there was a bona fide
22 dispute and that Acis had had every intention of filing an
23 appeal or we just got done talking about the bond that it
24 had --

25 A. My --

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1 Q. -- sought --

2 A. My understanding is that's not correct, based on case law
3 and that it's an unstayed judgment, so I -- that's getting
4 into bankruptcy law terms, but my understanding of that,
5 that's not correct.

6 Q. Well, it was -- it was stayed as of the moment you filed
7 the bankruptcy as -- by virtue of the automatic stay, wasn't
8 it?

9 MR. SHAW: I'm going to object. It calls for a legal
10 conclusion. This witness does not have a basis as a lawyer,
11 he's not been -- not an expert.

12 MR. CRUCIANI: He just offered an opinion.

13 THE COURT: I sustain the objection.

14 MR. CRUCIANI: Okay.

15 Q. Other than yourself, what other creditors can you point
16 to that were not generally being paid their debts as they
17 became due?

18 A. As of the date I filed the petition or --

19 Q. Just --

20 A. -- today --

21 Q. No, no.

22 A. -- today?

23 Q. I want you to put your January 30th at midnight hat on.
24 Okay? What other creditors were not generally being paid
25 their debts as they became due?

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1 A. So there was accrued audit fees that had been on the
2 balance sheet for some time and had increased. I don't know
3 if I knew that was KPMG at the time or not. Now I know it's
4 KPMG. Highland had had a substantial amount on the balance
5 sheet, and that amount had increased over time. It wasn't
6 able to pay that debt to -- to Highland. It was obviously
7 transferring the assets to Highland. My -- my eight-million-
8 dollar judgment, which wasn't on the Klos affidavit, it's my
9 understanding it's -- the balance sheet provided for this
10 supersedeas bond doesn't include the -- the judgment
11 of -- would -- wouldn't include the judgment in that case, so
12 that's why it wasn't on the balance sheet, but I was obviously
13 aware of it. And then, to the extent there was any other,
14 that it couldn't be paid because Acis was completely
15 dismantling its business, dis --

16 Q. Mr. --

17 A. -- dissipating --

18 Q. Mr. Terry --

19 A. -- assets below --

20 Q. Mr. Terry, Mr. Terry, I asked you as of that date --

21 A. Right.

22 Q. -- specific creditors, not what may happen in the future.
23 Can you identify every specific creditor you knew of or
24 believed you knew of as of January 30th?

25 A. Yeah, to the extent, that category of unknown creditors

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1 isn't a specific creditor, then -- then I've named the three
2 that I was aware of from the balance sheet.

3 Q. And why did you file -- well, let me ask it this way.

4 Let's turn to Exhibit 33, I believe. This was a January
5 29 -- excuse me, a January 31, 2018 hearing in front of Judge
6 Goldstein the afternoon after the stay had been entered.

7 Let's go to page 8. You were at this hearing, right?

8 A. Yes, I was.

9 Q. Okay, and down at starting at line 20, Mr. Shaw is
10 telling Judge Goldstein, "we have filed them into an
11 involuntary bankruptcy. We did so because on Monday we
12 received a sworn affidavit from Acis regarding their net
13 worth". Do you see that?

14 A. I do.

15 Q. Is that why you filed Acis into bankruptcy?

16 A. No, it -- it's not the -- it's not the specific reason
17 why I filed Acis into an involuntary bankruptcy, no.

18 Q. So the representation that Mr. Shaw made to the court was
19 false is what you're saying?

20 A. I think Mr. Shaw can obviously speak to the
21 representation that he made. I think he was referring to the
22 last piece of information that we had received prior to filing
23 the involuntary petition, which was a sworn net worth
24 affidavit from Mr. Klos that stated various facts that
25 previously weren't available to us.

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1 Q. So just so I have your testimony, when Mr. Shaw said that
2 the reason that "we", which would be you, Josh Terry, filed
3 Acis into bankruptcy was because of that January 29 Klos
4 affidavit. You said that, but now it's actually not; is that
5 your testimony?

6 A. That's -- from my perspective, that's not the
7 only -- that's not the reason that we filed Acis into an
8 involuntary bankruptcy, no.

9 Q. Do you remember -- or you were in the courtroom when Ms.
10 Patel's deposition tape was played, correct?

11 A. Yes. I think I may have actually run to the restroom
12 while some of the depositions were --

13 Q. Well --

14 A. -- up. I think I was here for --

15 Q. Did --

16 A. -- the majority of her --

17 Q. Did you hear the part where she testified (indiscernible)
18 that there just wasn't enough time? It'd be like she'd like
19 to find an asset market (ph.) in the Street, but there just
20 wasn't enough time to do more due diligence. Do you recall
21 the substance of that testimony?

22 A. Yes, I do.

23 Q. Okay. Now, that -- and the event that caused there to be
24 not enough time was the scheduled closing of the transaction
25 on February 1st, was it not?

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1 A. I don't know if that's one hundred percent true. I think
2 it was there was a multitude of various things going on at
3 that time, and it wasn't just that transaction. But that
4 certainly was on the forefront of our mind --

5 Q. There were --

6 A. -- at that time.

7 Q. I'm sorry. There were only two events on the short-term
8 time horizon: a temporary injunction during the schedule, for
9 January 31, and the CLO loan closing on February 1. Those
10 were the two short-term events that were coming up that had a
11 relationship (indiscernible); did they not?

12 A. I think that's true, but there was also a concern that --

13 Q. So are --

14 A. -- there was a --

15 Q. So were --

16 A. -- the

17 Q. -- those the two events?

18 A. Well, I'm -- I'm trying to answer your question and -- as
19 best I can, and I don't think those were just -- the only two
20 events.

21 Q. Let me ask you this. You testified under oath that there
22 was no time issue. There was no urgency from your standpoint
23 when you filed this on January 30. Do you recall testifying
24 to that?

25 A. I think that mischaracterizes my testimony.

Colloquy

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1 MR. CRUCIANI: You know what, Your Honor, I think
2 it's 5 o'clock, and maybe we'll pick up with that next week.

3 THE COURT: All right. So we will recess. I will
4 need you to take all your stuff because we're going to have --

5 MR. CRUCIANI: Yes, ma'am.

6 THE COURT: -- different people in here on Monday,
7 but I will see you 9 o'clock Tuesday.

8 Oh, okay, well, that's true. Your --

9 MS. PATEL: Your Honor, we ask --

10 THE COURT: Your boxes --

11 MS. PATEL: -- if we could just -- we've stacked our
12 up in the back, and that's where we'll just --

13 THE COURT: That --

14 MS. PATEL: -- leave them --

15 THE COURT: That'll be --

16 MS. PATEL: -- tucked away?

17 THE COURT: That'll be fine.

18 MS. CHIARELLO: Thank you, Your Honor.

19 THE COURT: Boxes against walls --

20 MR. CRUCIANI: And --

21 THE COURT: -- are fine.

22 MR. CRUCIANI: And could I just -- because we've
23 talked about different times, so it's Tuesday 9 until when?

24 THE COURT: Until -- yeah, because we have a 1:30.
25 We'll stop at 12:30.

Colloquy

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1 MR. CRUCIANI: And Thursday, the time again, please?

2 THE COURT: We can start at 9, I guess --

3 MR. CRUCIANI: Is --

4 THE COURT: -- on Thursday --

5 MR. CRUCIANI: Is it --

6 THE COURT: -- as well.

7 MR. CRUCIANI: -- a morning session on Thursday --

8 THE COURT: It's a --

9 MR. CRUCIANI: -- as well?

10 THE COURT: -- morning session, yeah.

11 MR. CRUCIANI: So like 9 to 12:30, as well?

12 THE COURT: 12:30, yeah.

13 MR. CRUCIANI: Thank you so much for --

14 THE COURT: All right.

15 MS. PATEL: Thank you --

16 MR. CRUCIANI: -- accommodating us.

17 MS. PATEL: -- Your Honor. I'm just trying to get an
18 understanding because we're trying to now begin, also, the
19 motion for stay pending an appeal --

20 THE COURT: Um-hum.

21 MS. PATEL: -- the motion to intervene. And just to
22 make sure that, again, we're prepared at -- whenever those are
23 going to get taken up, what -- are we still thinking both of
24 those are taken up at the end of all of the evidence after
25 closing arguments, before closing arguments?

Colloquy

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1 THE COURT: Well, I don't know, before or after
2 closing arguments. I guess --

3 MR. WARNER: The stay, we'd appreciate the Court
4 considering that the stay pending appeal consider before
5 ruling. The motion for relief from stay, be --

6 THE COURT: Oh, that's the different thing, the --

7 UNIDENTIFIED SPEAKER: Yeah, it's --

8 THE COURT: -- motion to lift stay.

9 MR. WARNER: Right.

10 MS. PATEL: Right, right. Now, and I was referencing
11 specifically --

12 MR. WARNER: And then there's --

13 MS. PATEL: -- the motion for relief from stay we've
14 already agreed gets set after the ruling.

15 MR. WARNER: Right. I'm okay with that after the
16 ruling, the motion for relief from stay.

17 MS. PATEL: That's the agreement, right.

18 MR. WARNER: the motion for stay pending appeal
19 before ruling, the motion to intervene, I assume, is before
20 ruling.

21 MS. PATEL: So I'm just --

22 THE COURT: Right, but --

23 MS. PATEL: -- wondering --

24 THE COURT: -- before or after closing arguments is
25 what we're discussing.

Colloquy

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1 UNIDENTIFIED SPEAKER: Yeah.

2 MR. CRUCIANI: Can we have a final time count so we
3 can maybe map this out a little bit so --

4 THE CLERK: Five hours and thirty-nine minutes for
5 you.

6 And eight hours, thirty-six minutes.

7 MR. CRUCIANI: Thank you.

8 THE COURT: I guess what I'm inclined to think is we
9 go ahead and roll to those other motions, and if we run out of
10 time, which I'm very afraid we will, we could come back for
11 closing arguments.

12 THE CLERK: Oh. I didn't --

13 THE COURT: Well, wait, how much time do we have?
14 You just told him --

15 THE CLERK: Three hours and (indiscernible).

16 MR. CRUCIANI: Little less than --

17 THE COURT: So we --

18 MR. CRUCIANI: -- four hours.

19 THE COURT: Okay, yeah, we can get through it all on
20 Thursday, closing arguments, as well as the two motions.

21 MR. CRUCIANI: Okay, great. Thank you --

22 THE COURT: All right?

23 MR. CRUCIANI: -- Your Honor.

24 MS. PATEL: So the -- just to be clear, Your Honor,
25 then, so on Tuesday we'll have evidence --

Colloquy

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1 THE COURT: And we'll probably finish or almost
2 finish the evidence.

3 THE CLERK: Yeah, that would be --

4 THE COURT: Because we're starting at 9 and --

5 MS. PATEL: Okay.

6 THE CLERK: Yeah, I don't think there's going to be
7 (indiscernible).

8 THE COURT: Thursday, yeah.

9 MS. PATEL: Thursday --

10 THE COURT: There's nobody --

11 MS. PATEL: -- evidence on --

12 THE COURT: Unless they don't use all their time.

13 THE CLERK: Evidence on Tuesday.

14 THE COURT: Which I'm guessing --

15 MS. PATEL: Evidence on Thursday. Motions on
16 Thursday before or after closing? Your Honor, I'm -- we're
17 just trying to -- again, we've been in this courtroom for the
18 last three days. I've had other people in my office working
19 on things. I need to check with their schedules --

20 THE COURT: Okay.

21 MS. PATEL: -- figure out --

22 THE COURT: We'll do the other --

23 MS. PATEL: -- who's going to argue stuff.

24 THE COURT: -- motions -- we'll do the other motions
25 first, and then closing arguments.

Colloquy

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1 MR. CRUCIANI: Not to be a fly in the ointment, but
2 if we could do closing, which I will, I think, be doing, I
3 will not need to be present to argue our motion to lift stay,
4 nor be involved in the intervention motion. As I said, I am
5 relying on an oral argument. And if we have --

6 THE COURT: Oh, wait, I forgot; when is that?

7 MR. CRUCIANI: Yeah, it's April 5th, and I'll be
8 leaving on --

9 THE CLERK: That's after this week --

10 THE COURT: Yeah, we're --

11 MR. WARNER: That's the following week.

12 THE COURT: -- we're going to finish Thursday --

13 MR. CRUCIANI: Okay --

14 THE COURT: -- of next week.

15 MR. CRUCIANI: Are we going to finish -- okay, that
16 was -- I just was concerned that we were going to run out of
17 time to do the two motions and closing argument. But if we're
18 going to finish everything --

19 THE COURT: We're going to --

20 MR. CRUCIANI: -- on Thursday, then that's fine.

21 THE COURT: -- finish Thursday --

22 MS. PATEL: And Your Honor --

23 THE COURT: -- even if I have to --

24 THE CLERK: Have to limit the time --

25 MR. CRUCIANI: Yeah, I think that --

Colloquy

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1 THE COURT: Yeah, we may --

2 MR. CRUCIANI: -- makes sense.

3 MS. PATEL: Right.

4 THE COURT: -- be doing that.

5 MS. PATEL: And Your Honor, just again, then we also
6 have a witness issue if we haven't been able to --

7 MR. CRUCIANI: I think we'll work --

8 MS. PATEL: -- work through with --

9 MR. CRUCIANI: I think we'll work that out.

10 MS. PATEL: Well, I -- but I need to -- I need to
11 know if we've worked it out. If not, I've --

12 MS. PATEL: -- got to start --

13 MR. CRUCIANI: We're fine.

14 MS. PATEL: -- issuing subpoenas.

15 MR. CRUCIANI: We're --

16 MS. PATEL: We're good?

17 MR. CRUCIANI: Yeah, we're good.

18 MS. PATEL: I don't --

19 MR. WARNER: You can use the --

20 MS. PATEL: -- need to issue a subpoena --

21 MR. WARNER: It's three pages.

22 MS. PATEL: -- to Lackey? The three pages we sent to
23 you is --

24 MR. WARNER: The three pages --

25 UNIDENTIFIED SPEAKER: It's subject to us

Colloquy

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1 supplementing for --

2 MS. PATEL: You can put in --

3 UNIDENTIFIED SPEAKER: -- for completeness.

4 MS. PATEL: -- whatever you like. I just want my
5 three pages in.

6 MR. CRUCIANI: Yeah.

7 MS. PATEL: Otherwise, I -- and then I don't need to
8 subpoena a witness. Okay. Thank you.

9 MR. SHAW: Thank you, guys.

10 THE CLERK: All rise.

11 MR. CRUCIANI: Thank you.

12 (Whereupon these proceedings were concluded at 5:06 p.m.)
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I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR
FOR THE ALLEGED DEBTORS: DIRE

Mark Okada	12	50	81
James Dondero	108	165	
Joshua Neal Terry	180		

VIA VIDEO DEPOSITION:
Brian P. Shaw, Esq. 84
Rakhee Patel, Esq. 98

EXHIBITS:

No.	Description	Marked	Admitted
DEMONSTRATIVE:			
6	Marked-up version of page 32 of Demonstrative 5	5	
8	PowerPoint	50	

C E R T I F I C A T I O N

I, Clara Rubin, the court-approved transcriber, do
hereby certify the foregoing is a true and correct transcript
from the official electronic sound recording of the
proceedings in the above-entitled matter.



March 27, 2018

CLARA RUBIN

DATE

ACIS CAPITAL MANAGEMENT, LP
ACIS CAPITAL MANAGEMENT GP, LLC

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ACIS CAPITAL MANAGEMENT, LP.
ACIS CAPITAL MANAGEMENT GP, LLC

March 23, 2018

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ACIS CAPITAL MANAGEMENT, LP
ACIS CAPITAL MANAGEMENT GP, LLC

March 23, 2018

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EXHIBIT 105

JAMES DONDERO

Page 1

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

IN RE:) CASE NO. 18-30264-SGJ7
)
ACIS CAPITAL MANAGEMENT) CHAPTER 7
L.P.,)
)
ALLEGED DEBTOR.)

IN RE:) CASE NO. 18-30265-SGJ7
)
ACIS CAPITAL MANAGEMENT GP,) CHAPTER 7
L.L.C.,)
)
ALLEGED DEBTOR.)

ORAL AND VIDEOTAPED/REALTIMED DEPOSITION OF

JAMES DONDERO - 30(b)(6)

AS CORPORATE REPRESENTATIVE OF

HIGHLAND CAPITAL MANAGEMENT, LP

MARCH 19, 2018

JAMES DONDERO

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7	MARCH 19, 2018	7	
8	*****		Changes and Signature 127
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11	ORAL AND VIDEOTAPED/REALTIMED DEPOSITION OF	11	
12	JAMES DONDERO, produced as a witness at the instance	12	DEPOSITION EXHIBIT INDEX
13	of the Petitioning Creditor Joshua N. Terry and duly	13	NUMBER DESCRIPTION PAGE
14	sworn, was taken in the above-styled and numbered	14	1 Notice of Appearance pleading 19
15	cause on MARCH 19, 2018, from 2:04 p.m. to 5:42	15	2 Assignment and Transfer Agreement, 31
16	p.m., before Karen L. D. Schoeve, CSR, RDR, CRR, in		dated 12/19/17
17	and for the State of Texas, reported by computerized	16	Bates stamped Acis0000227 - 236
18	machine shorthand, at the law offices of McKool		Confidential
19	Smith, 300 Crescent Court, Suite 1500, Dallas,	17	
20	Texas, pursuant to the Federal Rules of Bankruptcy	18	
21	Procedure and the provisions stated on the record or	19	
22	attached hereto.	20	
23	It is further agreed that Rule 30(b)(5) is	21	
24	waived by agreement of the parties.	22	
25		23	
		24	
		25	
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1	APPEARANCES	1	TRIAL EXHIBIT INDEX
2	APPEARING ON BEHALF OF DEBTOR AND THE WITNESS:	2	NUMBER DESCRIPTION PAGE
3	GARY CRUCIANI, ESQUIRE	3	1 Final Award, dated 10/20/17 23
4	CARSON D. YOUNG, ESQUIRE		(28 pages)
5	McKool Smith	4	13 Notice of List of Creditors 13
6	300 Crescent Court, Suite 1500		Pursuant to Fed. R.
7	Dallas, Texas 75201		Bank R.P. 1003(b), dated 01/31/18
8	D: 214.978.4009 (Mr. Cruciani)	6	15 Promissory Note for \$12,666,446, 29
9	D: 214.978.6368 (Mr. Young)	7	dated 10/07/16
10	T: 214.978.4000		(6 pages)
11	F: 214.978.4044	8	16 Assignment and Transfer Agreement, 55
12	gcruciani@mcckoolsmith.com	9	dated 11/03/17
13	cyoung@mcckoolsmith.com		Bates stamped Acis000050 - 55
14		10	Confidential
15	APPEARING ON BEHALF OF THE PETITIONER CREDITOR	11	21 E-mail dated 10/27/17 from Roy Amit 42
16	JOSHUA N. TERRY:	12	to Neil Desai
17			Subject: Hi
18	BRIAN P. SHAW, ESQUIRE	13	(1 pages)
19	CLOUSE DUNN LLP	14	23 Acis Capital Management, LP, 27
20	1201 Elm Street, Suite 5200		Balance Sheet, dated 01/26/18
21	Dallas, Texas 75270		(2 pages)
22	D: 214.239.2707	15	40 Case 18-30264-sgj7 Doc 39 Filed 34
23	T: 214.220.3888		03/06/18
24	F: 214.220.3833	16	List of Creditors
25	shaw@clousedunn.com	17	(3 pages)
	--AND--	18	43 Portfolio Management Agreement, 50
	RAKHEE V. PATEL, ESQUIRE		dated 10/27/17
	WINSTEAD PC	19	Bates stamped Acis0000420 - 439
	2728 N. Harwood Street, Suite 500		Confidential
	Dallas, Texas 75201	20	
	D: 214.745.5250	21	104 Letter Agreement dated 11/15/17 80
	T: 214.745.5400		from Mizuho
	rpatel@winstead.com	22	Private and Confidential
		23	(19 pages)
	ALSO PRESENT:	24	105 Final Judgment, dated 12/13/17 89
		25	(2 pages)
	Joshua N. Terry		
	Scott B. Ellington, Chief Legal Officer and		
	General Counsel, Highland Capital Management LP		
	Jerry Miller, Videographer		

Complete Legal

214-746-5400

HCL0M00288432

JAMES DONDERO

3 (Pages 6 to 9)

Page 6	Page 8
<p>1 TRIAL EXHIBIT INDEX</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 110 Consent of the Sole Member of 8</p> <p>4 Acis Capital Management GP, LLC,</p> <p>5 dated 06/10/16</p> <p>6 (3 pages)</p> <p>7 111 E-mail dated 11/03/17 from NexBank 38</p> <p>8 to Blair Roebber</p> <p>9 Subject: Online transfer is</p> <p>10 processed: One-to-One, with</p> <p>11 attachment</p> <p>12 (3 pages)</p> <p>13 173 Acis Loan Funding, Ltd. (The Company) 45</p> <p>14 Bates stamped</p> <p>15 TerryInvoluntary00003441 - 3444</p> <p>16 (4 pages)</p> <p>17 184 Assignment, Transfer and Amendment 90</p> <p>18 Agreement, dated 12/19/17</p> <p>19 Bates stamped Acis0000760 - 768</p> <p>20 Confidential</p> <p>21</p> <p>22 REPORTER'S NOTE 1: Please be advised that an</p> <p>23 UNCERTIFIED ROUGH DRAFT version of this transcript</p> <p>24 exists. If you are in possession of said rough</p> <p>25 draft, please replace it immediately with this</p> <p>CERTIFIED FINAL TRANSCRIPT.</p> <p>REPORTER'S NOTE 2: Quotation marks are used for</p> <p>clarity and do not necessarily reflect a direct</p> <p>quote.</p>	<p>1 Management, GP, L.L.C., at some point, correct?</p> <p>2 A. I believe so.</p> <p>3 (Trial Exhibit 110 referenced.)</p> <p>4 Q. (BY MR. SHAW) Let me show you what's been</p> <p>5 marked as Exhibit 110.</p> <p>6 MR. CRUCIANI: Are these gonna</p> <p>7 correspond to the trial exhibits?</p> <p>8 MR. SHAW: They are.</p> <p>9 Q. (BY MR. SHAW) This is a consent of the</p> <p>10 sole member of Acis Capital Management, GP, L.L.C.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And you see under the second "Resolve</p> <p>14 further" -- you see that there -- or actually the</p> <p>15 first "Resolve further"?</p> <p>16 A. Yes.</p> <p>17 Q. It names you as the president of Acis</p> <p>18 Capital Management, GP, L.L.C., correct?</p> <p>19 A. Yes.</p> <p>20 Q. And Mr. Waterhouse is the treasurer as of</p> <p>21 June 10th, 2016, of Acis Capital Management,</p> <p>22 GP, L.L.C.?</p> <p>23 A. Yes.</p> <p>24 Q. Is there some subsequent document that</p> <p>25 removed you as president of Acis Capital Management,</p>
Page 7	Page 9
<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 videotaped deposition of James Dondero. The date is</p> <p>4 March 20th, 2018. The time is approximately</p> <p>5 2:04 p.m.</p> <p>6 Will counsel present please identify</p> <p>7 yourself and who you represent, and will the court</p> <p>8 reporter please swear in the witness.</p> <p>9 MR. SHAW: Brian Shaw and Rahkee Patel</p> <p>10 on behalf of Joshua Terry.</p> <p>11 MR. CRUCIANI: Gary Cruciani with</p> <p>12 Carson Young and Scott Ellington on behalf of Acis</p> <p>13 and Mr. Dondero.</p> <p>14 JAMES DONDERO,</p> <p>15 having been first duly sworn to tell the truth, the</p> <p>16 whole truth, and nothing but the truth, so help him</p> <p>17 God, testified as follows:</p> <p>18 EXAMINATION</p> <p>19 BY MR. SHAW:</p> <p>20 Q. State your name.</p> <p>21 A. James Dondero.</p> <p>22 Q. Mr. Dondero, you're the president of Acis</p> <p>23 Capital Management GP, L.L.C., correct?</p> <p>24 A. I don't know if I still am, but . . .</p> <p>25 Q. You were the president of Acis Capital</p>	<p>1 GP, L.L.C.?</p> <p>2 A. I don't know.</p> <p>3 Q. If I say "Acis, GP," can we have the</p> <p>4 agreement that we're talking about Acis Capital</p> <p>5 Management, GP, L.L.C.?</p> <p>6 MR. CRUCIANI: That's fine.</p> <p>7 A. Okay.</p> <p>8 Q. (BY MR. SHAW) And if I say "Acis, LP,"</p> <p>9 I'm talking about Acis Capital Management, LP.</p> <p>10 Do you understand that?</p> <p>11 A. What's the difference?</p> <p>12 Q. One is a general partner, and one is the</p> <p>13 limited partnership.</p> <p>14 A. Okay.</p> <p>15 Q. Now, Acis, GP, controls and runs Acis, LP,</p> <p>16 correct?</p> <p>17 A. Controls and runs . . . It's the general</p> <p>18 partner.</p> <p>19 Q. Is there anyone at Acis, LP, or Acis, GP,</p> <p>20 that is higher on the organizational chart than you?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Mr. Waterhouse, he is listed in</p> <p>23 Exhibit 110 as the treasurer of Acis, GP.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

JAMES DONDERO

4 (Pages 10 to 13)

<p style="text-align: right;">Page 10</p> <p>1 Q. He's also an employee of Highland Capital 2 Management, correct? 3 A. Yes. 4 Q. Does Mr. Waterhouse have the authority to 5 transfer any assets of Acis, LP, without your 6 approval? 7 A. I don't know. 8 Q. Has Mr. Waterhouse ever transferred any 9 assets of Acis, LP, without your approval? 10 A. I don't know. 11 Q. The ownership of Acis, LP, you are a 12 beneficiary of the Dugaboya Investment Trust, right? 13 A. Wait a minute, benefit . . . Yes, I 14 believe so. 15 Q. That's a private express trust that has 16 Nancy Dondero, your sister, as its trustee, right? 17 A. I -- I don't know. She's the trustee. 18 Q. The ownership of Acis, LP, at one point, 19 the majority owner was the Dugaboya Investment 20 Trust, of which you are a beneficiary, correct? 21 A. I believe that's true. 22 Q. All right. Dugaboya Investment Trust no 23 longer has an ownership interest directly in 24 Acis, LP, right? 25 A. I do not believe so.</p>		<p style="text-align: right;">Page 12</p> <p>1 and I a note in interest for our shares, and then 2 the residuals spills out to -- once the notes are 3 paid off in full, the residual interests spills out 4 to charity. 5 Q. Have you ever described yourself as an 6 ownership of Highland Capital Management, LP? 7 A. Before -- yeah -- before -- yes. 8 Q. Have you ever described yourself as a 9 majority owner of Highland Capital Management, LP? 10 A. I'm sure I did when I was. 11 Q. And when did you cease becoming a majority 12 owner of Highland Capital Management, LP? 13 A. When -- we call the transaction the "Rand 14 transaction" internally, whenever that Rand 15 transaction was completed. 16 Q. If Highland Capital Management liquidated, 17 who would -- what flesh and blood individuals would 18 receive the proceeds from that liquidation? 19 A. It -- it spills to charity. It will -- it 20 would pay off the principal and interest of the 21 notes that remain to Mark Okada and I first. And if 22 it liquidated, whatever residual left goes to a 23 series of charities, primarily Catholic charities 24 and a couple others. 25 Q. There are no other flesh and blood</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. And the Dugaboya Investment Trust 2 transferred its interest in Acis, LP, to an entity 3 called Neutra, N-e-u-t-r-a, Limited; is that right? 4 A. I don't know. 5 Q. Do you have a -- any actual or beneficial 6 ownership in Neutra? 7 A. I -- I believe it's an affiliate of 8 Highland. 9 Q. You are a majority owner of the Highland 10 Capital Management, LP, right? 11 A. No. 12 Q. You are a majority owner of Highland 13 Capital Management, LP, through various entities -- 14 I believe you previously testified -- around 15 75 percent of Highland Capital Management, LP? 16 A. No. 17 Q. Do you have any ownership of -- do you or 18 any entity in which you have an ownership interest, 19 or trust in which you are a beneficiary, have an 20 ownership interest in Highland Capital Management, 21 LP? 22 A. I do not believe so. 23 Q. Who owns Highland Capital Management, LP? 24 A. A trust. A -- a taxing -- a trust in a 25 insured -- insurance vehicle that owes Mark Okada</p>		<p style="text-align: right;">Page 13</p> <p>1 individuals who would receive the proceeds from a 2 liquidation of the Highland Capital Management other 3 than you and Mr. Okada; is that correct? 4 A. We wouldn't receive proceeds from the 5 liquidation. We would receive principal and 6 interest on the established notes. Any residual 7 amount would go to charities, no individuals that 8 I'm aware of. 9 Q. You are the president of Highland Capital 10 Management, LP, right? 11 A. Yeah, I believe -- yes, I believe so. 12 Q. There is no one higher on the 13 organizational chart for Highland Capital 14 Management, LP, than James Dondero, right? 15 A. Correct. 16 Q. Highland is a creditor of Acis, LP, 17 correct? 18 A. I -- I don't know. 19 Q. You don't know if Highland Capital 20 Management, LP, is a creditor of Acis, LP? 21 A. I -- I'm not up to speed on specific 22 accounting at all. 23 Q. Let me see if I can refresh your memory. 24 (Trial Exhibit 13 referenced.) 25 Q. (BY MR. SHAW) I'm showing you what's been</p>

JAMES DONDERO

5 (Pages 14 to 17)

<p style="text-align: right;">Page 14</p> <p>1 marked as Acis Exhibit 13. 2 MR. CRUCIANI: Can I just ask for the 3 record, Brian. So you've marked the first one as 4 Trial Exhibit 110. This is -- is not 5 Trial Exhibit 13. It's a different Exhibit 13. 6 MR. SHAW: I believe it's 7 Trial Exhibit 13, but I could be wrong. 8 MR. CRUCIANI: Okay. Because the 9 first one says "Exhibit 110" and this one says 10 "Acis Exhibit 13," and so I just want to make sure 11 there's no confusion on the numbering. 12 MR. SHAW: You know, I just printed it 13 off of the documents that you gave us -- 14 MR. CRUCIANI: Okay. 15 MR. SHAW: -- for your exhibits, so if 16 it doesn't have a marking there, then I think we can 17 pretty easily identify it, though. 18 MR. CRUCIANI: Okay. 19 Q. (BY MR. SHAW) Do you recognize that 20 document, Mr. Dondero? 21 A. No. 22 Q. Okay. Do you see the page -- the third 23 page there? 24 A. Yes. 25 Q. Do you recognize that signature?</p>		<p style="text-align: right;">Page 16</p> <p>1 Highland Capital Management, LP? 2 A. Yes. 3 Q. And if I say "Highland," can we have the 4 agreement that I mean Highland Capital Management, 5 LP? 6 A. Yes. 7 Q. And you see they're listing \$2.77 million 8 as a creditor of Acis, LP? 9 A. Yes. 10 Q. Does that refresh your memory as to 11 whether or not Highland is a creditor of Acis, LP? 12 A. I'm sure, with painstaking accuracy, my 13 accountants and my lawyers put this together and 14 double-checked it. 15 Q. And no reason to disagree with that 16 document that was filed with the bankruptcy court? 17 A. I have no reason to disagree with it. 18 Q. Who represents Highland in this bankruptcy 19 proceeding? 20 MR. CRUCIANI: Objection; assumes 21 facts not in evidence. 22 A. Represents Highland in . . . Highland's 23 not a party, right? 24 Q. (BY MR. SHAW) So are there any lawyers 25 that are representing Highland in the bankruptcy</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Looks like my assistant's. 2 Q. That's your assistant's signature? 3 A. I believe so. 4 Q. She's signing for you? 5 A. I believe so. 6 Q. Does she regularly sign documents filed in 7 court pleadings on your behalf? 8 A. Yes. 9 Q. Did you authorize her to sign this on your 10 behalf? 11 A. Yes. 12 Q. Did you review the document before you 13 signed it -- or you had her sign it? 14 A. No. 15 Q. Page 2 of Exhibit 13, if you look at the 16 eighth creditor down, it says, "Highland, LP," 17 Do you see that? 18 A. Yes. 19 Q. And you're aware of the relationship 20 between Acis, LP, and Highland Capital Management, 21 LP? 22 A. Yes. 23 Q. You understand that there are 24 subadvisory -- there's subadvisory agreements and 25 shared services agreements between Acis, LP, and</p>		<p style="text-align: right;">Page 17</p> <p>1 proceeding? 2 A. I don't know. 3 Q. Is McKool Smith representing Highland in 4 this bankruptcy proceeding? 5 A. I -- I don't know. 6 Q. Is Cole Schotz representing Highland in 7 this bankruptcy proceeding? 8 A. I -- I don't -- I don't know the slate for 9 sure. I would -- I mean, don't know. I don't know 10 exactly what parties they're representing. 11 Q. You understand that McKool Smith and Cole 12 Schotz, at a minimum, represent Acis, LP, in this 13 bankruptcy proceeding? 14 A. I'm -- I'm saying I do -- I don't know. 15 I rely on my capable internal counsel to build the 16 appropriate slate of supporting external counsel. 17 Q. Who is paying McKool Smith and Cole Schotz 18 for the representation in this bankruptcy 19 proceeding? 20 A. I don't know. 21 Q. Now, as the president of Acis, GP, have 22 you had communications with outside counsel with 23 regard to this bankruptcy? 24 MR. CRUCIANI: You can answer "yes" or 25 "no," whether you've had communications.</p>

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6 (Pages 18 to 21)

<p style="text-align: right;">Page 18</p> <p>1 A. I -- I don't know. I mean, I -- I don't 2 know with what regard my conversations with counsel 3 have been. 4 Q. (BY MR. SHAW) So you don't know if they 5 were in your role as the president of Acis, GP, or 6 if they were in your role as the president of 7 Highland? 8 A. Correct. 9 Q. You have in-house counsel at Highland, 10 correct? 11 A. Yes. 12 Q. All right. Mr. Ellington and Mr. Leventon 13 are two of the members of Highland's legal team? 14 A. Yes. 15 Q. And they provide legal services to 16 Highland, right? 17 A. In some -- in some matters, yes. 18 Q. Are they also providing legal services to 19 Acis, LP, or Acis, GP? 20 A. I believe in this matter, the Acis 21 matters, Scott Ellington's been representing Acis. 22 Q. Is Mr. Ellington the -- the lead 23 attorney -- in-house attorney for Acis in this 24 bankruptcy proceeding? 25 A. I believe so.</p>		<p style="text-align: right;">Page 20</p> <p>1 A. (Examined exhibit.) 2 Q. Do you recognize this document? 3 A. No. 4 Q. Did you authorize the Bell Nunnally law 5 firm to file a notice of appearance in bankruptcy 6 court on behalf of Highland CLO Funding, Ltd., CLO 7 Holdco, Ltd., or Neutra, Ltd.? 8 A. No. This would have been a tactical 9 strategic decision of in-house or out-of-house 10 counsel. It wouldn't have been my decision. 11 Q. Now, CLO Holdco, Ltd., that's commonly 12 known as the DAF, right? 13 A. I don't know. 14 Q. You've heard of the DAF before? 15 A. Yes. 16 Q. What do you understand the DAF to mean? 17 A. The DAF, I don't know what the 18 abbreviation for it is. 19 Q. The Donor Advised Fund? 20 A. No. I know that abbreviation. I don't 21 know which one of these entities it is. 22 Q. And Mr. Scott is the trustee of the DAF, 23 right? 24 A. Mr. Scott -- you mean Mr. Grant Scott? 25 Q. Yes.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And Acis opposes the entry of an order of 2 relief in the bankruptcy proceeding, correct? 3 MR. CRUCIANI: Objection; vague as to 4 "order of relief." I'm not sure he knows what that 5 is, but you can ask him. 6 Q. (BY MR. SHAW) You can answer the 7 question. 8 A. What do you mean by "order of relief"? 9 Q. I knew that was gonna be your next 10 question. 11 Acis, GP, and LP does not want to be 12 in bankruptcy, correct? 13 A. I -- yeah. It's my belief it shouldn't be 14 in bankruptcy. 15 Q. And Highland also does not want Acis, GP, 16 or Acis, LP, to be in bankruptcy either, right? 17 A. It's -- yeah, it's not -- it's not right 18 for Acis to be in bankruptcy, and it potentially 19 creates issues for Highland, too. 20 (Deposition Exhibit 1 marked for 21 identification.) 22 Q. (BY MR. SHAW) Let me show you what's been 23 marked as Exhibit 1 to your deposition. I know 24 we're kind of getting confusing on our -- on our 25 exhibits, but I'm doing the best I can.</p>		<p style="text-align: right;">Page 21</p> <p>1 A. Yes, I think he's the independent trustee. 2 Q. Did he authorize the filing of this notice 3 of appearance? 4 A. I don't know. 5 Q. The entities listed here, Highland CLO 6 Funding Limited, CLO Holdco Limited, and Neutra 7 Limited, do you or does Highland have any ownership 8 interest in any of those entities? 9 MR. CRUCIANI: Objection; compound. 10 A. I believe I said Neutra is an affiliated 11 entity. I -- the DAF is completely separate, 12 independent, irrevocable to the extent one of those 13 represents the DAF, and I -- I don't know what the 14 other one is. 15 Q. (BY MR. SHAW) You don't know what 16 Highland CLO Funding Limited is? 17 A. Well, I'm taking your word that one of 18 them is the DAF. And I'm just saying the DAF, it's 19 an independent, irrevocable, charitable structure. 20 Q. I understand your position on that. 21 My question was with regards to 22 Highland CLO Funding Limited, that first entity 23 that's listed there. 24 A. I don't know. I don't know what it means. 25 Q. Does Highland have or its affiliates have</p>

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7 (Pages 22 to 25)

Page 22	Page 24
<p>1 any control over the Highland CLO Funding Limited?</p> <p>2 A. We have no control over anything related</p> <p>3 to the DAF. I don't know what the other entity is.</p> <p>4 Q. The DAF, Highland advises, though, right?</p> <p>5 A. We -- we advise on some -- yes, on some of</p> <p>6 the portfolio assets, yes.</p> <p>7 Q. And the DAF, is a -- some sort of</p> <p>8 charitable entity; is that right?</p> <p>9 A. Yes. It's an irrevocable pool of funds</p> <p>10 that eventually spill out to charities a certain</p> <p>11 amount each year.</p> <p>12 Q. But Highland has no control over the DAF.</p> <p>13 Is that what you're saying?</p> <p>14 A. Right. It has independent trustees</p> <p>15 invested in three or four subsidiary charities, and</p> <p>16 we can make a recommendation to it, but it -- as an</p> <p>17 investment advisor, but it doesn't have to take our</p> <p>18 investment advice.</p> <p>19 Q. I went to the Dallas Zoo recently with my</p> <p>20 wife and son and saw that Highland purports to</p> <p>21 sponsor the Dallas Zoo.</p> <p>22 Is that -- is that accurate, or is it</p> <p>23 the DAF that's supporting the Dallas Zoo?</p> <p>24 A. We made -- the donation, I believe, comes</p> <p>25 from the -- the donation comes from the DAF, but</p>	<p>1 A. Yes.</p> <p>2 Q. Were you made aware of that on</p> <p>3 October 20th, 2017?</p> <p>4 A. I don't remember.</p> <p>5 Q. Where were you when you were made aware of</p> <p>6 the roughly \$8 million arbitration award against</p> <p>7 Acis, GP, and Acis, LP?</p> <p>8 A. I don't remember.</p> <p>9 Q. Is an \$8 million arbitration award a</p> <p>10 significant event?</p> <p>11 MR. CRUCIANI: Objection; vague.</p> <p>12 A. It -- yes. It's particularly significant</p> <p>13 to Acis, yes.</p> <p>14 Q. (BY MR. SHAW) And you, in fact, testified</p> <p>15 at the arbitration hearing, right?</p> <p>16 A. Yes.</p> <p>17 Q. You testified at a -- in a deposition in</p> <p>18 the arbitration, right?</p> <p>19 A. Yes.</p> <p>20 Q. Mr. Okada, the -- the co-owner of Highland</p> <p>21 also testified in that arbitration?</p> <p>22 A. Yes.</p> <p>23 Q. Various other employees at Highland,</p> <p>24 including Mr. Surgent and Mr. Ellington, outside</p> <p>25 counsel, Mr. Katz, also testified in that</p>
Page 23	Page 25
<p>1 because all the original moneys put into the DAF</p> <p>2 came from Highland, Highland typically gets signage</p> <p>3 on the ultimate donations made by the DAF.</p> <p>4 Q. Same response for, say, the Perot --</p> <p>5 Perot Museum?</p> <p>6 A. Yes.</p> <p>7 Q. And same response, say, for the</p> <p>8 George W. Bush Library?</p> <p>9 A. Yes.</p> <p>10 (Trial Exhibit I referenced.)</p> <p>11 Q. (BY MR. SHAW) I'm showing you what's been</p> <p>12 marked as Exhibit Number 1.</p> <p>13 A. (Examined exhibit.)</p> <p>14 Q. Do you recognize that document?</p> <p>15 A. No.</p> <p>16 Q. Have you ever read the arbitration award</p> <p>17 that was entered by JAMS in the arbitration between</p> <p>18 Mr. Terry and the parties listed on the second page</p> <p>19 to Exhibit Number 1?</p> <p>20 A. No.</p> <p>21 Q. You've never read that document?</p> <p>22 A. Never glanced at it.</p> <p>23 Q. Were you aware that an arbitration award</p> <p>24 was entered against Acis Capital Management, LP, and</p> <p>25 Acis Capital Management, GP, L.L.C.?</p>	<p>1 arbitration hearing.</p> <p>2 Do you recall that?</p> <p>3 A. I was only there for mine, but I -- but I</p> <p>4 believe there was a parade of people, yes.</p> <p>5 Q. And you actually issued a -- a pretty</p> <p>6 extensive press release once the outcome of this</p> <p>7 arbitration award was made public, right?</p> <p>8 A. I believe so.</p> <p>9 Q. And that was in response to an article by</p> <p>10 The Wall Street Journal?</p> <p>11 A. Yes.</p> <p>12 Q. And did you author that press release?</p> <p>13 A. No.</p> <p>14 Q. Who did?</p> <p>15 A. PR Legal Compliance.</p> <p>16 Q. Did you approve of the issuance and</p> <p>17 publication of that press release?</p> <p>18 A. Yes.</p> <p>19 Q. Yet you didn't even review the underlying</p> <p>20 arbitration award?</p> <p>21 A. Correct.</p> <p>22 Q. At some point, you became aware of the</p> <p>23 roughly \$8 million arbitration award entered against</p> <p>24 Acis, GP, and Acis, LP, right?</p> <p>25 A. Yes.</p>

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8 (Pages 26 to 29)

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<p>1 Q. But you can't recall where you were when 2 you received that information? 3 A. No. 4 Q. After you received notice that this 5 arbitration award had been entered, did you have any 6 conversations with any Highland employees about 7 transferring Acis, LP's or Acis, GP's assets? 8 MR. CRUCIANI: I'm just gonna instruct 9 you not to answer to the extent you had any 10 discussions with your legal counsel. Otherwise you 11 may answer. 12 A. Yeah, not that I recall. 13 Q. (BY MR. SHAW) All right. So excluding 14 counsel, right? Is that -- is that the answer? 15 A. Right. 16 Q. So you didn't have any conversations 17 about -- with Mr. Covitz about transferring Acis, 18 LP, or Acis, GP's assets after the entrance of the 19 arbitration award on October 20th, 2017? 20 A. No, not that I recall. 21 Q. I know that I'm gonna get an objection to 22 this, but -- and an instruction not to answer. 23 But did you have any conversations 24 with counsel with regard to transferring the assets 25 of Acis, LP, or Acis, GP, after October 20th, 2017?</p>	<p>1 A. (Complied.) 2 Q. Do you see the listing for Equity, it 3 says, "James Dondero draws"? 4 Do you see that, sir? 5 A. Yes. 6 Q. Any reason to dispute the fact that you 7 have received, according to Acis's own balance 8 sheet, a little over \$11 million in draws? 9 A. Yes. 10 Q. You have reason to dispute that or you 11 have no reason to dispute it? 12 A. No, I have reason to dispute it. It's -- 13 it's under a column saying "Estimated Value" on 14 something that was prepared a month or two before 15 the actual distributions were made. 16 Q. Well, you've been receiving distributions 17 from Acis -- well, at least you started receiving 18 distributions from Acis in 2011 and received 19 distributions into 2016, right? 20 A. I -- I don't know. 21 Q. You have not received any distributions 22 nor has any -- nor have any of the other partners of 23 Acis, LP, since Mr. Terry was terminated in June 24 of 2016, right? 25 A. I don't even know that.</p>
Page 27	Page 29
<p>1 MR. CRUCIANI: And I -- I would 2 instruct you not to answer. 3 Q. (BY MR. SHAW) Are you refusing to answer 4 based upon your instructions from your attorney? 5 A. Sounds good. 6 Q. Is that a "yes"? 7 MR. CRUCIANI: He's gonna follow my 8 instruction, yes. 9 A. Yes. I'm following his instructions. 10 Q. (BY MR. SHAW) So I don't need to follow 11 up with that ques- -- with that question after? If 12 he instructs you not to answer, I can assume that 13 you're following your -- 14 A. Yes. 15 Q. -- attorney's instructions? Okay. 16 Thanks. 17 Are Acis -- strike that. 18 You've received, personally or through 19 the Dugaboya Investment Trust, roughly \$11 million 20 in distributions from Acis, LP; is that right? 21 A. I have no idea. 22 (Trial Exhibit 23 referenced.) 23 Q. (BY MR. SHAW) Let me show you what's been 24 marked as Exhibit Number 23. 25 Go to the second page there.</p>	<p>1 Q. Let's talk about the assets of Acis on 2 October 20th, 2017. 3 That's the date of the arbitration 4 award. Okay? 5 (Trial Exhibit 15 referenced.) 6 Q. (BY MR. SHAW) Let me show you what's been 7 marked as Exhibit Number 15, Acis 15. 8 Do you see that document? 9 A. Yes. 10 Q. Have you ever seen it before? 11 A. (Examined exhibit.) Not that I recall. 12 Q. Go to the second to last page there and 13 tell me if that's your signature? 14 A. It looks like it. 15 Q. All right. And this Promissory Note 16 reflects that Highland, of which you're the 17 president, was the maker under a promissory note in 18 favor of Acis, LP; is that right? 19 A. Yes. 20 Q. All right. And that's a \$12.6 million 21 promissory note? 22 A. Yes. 23 Q. And you're a -- credit expert. This 24 promissory note was an asset of Acis, LP, on 25 October 20th, 2017, right?</p>

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9 (Pages 30 to 33)

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<p>1 A. Yes.</p> <p>2 Q. The underlying transaction for which Acis</p> <p>3 received this promissory note, are you familiar with</p> <p>4 that transaction?</p> <p>5 A. Just generally.</p> <p>6 Q. What's your general understanding of</p> <p>7 the -- of that transaction?</p> <p>8 A. That it was a note payable for a future</p> <p>9 stream of payments that Acis was going to give</p> <p>10 Highland for --</p> <p>11 Q. So Acis -- Acis had a right to an income</p> <p>12 stream under these collateral management agreements,</p> <p>13 and in exchange for the note, Acis transferred that</p> <p>14 fee stream to Highland.</p> <p>15 Is that your general understanding of</p> <p>16 the transaction?</p> <p>17 A. Right. That there was no actual value</p> <p>18 times zero received by Highland for the note.</p> <p>19 Each -- each side promised streams to the other.</p> <p>20 Q. And did you feel like that was a fair and</p> <p>21 arm's length transaction?</p> <p>22 A. It -- I believe it was meant to offset,</p> <p>23 it was primarily due for tax planning, if I recall.</p> <p>24 That was my general understanding.</p> <p>25 Q. And -- and you were on both sides of that</p>	<p>1 one hand, and Highland CLO Holdings Limited,</p> <p>2 Caymans. It's a Cayman entity.</p> <p>3 Do you see that in the first</p> <p>4 paragraph?</p> <p>5 A. Yes.</p> <p>6 Q. And if you look down into the Recitals, it</p> <p>7 discusses the assets that are being transferred, and</p> <p>8 the -- one, two, three -- fourth whereas paragraph</p> <p>9 down, are you there with me? It says, "Whereas, in</p> <p>10 satisfaction of the transfer receivable, Acis</p> <p>11 proposes a transfer to HCLOH, 100 hundred percent of</p> <p>12 Acis's ownership interest in the assets listed in</p> <p>13 Exhibit A hereto."</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. All right. So let's go back and look at</p> <p>17 Exhibit A.</p> <p>18 A. (Complied.)</p> <p>19 Q. And that Schedule A there says, "The</p> <p>20 assets are a limited liability company interest in</p> <p>21 Acis CLO Management Intermediate Holdings I, LLC;</p> <p>22 Acis CLO Management GP, LLC; and a limited</p> <p>23 partnership interest in Acis CLO Management</p> <p>24 Holdings, LP."</p> <p>25 Did I read that correctly?</p>
Page 31	Page 33
<p>1 transaction. On the Highland side as the president</p> <p>2 of Highland, and on the Acis side as the president</p> <p>3 of Acis, GP, right?</p> <p>4 A. Yes.</p> <p>5 Q. And presumably, you thought that was a</p> <p>6 fair deal for both Highland and for Acis?</p> <p>7 A. I -- yeah. At the time that was</p> <p>8 recommended by our tax accountants.</p> <p>9 Q. And you wouldn't have done the deal if it</p> <p>10 wasn't fair to both sides, both to Acis, LP, and to</p> <p>11 Ac- -- and to Highland, right?</p> <p>12 A. Yeah, we -- yes.</p> <p>13 Q. All right. So we've got one asset of</p> <p>14 Acis, LP, as of October 20th, 2017. I want us to</p> <p>15 talk about additional assets. And because there's a</p> <p>16 lot of names here, I want to help you and show</p> <p>17 you ...</p> <p>18 (Deposition Exhibit 2 marked for</p> <p>19 identification.)</p> <p>20 Q. (BY MR. SHAW) I'm going to show you</p> <p>21 what's been marked as Depo Exhibit 2.</p> <p>22 A. (Examined exhibit.)</p> <p>23 Q. All right. And go to -- if you will, just</p> <p>24 look at that document. This is a transaction</p> <p>25 entered into between Acis Capital Management, on the</p>	<p>1 A. Yes.</p> <p>2 Q. All right. As of October 20th, 2017, Acis</p> <p>3 owned those assets listed in Schedule A, right?</p> <p>4 A. I don't know, but I would assume.</p> <p>5 Q. Acis can't transfer something that it</p> <p>6 doesn't already own, right?</p> <p>7 A. That's what I would assume, but I have no</p> <p>8 knowledge.</p> <p>9 Q. And that doesn't refresh your memory at</p> <p>10 all on Schedule A about what entity interest or</p> <p>11 partnership interest that Acis owned on</p> <p>12 October 20th, 2017?</p> <p>13 A. No.</p> <p>14 Q. Are you familiar with an entity called</p> <p>15 Acis Loan Funding Limited?</p> <p>16 A. I'm -- not specifically.</p> <p>17 Q. You've heard of the acronym "ALF," right?</p> <p>18 A. Yes.</p> <p>19 Q. And ALF, you understand, is repre- -- is</p> <p>20 short for Acis Loan Funding?</p> <p>21 A. Yes.</p> <p>22 Q. On October 20th, 2017, Acis owned an</p> <p>23 interest in ALF, right?</p> <p>24 A. I -- I don't know.</p> <p>25 Q. All right. As of October 20th, 2017, Acis</p>

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10 (Pages 34 to 37)

<p style="text-align: right;">Page 34</p> <p>1 was the portfolio manager under various 2 collateralized – or collateral management 3 agreements; is that right? 4 A. I believe so. 5 Q. All right. Let's talk about the Acis 6 liabilities as of October 20th, 2017. You have a 7 list of creditors there that we've already talked 8 about that was marked as an exhibit. 9 Will you look at that, please, again, 10 for me? 11 A. (Examined exhibit.) 12 (Trial Exhibit 40 referenced.) 13 Q. (BY MR. SHAW) And then I want to show you 14 an additional exhibit which is Trial Exhibit 40, 15 Acis 40. 16 A. (Examined exhibit.) 17 Q. And this is a document that was filed in 18 the bankruptcy proceeding. 19 Do you see that document? 20 A. Yes. 21 Q. As of October 20th, 2017, Acis had 22 creditors for which it has not paid outstanding 23 invoices; is that right? 24 A. I mean, I'm not the guy to answer that for 25 you. I -- I don't know.</p>		<p style="text-align: right;">Page 36</p> <p>1 A. Years ago, I believe so. 2 Q. Now, the Stanton Law Firm on number 18, 3 Exhibit Number 40, is listed as a creditor of Acis. 4 Do you see that? 5 A. Yes. 6 Q. And that invoice date is 10-18-2016? 7 A. Yes. 8 Q. Now, after 10-18-2016, you authorized on 9 behalf of Acis, LP, and Highland the payment by Acis 10 to Highland of amounts due under the shared services 11 agreement and subadvisory agreements, right? 12 A. What was the first part of the sentence? 13 I -- I authorized? Is that what you're saying? 14 Q. Yes. 15 A. It was part of the operating agreement. I 16 mean, I didn't specifically authorize it, but . . . 17 Q. So under the operating procedure for Acis, 18 when an amount was due to Highland under the shared 19 services agreement or subadvisory agreement, did 20 Mr. Covitz just have authority to unilaterally pay 21 Ac- -- pay from Acis to Highland those amounts? 22 A. You're talking in a time period after Josh 23 is gone? 24 Q. Correct. 25 A. After Josh was gone, it would have been</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. Well, let's look at Exhibit 2 Number 40 and see if this helps you. This is a 3 document that was filed by Acis in the bankruptcy 4 court, and on page 2 -- let's see. Let's go to page 5 3 of Exhibit 40 and line 16, Reid Collins Tsai. 6 Are you familiar with that law firm? 7 A. Yes. 8 Q. They apparently did some work for Acis in 9 the Terry matter, right? 10 A. I don't know. 11 Q. And that law firm has also represented 12 Highland or Highland's affiliates in -- in other 13 litigation too, correct? 14 A. It's represented Highland and other 15 Highland affiliates in other litigation, but I have 16 no idea what they did here. 17 Q. Are you familiar with a lawyer named James 18 Stanton? 19 A. Yes. 20 Q. And James Stanton is a former judge, 21 right? 22 A. I believe so. 23 Q. And he also was co-counsel with Reid Tsai 24 in litigation before Judge Tillery in Dallas County, 25 right?</p>		<p style="text-align: right;">Page 37</p> <p>1 between legal, accounting. There would have been 2 a -- a consensus of when and how to pay or who to 3 pay or whatever. 4 Q. And did you have any involvement in that 5 consensus? 6 A. No. 7 Q. Legal bills for Highland and its 8 affiliates, including Acis, what is the procedure 9 for the approval and payment of those legal bills? 10 MR. CRUCIANI: Objection; overbroad. 11 A. Scott and his team decide timing and 12 amounts, and if it aggregates to a large number, 13 they bring it by me for overall signoff. If it's a 14 lesser amount, they don't. 15 Q. (BY MR. SHAW) So there are times when you 16 are involved in the approval or disapproval of 17 certain payments to legal providers? 18 A. Generally. 19 Q. Have there been times that Mr. Leventon 20 has brought you in a stack of legal bills and you've 21 thrown some of those away and approved some of them 22 and not approved others? 23 A. Not that I recall with that specificity. 24 Q. Why hasn't former Judge Stanton been paid 25 from this 2016 invoice?</p>

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11 (Pages 38 to 41)

<p style="text-align: right;">Page 38</p> <p>1 A. I don't know. 2 Q. Who would know that? 3 A. Scott and his team. 4 Q. Same question for Reid Collins Tsai, this 5 law firm that's represented Highland or its 6 affiliates in other litigation. That's an invoice 7 from 8-31-2017. 8 Why hasn't that been paid? 9 A. I don't know. 10 Q. But we do know that despite the fact that 11 this invoice has been outstanding since August 2017, 12 that Highland has received payments after that 13 8-31-2017 invoice, right? 14 A. I don't know that answer either. 15 Q. Let me show you what's been marked as 16 Exhibit Number 111, Trial Exhibit 111. 17 (Trial Exhibit 111 referenced.) 18 A. (Examined exhibit.) 19 Q. (BY MR. SHAW) The cover sheet there is 20 Carson Young. He's an attorney with McKool Smith, 21 sitting here today, and this is transfer -- 22 historical transfers from NexBank for Acis. 23 Do you see that? 24 MR. CRUCIANI: Again, just for the 25 record, I think this just reflects that it was</p>		<p style="text-align: right;">Page 40</p> <p>1 whether -- what it stepped up to or how much was 2 basis points, how much was not included in the basis 3 points, like how much was for a la carte structuring 4 or legal stuff, I don't know. 5 And the specific timing on when to pay 6 what lawyers how much was handled by Scott and his 7 group. I think that answers all your questions, at 8 least as far as I know. 9 Q. Respectfully, I don't -- I don't agree 10 with that -- that it answers the question. 11 So I'm gonna ask it again, which is, 12 we know that we have a creditor, which is Highland, 13 right, of Acis? We've established that. 14 There's -- there's no contest that 15 Highland is a creditor of Acis, right? 16 A. Right. 17 Q. All right. And then we have a listing 18 of -- of other alleged creditors that's in Exhibit 19 Number 40, right? 20 A. Well, I wouldn't -- we presented them as 21 factual, so I wouldn't say "alleged," but okay. 22 Q. Okay. And what I'm asking is: Who makes 23 the decision to pay Highland as a creditor as 24 opposed to one of these other parties, these other 25 creditors?</p>
<p style="text-align: right;">Page 39</p> <p>1 printed out by Carson Young -- 2 MR. SHAW: Sure. 3 MR. CRUCIANI: -- as opposed to being 4 from or to. 5 MR. SHAW: Sure. Sorry about that. 6 MR. CRUCIANI: And I'm sorry. What -- 7 what was the question, or was there a question? 8 Q. (BY MR. SHAW) All right. This document, 9 Exhibit 111, reflects historical transfers from the 10 NexBank account for Acis to an acronym HCMLP. 11 Do you see that? 12 A. Yep. 13 Q. And HCMLP is Highland, right? 14 A. Yes. 15 Q. And you see there that there are multiple 16 transfers of amounts of money that occur after Reid 17 Collins invoiced Acis, after Stanton Law Firm 18 invoiced Acis, right? 19 A. Yes. 20 Q. Who makes the decision at Acis to pay 21 Highland as opposed to one of these other creditors? 22 A. My general understanding, for a long time 23 shared services was a basis point equation when Josh 24 was there. That stepped up, what -- over the years, 25 even while Josh was there. After Josh was there,</p>		<p style="text-align: right;">Page 41</p> <p>1 MR. CRUCIANI: Objection; asked and 2 answered. 3 A. Yeah, I think I've answered it. 4 Do you want me to say it again? 5 Q. (BY MR. SHAW) I want you to answer the 6 question I've asked. 7 So who makes that decision? Do you 8 make the decision? 9 A. No, I don't make the decision. I'm saying 10 anything regarding legal payments and the timing 11 thereof is determined by Scott and his group, 12 period, and then -- 13 Q. And -- okay. 14 A. -- and then the shared services and the 15 basis points and how much Young gets paid and who 16 does that calculation and whatever would be 17 calculated more by the accountants. 18 Q. Is Mr. Ellington acting on behalf of Acis 19 when he makes that determination or whom? 20 A. You need to talk to Mr. Ellington on -- on 21 that one. It's -- he uses his -- he uses his 22 judgment, and he can tell you why. 23 Q. Are you aware that individuals who are 24 employees at Highland had communications with 25 Goldman Sachs regarding a refinance or reset of</p>

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12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 various Acis CLOs?</p> <p>2 A. Yes.</p> <p>3 Q. How did you become aware of that?</p> <p>4 A. From counsel.</p> <p>5 Q. Anybody else?</p> <p>6 A. No. It's pretty much counsel.</p> <p>7 Q. Did you direct Mr. Covitz to have</p> <p>8 communications with Goldman with regard to a</p> <p>9 refinance or reset of Acis CLOs?</p> <p>10 A. I believe Mr. Covitz was the business</p> <p>11 person, but there were a lot of legal issues, so I</p> <p>12 believe there was always -- or virtually always</p> <p>13 lawyers on the phone.</p> <p>14 Q. Did you have conversations with Mr. Covitz</p> <p>15 with regard to a refi or reset of Acis CLOs?</p> <p>16 A. Not that I recall other than, generally,</p> <p>17 that it needed to happen because not refinancing was</p> <p>18 killing the equity.</p> <p>19 Q. Did you have any written communications</p> <p>20 with Mr. Covitz with regard to a refi or reset of</p> <p>21 Acis CLOs?</p> <p>22 A. I don't recall. I mean, I might have</p> <p>23 pushed him and asked him status, but . . .</p> <p>24 (Trial Exhibit 21 referenced.)</p> <p>25 Q. (BY MR. SHAW) I'm going to show you</p>		<p style="text-align: right;">Page 44</p> <p>1 businesspeople, did you have that conversation?</p> <p>2 A. No.</p> <p>3 Q. And are you familiar with any of the</p> <p>4 written communications with Goldman Sachs?</p> <p>5 A. No.</p> <p>6 Q. Did you have any written communications</p> <p>7 with any businesspeople with regards to the transfer</p> <p>8 of management contracts -- collateral management</p> <p>9 contracts from Acis to a Highland affiliate?</p> <p>10 A. No.</p> <p>11 Q. Does anybody have authority at Acis, other</p> <p>12 than you, to -- to pursue a strategy of transferring</p> <p>13 the management of Acis collateral management</p> <p>14 agreements to a Highland affiliate?</p> <p>15 MR. CRUCIANI: Objection; vague,</p> <p>16 assumes facts not in evidence.</p> <p>17 A. Yeah, you need to rephrase that question</p> <p>18 for me.</p> <p>19 Q. (BY MR. SHAW) I mean, what I'm getting at</p> <p>20 is, could this happen without James Dondero's</p> <p>21 approval? Could a collateral management agreement</p> <p>22 that was formerly in the name of Acis, LP, be</p> <p>23 transferred to a Highland affiliate without your</p> <p>24 approval?</p> <p>25 A. Well, I mean, ultimately, it comes to my</p>
<p style="text-align: right;">Page 43</p> <p>1 what's been marked as Exhibit Number 21 to the</p> <p>2 trial.</p> <p>3 A. (Examined exhibit.)</p> <p>4 Q. Are you familiar with Mr. Amit at Goldman</p> <p>5 Sachs?</p> <p>6 A. No.</p> <p>7 Q. Have you ever seen this e-mail?</p> <p>8 A. No.</p> <p>9 Q. And you note that this e-mail,</p> <p>10 October 27th, is seven days after the arbitration</p> <p>11 award?</p> <p>12 A. Okay.</p> <p>13 Q. No reason to disagree with that, right?</p> <p>14 A. Right.</p> <p>15 Q. I want to make it abundantly clear, if I</p> <p>16 didn't ask it before.</p> <p>17 Did you direct any person to transfer</p> <p>18 Acis, LP, assets after the arbitration award?</p> <p>19 MR. CRUCIANI: I think this was the</p> <p>20 same question asked previously, and I think my</p> <p>21 instruction to that was, and is, to the extent you</p> <p>22 had discussions with businesspeople, feel free to</p> <p>23 answer. To the extent you had discussions with</p> <p>24 counsel, I would instruct you not to answer.</p> <p>25 Q. (BY MR. SHAW) All right. And so with any</p>		<p style="text-align: right;">Page 45</p> <p>1 desk, but it -- but it's -- yeah, it would have -- I</p> <p>2 was gonna say at the -- it wasn't orch -- not at my</p> <p>3 orchestration, but as approval of something that</p> <p>4 was -- not a transfer, but a result of a refi and a</p> <p>5 market demanding a distancing from Acis. It -- I</p> <p>6 would just recharacterize the whole context</p> <p>7 differently.</p> <p>8 MR. CRUCIANI: Whenever you're at a</p> <p>9 breaking point. We've been going about an hour. If</p> <p>10 this is good, we can take a break. If you're in the</p> <p>11 middle of something, we can wait.</p> <p>12 MR. SHAW: That's fine. We can take a</p> <p>13 break.</p> <p>14 THE VIDEOGRAPHER: We're off the</p> <p>15 record. The time is approximately 3:00 p.m.</p> <p>16 (A recess was taken from 3:00 p.m. to</p> <p>17 3:10 p.m.)</p> <p>18 THE VIDEOGRAPHER: We are back on the</p> <p>19 record. The time is approximately 3:10 p.m.</p> <p>20 (Trial Exhibit 173 referenced.)</p> <p>21 Q. (BY MR. SHAW) Mr. Dondero, I'm going to</p> <p>22 show you what's marked as Trial Exhibit 173.</p> <p>23 A. (Examined exhibit.)</p> <p>24 Q. You're familiar with ALF Loan Funding,</p> <p>25 correct?</p>

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13 (Pages 46 to 49)

<p style="text-align: right;">Page 46</p> <p>1 A. Not in any kind of detail, but yes.</p> <p>2 Q. All right. And you're -- you're familiar</p> <p>3 with the ALF Loan Funding as an affiliate of</p> <p>4 Highland?</p> <p>5 A. I don't know that.</p> <p>6 Q. You're familiar with Mr. Waterhouse,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. You're familiar with Mr. Scott, Grant</p> <p>10 Scott, right?</p> <p>11 A. Yes.</p> <p>12 Q. And this document, Exhibit Number 173, was</p> <p>13 executed on October 24th, 2017.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. All right. That's four days after the</p> <p>17 arbitration award.</p> <p>18 Any reason to dispute that?</p> <p>19 A. No.</p> <p>20 Q. And if you look on Exhibit 173, first</p> <p>21 page, that number 1 says, "The Company be and is</p> <p>22 hereby specifically empowered, authorized and</p> <p>23 directed to acquire 966,679 ordinary shares of no</p> <p>24 par value in the capital of the Company."</p> <p>25 Do you see that?</p>		<p style="text-align: right;">Page 48</p> <p>1 reflected in Exhibit Number 173?</p> <p>2 A. No, not that I recall at all.</p> <p>3 Q. So at the beginning of your testimony, we</p> <p>4 talked about Mr. Waterhouse's role and whether</p> <p>5 Mr. Waterhouse had the authority to transfer assets</p> <p>6 out of Acis without your approval.</p> <p>7 Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. And you correct me if I'm wrong, but I</p> <p>10 believe you testified that he did not have the</p> <p>11 authority to transfer assets from Acis without your</p> <p>12 approval?</p> <p>13 MR. CRUCIANI: Objection; misstates</p> <p>14 his testimony.</p> <p>15 A. Yeah. This is a de minimis amount of</p> <p>16 shares, and I -- I'm not sure this is anything more</p> <p>17 than an accounting cleanup, right? I think it's</p> <p>18 just moving it from one entity to a related entity,</p> <p>19 right?</p> <p>20 I mean, I -- I don't have an awareness</p> <p>21 of what it is, but if you're asking me did Frank</p> <p>22 overstep his bounds or do something untoward, I</p> <p>23 don't -- I don't think so. I think this was</p> <p>24 probably a cleanup item, probably something that</p> <p>25 came from legal, and Frank -- Frank's a trustworthy</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Yes.</p> <p>2 Q. And the Company is defined as "Acis Loan</p> <p>3 Funding Limited," right? First line, it says, "Acis</p> <p>4 Loan Funding."</p> <p>5 Is that --</p> <p>6 A. Sure.</p> <p>7 Q. -- the Company?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then it says, "To be entered</p> <p>10 into between the Company," that's Acis Loan Funding</p> <p>11 Limited, "and Acis Capital Management."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And that's the entity in which you served</p> <p>15 as the president of the general partner?</p> <p>16 A. Yes.</p> <p>17 Q. And that document's signed by</p> <p>18 Mr. Waterhouse as treasurer of Acis?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have a discussion with</p> <p>21 Mr. Waterhouse with regard to the transaction that's</p> <p>22 reflected in Exhibit Number 173?</p> <p>23 A. No, not that I recall.</p> <p>24 Q. Did you have any communications at all</p> <p>25 with Mr. Waterhouse with regard to the transaction</p>		<p style="text-align: right;">Page 49</p> <p>1 CFO.</p> <p>2 Q. (BY MR. SHAW) Did you authorize this</p> <p>3 transaction?</p> <p>4 A. No, not that I recall.</p> <p>5 Q. And Mr. Waterhouse, who you referred to as</p> <p>6 Frank, he is both an employee of Highland on the one</p> <p>7 hand and also the treasurer of Acis, LP -- or I'm</p> <p>8 sorry, Acis GP, correct?</p> <p>9 A. I don't know if he is now. As -- as of</p> <p>10 the date of whatever you showed me, he was, but I</p> <p>11 have no idea if he is now.</p> <p>12 Q. Okay. What was the purpose of this</p> <p>13 transaction reflected in Exhibit Number 173?</p> <p>14 A. I don't know.</p> <p>15 Q. What did Acis, LP, receive for</p> <p>16 transferring this interest in Acis Loan Funding,</p> <p>17 Limited, to Acis Loan Funding, Limited?</p> <p>18 A. USD 991,180.13.</p> <p>19 Q. So it received --</p> <p>20 MR. CRUCIANI: I think your -- I</p> <p>21 think, by the way, your last question had Acis Loan</p> <p>22 Funding, Limited, at both ends, so you might want</p> <p>23 to --</p> <p>24 MR. SHAW: And that's what the</p> <p>25 transaction was.</p>

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14 (Pages 50 to 53)

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<p>1 MR. CRUCIANI: Whatever.</p> <p>2 A. All right. I was trying to be clever. I</p> <p>3 don't have an awareness of this.</p> <p>4 It says, if you read it, that the</p> <p>5 shares were transferred for U.S. dollar</p> <p>6 consideration. Beyond what it says there, I don't</p> <p>7 have an awareness.</p> <p>8 Q. (BY MR. SHAW) Did Acis receive \$991,000</p> <p>9 for the transfer of these shares?</p> <p>10 A. I don't know specifically.</p> <p>11 Q. And you said something about this is just</p> <p>12 an accounting transaction.</p> <p>13 I mean, is \$991,000, in your opinion,</p> <p>14 just a minor cleanup, accounting transaction?</p> <p>15 MR. CRUCIANI: Objection; vague.</p> <p>16 A. It could be.</p> <p>17 Q. (BY MR. SHAW) Do you believe that Exhibit</p> <p>18 Number 173 was in Acis, LP's best interest?</p> <p>19 A. I've no reason to think it's not. I don't</p> <p>20 have an awareness of it.</p> <p>21 (Trial Exhibit 43 referenced.)</p> <p>22 Q. (BY MR. SHAW) I'm showing you what's been</p> <p>23 marked as Exhibit Number 43 -- Trial Exhibit 43.</p> <p>24 A. (Examined exhibit.)</p> <p>25 Q. Have you ever seen this document?</p>	<p>1 A. Yes.</p> <p>2 Q. Who is Highland HCF Advisor, Limited?</p> <p>3 A. It's affiliated with Highland of some</p> <p>4 sort -- in some way, but I -- I don't know.</p> <p>5 Q. Do you have any ownership interest in</p> <p>6 Highland HCF Advisor, Limited?</p> <p>7 A. I would have no idea.</p> <p>8 Q. And who would?</p> <p>9 A. Corporate rep or ask the lawyers.</p> <p>10 Q. Page 18, will you turn to that, please.</p> <p>11 A. Yes.</p> <p>12 Q. Is that your signature there?</p> <p>13 A. (Examined exhibit.) No.</p> <p>14 Q. Whose signature is it?</p> <p>15 A. It's -- I got a blank page with no</p> <p>16 signature.</p> <p>17 Q. The very last page at the bottom, you see</p> <p>18 where it says, "Consented and Agreed, Acis Capital</p> <p>19 Management"?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Is that your signature there?</p> <p>22 A. Looks like my assistant's. But if -- if</p> <p>23 it is, it's authorized by me.</p> <p>24 Q. How often does your assistant sign</p> <p>25 documents on your behalf?</p>
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<p>1 A. No.</p> <p>2 Q. Are you aware that seven days after the</p> <p>3 arbitration award this portfolio management</p> <p>4 agreement was executed?</p> <p>5 A. No.</p> <p>6 Q. Are you aware that Acis was formally the</p> <p>7 portfolio manager and was terminated on</p> <p>8 October 27th, 2017?</p> <p>9 A. (Examined exhibit.)</p> <p>10 Q. Do you see number 1 on page 1,</p> <p>11 "Termination of the Portfolio Services Agreement"?</p> <p>12 Do you see that there?</p> <p>13 A. Yes.</p> <p>14 Q. All right. You see it's effective -- "As</p> <p>15 of the effective date, the Predecessor Portfolio</p> <p>16 Management Agreement is hereby canceled"?</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And in the first paragraph, Predecessor</p> <p>20 Portfolio Manager is defined as Acis Capital</p> <p>21 Management.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And you see that the new portfolio manager</p> <p>25 is Highland HCF Advisor, Limited?</p>	<p>1 A. Often.</p> <p>2 Q. And how does that go? Do you direct her</p> <p>3 to sign a particular document or does she just get a</p> <p>4 document and sign it without any authorization from</p> <p>5 you? I mean, what's the protocol there?</p> <p>6 A. Well, I travel a lot. I'm out of the</p> <p>7 office a lot, you know. She'll call or she'll text</p> <p>8 and say, "The lawyers or the accountants need</p> <p>9 whatever it is signed. Can I sign it for you?"</p> <p>10 And -- and most of the time I can say</p> <p>11 yes, just based on her saying what it is.</p> <p>12 Q. Do you review these documents that your</p> <p>13 assistant signs on your behalf?</p> <p>14 A. No. We -- we have a lot of entities and a</p> <p>15 lot of companies and -- and I sign hundreds of</p> <p>16 things a week.</p> <p>17 Q. Now, this portfolio management --</p> <p>18 management agreement that removes Acis as the</p> <p>19 portfolio manager and then substitutes in Highland</p> <p>20 HCF Advisor, Limited, this was done seven days after</p> <p>21 the arbitration award.</p> <p>22 How is this in Acis's best interest?</p> <p>23 A. Because Acis had no ability to provide the</p> <p>24 services. I mean, Acis would have just had the</p> <p>25 liability.</p>

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15 (Pages 54 to 57)

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<p>1 Q. How does Acis historically make money?</p> <p>2 A. By putting together and managing the CLOs.</p> <p>3 Q. And the management of those CLOs pays</p> <p>4 fees, right?</p> <p>5 And I might -- let me restate that</p> <p>6 because I don't think it was a good question.</p> <p>7 Acis receives fees for managing the</p> <p>8 CLOs pursuant to collateralized management</p> <p>9 agreements or also known as portfolio management</p> <p>10 agreements; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. So in this document, Exhibit Number 43,</p> <p>13 Acis is giving up its right to receive those fees</p> <p>14 under the existing portfolio management agreement</p> <p>15 and now Highland HCF Advisor, Limited, will be the</p> <p>16 entity that has the right to those fees?</p> <p>17 MR. CRUCIANI: Objection;</p> <p>18 mischaracterizes the document.</p> <p>19 A. Rephrase the question for me.</p> <p>20 Q. (BY MR. SHAW) Before this agreement was</p> <p>21 executed -- this portfolio management agreement</p> <p>22 that's Exhibit Number 43 --</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Before that was executed, Acis had the</p>		<p>1 November 3rd, 2017, that is 13 days after the</p> <p>2 arbitration award that occurred on October 20th,</p> <p>3 2017, and it's between Acis, Highland, and Highland</p> <p>4 CLO Management, Limited.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Who owns Highland CLO Management, Limited?</p> <p>8 A. I don't know.</p> <p>9 Q. Who controls Highland CLO Management,</p> <p>10 Limited?</p> <p>11 A. Beyond it being an affiliate of Highland,</p> <p>12 I don't know.</p> <p>13 Q. Do you ultimately control all of the</p> <p>14 affiliates of Highland?</p> <p>15 MR. CRUCIANI: Objection; overbroad.</p> <p>16 A. No.</p> <p>17 Q. (BY MR. SHAW) All right. This document,</p> <p>18 Exhibit Number 16, I want you to look in the</p> <p>19 recitals.</p> <p>20 So the first recital talks about "Acis</p> <p>21 is a portfolio manager under certain collateralized</p> <p>22 loan obligations listed in Schedule A of the</p> <p>23 purchase agreement and is entitled to fee</p> <p>24 compensation in connection therewith as set forth</p> <p>25 therein."</p>
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<p>1 right to the fees under the portfolio management</p> <p>2 agreement that was in existence, right?</p> <p>3 MR. CRUCIANI: Objection;</p> <p>4 mischaracterizes the document.</p> <p>5 A. (No response.)</p> <p>6 Q. (BY MR. SHAW) Can you answer the question</p> <p>7 or not?</p> <p>8 A. No.</p> <p>9 (Trial Exhibit 16 referenced.)</p> <p>10 Q. (BY MR. SHAW) All right. I'm showing you</p> <p>11 what's been marked as Exhibit Number 16 -- Trial</p> <p>12 Exhibit 16.</p> <p>13 This is a document entitled</p> <p>14 "Assignment and Transfer Agreement." It's dated</p> <p>15 November 3rd, 2017.</p> <p>16 Do you see that?</p> <p>17 A. (Examined exhibit.) Yes.</p> <p>18 Q. And this is a document that was signed by</p> <p>19 you on the last page, if you'll turn with me to the</p> <p>20 last page.</p> <p>21 A. Yes.</p> <p>22 Q. Is that your actual signature or is that</p> <p>23 your assistant's signature?</p> <p>24 A. That one looks more like mine.</p> <p>25 Q. All right. Now, this document,</p>		<p>1 That's what we were just discussing</p> <p>2 with regard to how Acis makes money, right?</p> <p>3 A. Right.</p> <p>4 Q. And then the second paragraph says that</p> <p>5 "Whereas Acis and HCM entered into the purchase</p> <p>6 agreement whereby Acis sold a portion of its future</p> <p>7 service fees to HCM in exchange for cash flows</p> <p>8 for HC- -- from HCM in each case as set forth in the</p> <p>9 note."</p> <p>10 And that's that promissory note that</p> <p>11 we referred to earlier in your deposition, right?</p> <p>12 A. Right.</p> <p>13 Q. So the third "whereas" paragraph says,</p> <p>14 "Whereas HCM has notified Acis that HCM is unwilling</p> <p>15 to continue to provide support personnel and other</p> <p>16 critical services to Acis with respect to the CLOs."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Who made the determination</p> <p>20 that HCM, Highland, was unwilling to continue to</p> <p>21 provide support personnel and other critical</p> <p>22 services to Acis?</p> <p>23 A. I -- that was a thoughtful, considering</p> <p>24 all facts and circumstances, decision made by our</p> <p>25 counsel -- internal and external counsel.</p>

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16 (Pages 58 to 61)

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<p>1 Q. Were you involved in that decision?</p> <p>2 A. I was aware of it, and I agreed with it,</p> <p>3 but...</p> <p>4 Q. What external counsel was involved in that</p> <p>5 determination?</p> <p>6 A. You'll have to ask Scott Ellington.</p> <p>7 Q. And the internal counsel that was involved</p> <p>8 in that determination was who?</p> <p>9 A. Tim.</p> <p>10 Q. That's Tim Cournoyer?</p> <p>11 A. Yes.</p> <p>12 Q. Was Mr. Ellington involved in that</p> <p>13 decision?</p> <p>14 A. I don't know.</p> <p>15 Q. Now, when Highland notified Acis that</p> <p>16 Highland was no longer to provide the support and</p> <p>17 personnel and other critical services to Acis with</p> <p>18 respect to the CLOs, what did Acis do to go out to</p> <p>19 the market to try to get those support services and</p> <p>20 personnel from other service providers?</p> <p>21 A. I don't know.</p> <p>22 Q. Did it do anything to go out and say,</p> <p>23 "Hey, Highland's no longer gonna provide these</p> <p>24 shared services and subadvisory services, so we need</p> <p>25 to find somebody else to provide those"?</p>	<p>1 needed to be refinanced that weren't likely to be</p> <p>2 outstanding for any length of time to -- for a third</p> <p>3 party to get involved and to try and take over the</p> <p>4 deals for a very short period of time and be</p> <p>5 potentially subject to litigation or be subject to</p> <p>6 not being paid because litigation was somehow</p> <p>7 slowing or taking money or whatever.</p> <p>8 I'm not sure that errand would have</p> <p>9 been -- I'm not sure there would have been interest</p> <p>10 from anybody under any circumstance -- any plausible</p> <p>11 circumstance that I can imagine --</p> <p>12 Q. But we don't know --</p> <p>13 A. -- anybody interested in buying it.</p> <p>14 Q. I'm sorry. I didn't mean to cut you off</p> <p>15 there.</p> <p>16 But we don't know because, no, we</p> <p>17 don't -- we're unaware of any efforts that were made</p> <p>18 to -- to determine that, right?</p> <p>19 A. Yeah. The -- those efforts wouldn't have</p> <p>20 been made at my level. But I'm -- I'm just saying I</p> <p>21 have a hard time seeing how it would have been</p> <p>22 plausible, but you can -- you can ask Scott and</p> <p>23 other people.</p> <p>24 Q. All right. So this -- this transfer</p> <p>25 agreement contemplates the transfer of these</p>
Page 59	Page 61
<p>1 A. I -- I don't know. I don't know if it</p> <p>2 did. I don't know if it would have been plausible,</p> <p>3 but I -- I don't know.</p> <p>4 Q. Who would know that?</p> <p>5 A. Check with Scott.</p> <p>6 Q. All right. The next paragraph says,</p> <p>7 "Whereas Acis has determined that the effect of the</p> <p>8 notification is that it cannot fulfill its duties as</p> <p>9 portfolio manager of the CLOs, and in order to</p> <p>10 ensure the continued operation of such CLOs and</p> <p>11 protection for its stakeholders, it must assign its</p> <p>12 rights as portfolio manager in the CLOs to a</p> <p>13 qualified successor portfolio manager pursuant to</p> <p>14 the CLO documents."</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. What efforts did Acis make to sell its</p> <p>18 rights as a portfolio manager in the CLOs as opposed</p> <p>19 to just transferring them to a Highland affiliate?</p> <p>20 A. I don't know, but I want to focus on my</p> <p>21 second comment I said -- last time I said I don't</p> <p>22 know. I don't believe it would have been a</p> <p>23 plausible errand.</p> <p>24 I don't know what efforts were made,</p> <p>25 but you had deals that were priced off market that</p>	<p>1 collateralized management agreements from Acis to</p> <p>2 Highland CLO Management, Limited.</p> <p>3 That's that Cayman entity, right?</p> <p>4 A. Yes.</p> <p>5 Q. All right. What efforts did Acis make to</p> <p>6 obtain or to get from Highland CLO Management,</p> <p>7 Limited, some amount of money for the transfer of</p> <p>8 those portfolio management agreements?</p> <p>9 A. Then maybe this is the crux of everything.</p> <p>10 It's hard to see how they have any value.</p> <p>11 Q. Is it your position that those portfolio</p> <p>12 management agreements, or often called collateral</p> <p>13 management agreements, have no value?</p> <p>14 A. When I have 30 or 60 days of tenure and</p> <p>15 they're mirrored in a pile of litigation, yeah, I'd</p> <p>16 say they have limited to zero value.</p> <p>17 Q. When you entered into the note</p> <p>18 transaction, when Highland took a note in exchange</p> <p>19 for part of the fees under those collateralized</p> <p>20 management agreements, that was done at a time that</p> <p>21 there was pending litigation between Mr. Terry and</p> <p>22 Acis, right?</p> <p>23 A. I -- I don't recall that timing, but it</p> <p>24 was -- I don't -- yeah, I don't -- I don't recall --</p> <p>25 I thought it was before that. But if it -- but</p>

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17 (Pages 62 to 65)

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<p>1 that -- wasn't that completely held valid in 2 arbitration anyway? 3 But anyway, I don't -- I don't know 4 the time. If you want to -- 5 Q. So the promissory note is dated 6 October 7th, 2016. 7 Any reason -- 8 A. Okay. 9 Q. -- to disagree with that? All right. 10 And you -- and you recall that in 11 September of 2016 was when Highland filed a 12 lawsuit -- public lawsuit against Mr. Terry. 13 Mr. Terry filed an arbitration against 14 Highland and Acis in September of 2016 as well, 15 right? 16 A. Okay. Yes. 17 Q. Highland CLO Management, Limited, since it 18 became an entity, what -- what assets does Highland 19 CLO Management, Limited, have? 20 A. I have no idea. 21 Q. All right. Go to the second page of 22 Exhibit 16. 23 A. (Complied.) 24 Q. So this is the actual agreement, not the 25 recitals, but it talks in number 1, "Succession,</p>	<p>1 October 20th, 2017, the note was an asset of Acis, 2 right? 3 A. (Examined exhibit.) Yes. 4 Q. All right. And now this agreement 5 effectuates the transfer of that asset of Acis to 6 HCLOM? 7 A. Yes. 8 Q. Now, number 4 says, "Expense Support," and 9 it says, "In the event Acis delivers written notice 10 to HCLOM that Acis is unable to pay when due any 11 Acis expenses, then HCLOM shall promptly pay to 12 Acis" -- and then it goes on and on to say "an 13 aggregate of \$3 million of Acis's administrative 14 fees and legal expenses." 15 Do you see that? 16 A. Yes. 17 Q. Prior to the filing of the bankruptcy, did 18 Acis ever deliver written notice to HCLOM that Acis 19 was unable to pay any Acis expenses? 20 A. I think you mixed up parties. 21 Could you say it one more time. 22 Q. Prior to the filing of the bankruptcy, did 23 Acis deliver a written notice to HCLOM that Acis was 24 unable to pay when due any Acis expenses? 25 A. Not that I'm aware of.</p>
Page 63	Page 65
<p>1 Acis shall promptly provide the controlling class 2 with notice that Highland" -- this Cayman entity -- 3 "will be the portfolio manager," in number 1. 4 Do you see that? 5 A. Um-hum. 6 Q. Is that a "yes"? 7 A. Yes, I see it. Yes. 8 Q. And then we have number 2, "There is a 9 successor manager, each of Acis and HCLOM shall 10 promptly pursue successor management appointment of 11 this Highland Cayman entity." 12 Do you see that? 13 A. Yes. 14 Q. All right. And then number 3 is an 15 assignment and transfer of the promissory note. And 16 the promissory note is that document that we were 17 referring to earlier. It's dated October 7th, 2016. 18 That's the note from Highland to Acis. 19 Do you recall that? 20 A. Yes. 21 Q. All right. And so the first paragraph 22 there transfers the note from Acis to HCLOM. 23 Do you see that? 24 A. Yes. 25 Q. So do you recall too we discussed on</p>	<p>1 Q. Why not? 2 A. I don't know. I think it was paying all 3 expenses when it was due and payable. 4 Q. Well, was it? 5 A. It wasn't -- yeah. I believe so. 6 Q. Well, we have a creditor list that you've 7 reviewed earlier, for example, James Stanton, whose 8 bill was invoiced in October of 2016, that has not 9 been paid for legal expenses. 10 Why did Acis not send the notice to 11 HCLOM, "Hey, we've got James Stanton. He hasn't 12 been paid since 2016. We want some of this expense 13 support under this assignment and transfer 14 agreement"? 15 A. From an Acis standpoint, it -- it wasn't 16 past due. I mean, it -- bills, especially legal 17 fees -- bills and structuring fees, get paid over 18 extended period of times are adjusted downward or -- 19 or blended into other deals or -- or whatever. 20 Again, that would be determined by Scott and his 21 team. 22 But from an Acis perspective, there 23 were no overdue or defaulted bills or payments. 24 Q. Same thing for Andrews Kurth. 25 Is that right, those bills that were</p>

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18 (Pages 66 to 69)

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1 due to Andrews Kurth?
2 A. Correct.
3 Q. You say that as of the date of this
4 agreement here, that those were not due and payable?
5 A. Correct.
6 (Mr. Carson Young left the room.)
7 A. But they weren't in default or they
8 weren't beyond payment date.
9 Q. (BY MR. SHAW) Nothing in this agreement
10 requires Acis to deliver this written notice, right?
11 A. Nothing requires -- doesn't some -- number
12 4, first sentence require Acis?
13 Q. That -- the question is to you: In the
14 event Acis delivers written notice, are you aware of
15 any requirement that Acis deliver that notice to
16 HCLOM, or could A -- could Acis just say, "You know
17 what, we're not gonna send the notice because we
18 don't want to"?
19 A. Well, I think the way that paragraph is
20 written, they have to send a notice if they want to
21 draw on the 2 million for legal expenses or 1
22 million for administrative expenses.
23 I mean, they -- they don't have to,
24 but then I don't think they ever had a chance at
25 getting those moneys.

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1 Q. So we know the overall effect of this
2 Exhibit Number 1 -- 16 is, number 1, to transfer the
3 promissory note, the maker of which was Highland,
4 that had roughly \$9 million left to be paid.
5 That was transferred out, right,
6 pursuant to this agreement?
7 A. Yes.
8 Q. All right. And we know that the intent
9 was to transfer the management of these
10 collateralized management -- collateral --
11 collateral management agreements to this Highland
12 affiliate as well, right?
13 A. Yes.
14 Q. And what did Acis get out of this Exhibit
15 Number 16?
16 A. A \$3 million windfall. \$3 million it
17 would have never gotten otherwise. I mean, it's a
18 gigantic windfall.
19 You've got to remember the creation of
20 that note never put any value in Highland's pocket.
21 It's not like Highland got 12 million of cash and
22 signed a \$12 million note.
23 Highland got a promise of fees that
24 Acis is never gonna deliver against that note. This
25 transaction was trying to be very fair to everybody

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1 and everybody -- everybody knew it would be
2 scrutinized in hindsight.
3 But the purpose of putting that
4 \$3 million in there was to create an abundance and a
5 windfall for the benefit of Acis that the assets
6 couldn't be questioned in terms of their value.
7 Q. Why did you know that it was gonna be
8 scrutinized in hindsight?
9 A. What? I just -- the level of litigation
10 was -- was high and the -- the personalities on both
11 sides were intractable. We'll be here a decade from
12 now.
13 Q. And you're saying the personalities on
14 both sides are intractable?
15 A. Oh, yeah.
16 Q. Now, Highland did receive participation
17 fees pursuant to that note transaction, didn't it?
18 A. I'm sorry. Say that again.
19 Highland...
20 Q. Highland did receive participation fees
21 pursuant to that note transaction?
22 MR. CRUCIANI: For clarity, I think
23 you're referring to the first as opposed to the
24 second note transaction. You just might want to
25 make that clear.

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1 Q. (BY MR. SHAW) Yeah. So Highland received
2 fees pursuant to the first note transaction which
3 assigned out the interest in the collateral
4 management agreements to Highland. It received fees
5 pursuant to that underlying transaction in October
6 of 2016.
7 And I'm not saying the fees were
8 received in October of 2016, but that's the
9 transaction I'm referring to.
10 MR. CRUCIANI: I'm sorry. Objection;
11 vague.
12 A. I couldn't follow that either. I couldn't
13 follow that either.
14 Q. (BY MR. SHAW) All right. There was a
15 transaction in October of 2016 where Highland gave a
16 note to Acis and Acis transferred an interest in
17 fees under the collateralized management agreements.
18 Do you recall that transaction?
19 A. Yes. But to be clear, Highland got
20 nothing for its promissory note but a promise or a
21 potential capture of future fees.
22 Q. And those future fees were paid to
23 Highland?
24 A. For a little while, and then Highland paid
25 on the note for a little while also.

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19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 Q. Until this transaction occurred in Exhibit 2 Number 16? 3 A. Yes, because with the refinancings that 4 were necessary being demanded by the equity 5 investors would eliminate the manage -- the 6 management fees to Acis, and Acis was in no position 7 to provide the services anyway. 8 Q. Was part of the goal in this Exhibit 9 Number 16 also to avoid Acis having to go into 10 bankruptcy? 11 A. I don't think -- I -- not that I'm aware 12 of. I couldn't see that far in advance. I don't 13 know what other people were thinking. 14 It was to provide real value -- real 15 value for assets that had negligible value. 16 Q. And you believe Acis received that real 17 value pursuant to this agreement, Exhibit 16? 18 A. Yes. I believe -- yes. I believe it -- 19 it removed itself from an inability to perform, and 20 I believe it got more value in paragraph 4 than it 21 ever would have received otherwise. 22 Q. But Acis hasn't received 1 cent under 23 Paragraph Number 4, has it? 24 A. Not yet. It's early. 25 Q. And you, as Acis's president as it stands,</p>		<p style="text-align: right;">Page 72</p> <p>1 Q. And you, as the president of Acis, GP, get 2 to make the determination, under paragraph 4, 3 whether you serve that written notice or not? 4 A. A better way to describe it is I would 5 approve it as the agreement would be administered by 6 somebody else. 7 Q. And why hasn't that happened prior to the 8 bankruptcy? 9 A. Again, because it hasn't been triggered 10 yet. 11 Q. And where is the trigger in your opinion, 12 where, okay, this is the -- this is the number -- 13 the dollar number or the -- or the age of the 14 receivable or the payable, that's gonna trigger me 15 to say, "Me, Jim Dondero, as president of the 16 general partner of Acis, sends this notice to HCLOM 17 to pay"? 18 A. It would have to come from either 19 accounting or legal. The people who would 20 administer this agreement, if they would come and 21 say, "Okay. This is the current facts and 22 circumstances. We need to do the following. We 23 recommend you do the following." 24 Q. And those are all Highland employees, 25 right, that would make that determination?</p>
<p style="text-align: right;">Page 71</p> <p>1 get to determine whether or not Acis gets that 2 \$3 million or if it doesn't get that \$3 million in 3 expense support? 4 (Mr. Carson Young entered the room.) 5 MR. CRUCIANI: Objection; misstates 6 evidence that we're in bankruptcy. 7 A. If this was -- if this was -- this 8 agreement operated in the normal course like it 9 should have, that would have come across my desk, 10 yes. 11 Q. (BY MR. SHAW) I'm saying outside of 12 bankruptcy -- 13 A. Right. 14 Q. -- we know that Acis never received a 15 dollar under Exhibit -- under Paragraph Number 4, 16 right? 17 A. Right, not yet. 18 Q. And we know that Acis gets to make the 19 determination of when and whether it files this 20 written notice to HCLOM that it wants this money. 21 A. Right, which Highland operates in good 22 faith. HCLOM -- HCLOM will operate in good faith. 23 Acis has operated in good faith. And if it gets to 24 the point where this paragraph is properly 25 triggered, it will do what it's supposed to do.</p>		<p style="text-align: right;">Page 73</p> <p>1 A. Yeah. In the normal course, there's no 2 ability for Acis to operate. There's no employees 3 there, so that kind of stuff would be done via a 4 shared services responsibilities. 5 Q. And we talked about this before. 6 Does HCLOM have \$3 million in cash to 7 pay Acis? 8 A. I -- I don't know. 9 Q. If HCLOM didn't have the cash to pay 10 Acis -- so let's -- the scenario that Acis sends the 11 notice, and HCLOM says, "We don't have the cash to 12 pay." 13 Would you, as Acis, go out and sue 14 HCLOM to compel the payment of this \$3 million 15 support fee? 16 MR. CRUCIANI: Objection; calls for 17 speculation. 18 A. Yeah. I mean, we'd expect the agreement 19 to be honored, and we would operate accordingly, but 20 I don't want to speculate on what we would do when. 21 Q. (BY MR. SHAW) Why was HCLOM set up as a 22 Cayman entity as opposed to like Acis, a Delaware 23 entity or like Highland, a Delaware entity? 24 A. Because the whole structured product world 25 is offshore. All the risk retention stuff is in</p>

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20 (Pages 74 to 77)

<p style="text-align: right;">Page 74</p> <p>1 Guernsey. All the CLOs are created in Cayman. All 2 the -- it makes more -- most sense or more sense for 3 it to be there than anywhere else. 4 Q. Yeah. But this is -- we're talking about 5 an asset manager, right? You'd know the difference 6 between an asset manager as opposed to the 7 underlying entities that run -- that are the CLOs or 8 the risk retention people, right? 9 A. Yes. 10 Q. All right. And Acis was the asset manager 11 of these Acis CLOs and it was a Delaware entity, 12 right? 13 A. I believe so. 14 Q. Now, this Exhibit Number 16, we talked 15 about the fact that it contemplates the transfer of 16 the collateralized management agreements. 17 If -- we know that those 18 collateralized management agreements -- as we sit 19 here today, all of those have not been transferred 20 to HCLM, right? 21 A. I don't know. 22 Q. So you don't know, as we sit here today, 23 whether Acis is the portfolio manager under any 24 collateralized management agreements? 25 A. I -- I think the ones that were about to</p>		<p style="text-align: right;">Page 76</p> <p>1 make sure you match. 2 You either just talk about CLO3 or if 3 you're talk about all the CLO management agreements, 4 if you'll look at your question. 5 Q. (BY MR. SHAW) I'm just talking about 6 Exhibit 16. 7 Had Exhibit 16 gone through as 8 planned, what -- 9 MR. CRUCIANI: I'm sorry. You said 10 Exhibit 16. That's my point. You're talking about 11 just CLO3, because part of your question was -- it 12 seemed to be directed just to CLO3, and then part of 13 your question seemed directed to the other 14 collateral management agreements for the other CLOs. 15 I'm just asking for clarification on that. 16 MR. SHAW: Okay. Well, I think it was 17 clear, so I appreciate that, but . . . 18 Q. (BY MR. SHAW) Exhibit 16 contemplates the 19 transfer of the promissory note, correct? And it 20 did effectuate the transfer of the promissory note. 21 A. Right. 22 Q. We know that Acis had -- strike that. 23 We know that this document also 24 contemplates that Acis be replaced as the portfolio 25 manager under various collateralized management</p>
<p style="text-align: right;">Page 75</p> <p>1 be refinanced that got stopped in mid-refi, which 2 you guys will be liable for, I believe those are 3 still at Acis. 4 Q. All right. Had this -- had that not been 5 stopped, right, or had that -- had that gone 6 through, what -- what assets would Acis have left 7 over? 8 A. Like I said, I don't know. I don't know 9 about what latter CLOs are still there, but -- I 10 don't know. 11 Q. Well, we know it wouldn't have the note, 12 right? 13 A. We know it wouldn't have the note. 14 Q. We know that there were interests in 15 various entities. We looked at those lists in that 16 Schedule A that it no longer has, right? 17 A. Right. 18 Q. We know that if this transaction had gone 19 through, that it would no longer be the portfolio 20 manager under any collateralized management 21 agreements, right? 22 MR. CRUCIANI: Could I just make a 23 question? You were talking about the one 24 transaction and then you talked about globally other 25 collateral management agreements. I just want to</p>		<p style="text-align: right;">Page 77</p> <p>1 agreements, right? 2 A. Right. 3 Q. So had that gone through, what would Acis 4 have had left? 5 MR. CRUCIANI: Objection; vague. 6 A. Yeah, like I said, I'm not the person to 7 answer that. 8 But for sure, it would have had cash. 9 It would have had the \$3 million asset to trigger 10 under this agreement, and I don't know what other 11 assets, from this other thing, right. 12 It got 900,000 in cash or something, I 13 don't know, whatever. But there -- there would be 14 cash -- I don't know what other incidental assets. 15 And then there would be \$3 million of 16 receivables from HCLM. 17 Q. (BY MR. SHAW) Who would know the -- the 18 answer to that question? 19 A. A corporate rep. 20 Q. And you understand that Mr. Leventon was 21 designated as the corporate rep for Acis in this 22 bankruptcy proceeding? 23 A. I don't know. 24 Q. Does Mr. Leventon have any day-to-day 25 business side operation role in Acis?</p>

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21 (Pages 78 to 81)

<p style="text-align: right;">Page 78</p> <p>1 A. I don't know.</p> <p>2 Q. Who does run the day-to-day business side</p> <p>3 operations of Acis?</p> <p>4 A. I -- I don't know.</p> <p>5 Q. I mean, Mr. Covitz?</p> <p>6 A. He runs the portfolios, I -- I don't who,</p> <p>7 on Frank's team -- who manages the Acis stuff.</p> <p>8 Q. Mr. Simek?</p> <p>9 A. No.</p> <p>10 Q. What does Mr. Simek do?</p> <p>11 A. He helps find primarily AAA, AA, A</p> <p>12 investors and CLOs. He has input into structuring.</p> <p>13 Q. This Exhibit 16, did you have any written</p> <p>14 communications with anybody with regard to this</p> <p>15 transaction and -- and that's reflected in</p> <p>16 Exhibit -- Exhibit 16?</p> <p>17 A. No.</p> <p>18 Q. Did you have any oral conversations with</p> <p>19 anybody on the business side, nonattorneys, with</p> <p>20 regards to Exhibit Number 16?</p> <p>21 A. No.</p> <p>22 Q. What role did you play in Exhibit 16 in</p> <p>23 that transaction?</p> <p>24 A. I just had a general awareness of it.</p> <p>25 Q. Was Exhibit 16 done at your behest?</p>		<p style="text-align: right;">Page 80</p> <p>1 (A recess was taken from 3:56 p.m. to</p> <p>2 4:12 p.m.)</p> <p>3 THE VIDEOGRAPHER: We are back on the</p> <p>4 record. The time is approximately 4:12 p.m.</p> <p>5 Q. (BY MR. SHAW) Prior to the filing of the</p> <p>6 involuntary bankruptcy petitions, was Acis, LP, net</p> <p>7 negative cash flow?</p> <p>8 MR. CRUCLANI: Objection; vague.</p> <p>9 A. I don't know.</p> <p>10 Q. (BY MR. SHAW) Who would know that?</p> <p>11 A. The accountants, I would think, and I</p> <p>12 don't know who else.</p> <p>13 Q. And the accountants, who -- who handles</p> <p>14 the accounting for Acis?</p> <p>15 A. I don't know.</p> <p>16 Q. Mr. Klos?</p> <p>17 A. I don't know.</p> <p>18 (Trial Exhibit 104 referenced.)</p> <p>19 Q. (BY MR. SHAW) I'm showing you what's been</p> <p>20 marked as Exhibit 104.</p> <p>21 A. (Examined exhibit.)</p> <p>22 Q. Do you recognize that document?</p> <p>23 A. No.</p> <p>24 Q. Go to page 12 of 19.</p> <p>25 A. (Complied.)</p>
<p style="text-align: right;">Page 79</p> <p>1 A. No.</p> <p>2 Q. Whose behest was it done at?</p> <p>3 A. Legal, internal/external.</p> <p>4 Q. Did you direct legal to do that?</p> <p>5 A. I'm not a lawyer by training. This is a</p> <p>6 lot of legal dancing.</p> <p>7 Q. But did you direct legal to --</p> <p>8 A. No, I did not.</p> <p>9 Q. Let me finish the question.</p> <p>10 Did you direct legal to effectuate</p> <p>11 Exhibit Number 16?</p> <p>12 MR. CRUCLANI: Objection; vague.</p> <p>13 A. I didn't -- I -- I didn't ord- -- I didn't</p> <p>14 tell anybody to effectuate anything.</p> <p>15 Q. (BY MR. SHAW) You approve of Exhibit 16,</p> <p>16 though, correct?</p> <p>17 A. Yes.</p> <p>18 THE WITNESS: Is this a good time for</p> <p>19 a break?</p> <p>20 MR. CRUCLANI: Sure. We've been</p> <p>21 going --</p> <p>22 MR. SHAW: Sure.</p> <p>23 MR. CRUCLANI: Take a break.</p> <p>24 THE VIDEOGRAPHER: We're off the</p> <p>25 record. The time is approximately 3:56 p.m.</p>		<p style="text-align: right;">Page 81</p> <p>1 Q. Are you there with me?</p> <p>2 A. Yes.</p> <p>3 Q. Is that your signature for Highland CLO</p> <p>4 Management, L.L.C.?</p> <p>5 A. Yes.</p> <p>6 Q. Are you familiar with this document?</p> <p>7 A. No.</p> <p>8 Q. Are you aware that Mizuho was handling the</p> <p>9 refi or reset for various Acis CLOs?</p> <p>10 A. I know the businesspeople and the lawyers</p> <p>11 had talked to Mizuho. I think maybe before that</p> <p>12 Goldman, or Goldman after Mizuho. And then -- or</p> <p>13 Goldman before. I don't -- whatever.</p> <p>14 They -- they talked to two or three</p> <p>15 different underwriters, and they tried to negotiate</p> <p>16 something similar to this.</p> <p>17 Q. Mizuho was the only investment bank that</p> <p>18 was willing to do the deal, though, right?</p> <p>19 A. I -- I don't know.</p> <p>20 Q. Are you aware that Goldman passed on</p> <p>21 handling the refi or reset?</p> <p>22 A. Yes.</p> <p>23 Q. How'd you become aware of that?</p> <p>24 A. From counsel.</p> <p>25 Q. So Exhibit 104, who -- who was negotiating</p>

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22 (Pages 82 to 85)

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<p>1 that agreement on behalf of Acis?</p> <p>2 A. I believe Scott Ellington.</p> <p>3 Q. Now, Mr. Ellington has no formal role with</p> <p>4 Acis, right? I mean, he's not the -- an officer or</p> <p>5 director of Acis, LP, or Acis, GP?</p> <p>6 A. Okay. Then his contact comes in via the</p> <p>7 shared services.</p> <p>8 Q. Do you have any e-mail communications with</p> <p>9 regard to the Mizuho transaction?</p> <p>10 A. No.</p> <p>11 Q. What was the purpose of the Mizuho</p> <p>12 agreement and the contemplated refi or reset?</p> <p>13 A. Financing rates, like mortgage rates on</p> <p>14 your house, had come down materially for CLOs, and</p> <p>15 the ability to refinance or refinance and extend the</p> <p>16 deal for the benefit of the shareholders or the</p> <p>17 equity holders was clear and possible for the Acis</p> <p>18 transactions.</p> <p>19 Q. Who are the equity holders in the Acis</p> <p>20 CLOs that are listed here on Exhibit Number 104?</p> <p>21 A. Primarily the ALF, I guess, which is</p> <p>22 primarily DAF investors and primarily one large</p> <p>23 institutional investor.</p> <p>24 Q. So we've got the institutional investor,</p> <p>25 and we've got the DAF.</p>	<p>1 holders from suffering and being crushed by an</p> <p>2 expensive cap structure and to prevent or mitigate</p> <p>3 any claims against Acis for not refinancing the</p> <p>4 deals.</p> <p>5 Q. Is Acis required to refinance a deal?</p> <p>6 A. It's required to do what's in the best</p> <p>7 interest of its equity investors that hired him that</p> <p>8 it has fiduciary responsibility to.</p> <p>9 Q. Is Acis required to refi any of the CLOs?</p> <p>10 A. Fiduciary -- fiducially "obligated" may</p> <p>11 be a better word than "required" because it's not a</p> <p>12 contractual requirement.</p> <p>13 But it's a -- it's something that --</p> <p>14 an opportunity that I think they could be held</p> <p>15 liable or negligent for if they didn't do.</p> <p>16 And that's why I believe you guys</p> <p>17 ultimately would be liable for delaying it.</p> <p>18 Q. The outside investor that you mentioned</p> <p>19 that controls the equity along with the DAF, when</p> <p>20 did that outside investor take a piece of the</p> <p>21 equity?</p> <p>22 A. Last fall.</p> <p>23 Q. Was that equity investor apprised of the</p> <p>24 pendency of the arbitration between Mr. Terry and</p> <p>25 Acis?</p>
Page 83	Page 85
<p>1 Anybody else who owns equity in these</p> <p>2 CLOs that are reflected in Exhibit Number 104?</p> <p>3 A. I don't know. If not, it'd be small.</p> <p>4 Even if there is, they're small. I don't know.</p> <p>5 Q. Now, the transaction that's contemplated</p> <p>6 by Exhibit 104 is not simply a reset or a refi.</p> <p>7 It's a reset or refi together with a</p> <p>8 transfer of the management agreement -- or</p> <p>9 management agreements from Acis to Highland CLO</p> <p>10 Management, L.L.C., right?</p> <p>11 A. Yes, I believe so.</p> <p>12 Q. The second part of that, the transfer of</p> <p>13 the management agreements, why is that necessary?</p> <p>14 A. The way it was described to me was no one</p> <p>15 wanted to be near the Acis brand. They -- they</p> <p>16 wanted it to be a functioning Highland subsidiary,</p> <p>17 not a nonfunctioning litigation mess.</p> <p>18 Q. This nonfunctioning Highland subsidiary</p> <p>19 that would take over the management of these CLOs,</p> <p>20 they're taking over the management because they want</p> <p>21 to reap the benefits of the collateralized --</p> <p>22 collateral management agreements, right?</p> <p>23 A. No.</p> <p>24 Q. Why are they taking it over?</p> <p>25 A. To prevent the shareholders or the equity</p>	<p>1 A. Yes. We kept them fully informed.</p> <p>2 Q. So they knew coming in that the deal had</p> <p>3 some hair on it?</p> <p>4 MR. CRUCIANI: Objection; vague.</p> <p>5 A. I'm gonna force you to give me more</p> <p>6 specific words than "hair on it."</p> <p>7 Q. (BY MR. SHAW) Well, they came in knowing</p> <p>8 that there was litigation in which Acis, the</p> <p>9 portfolio -- the current portfolio manager, was a</p> <p>10 party and could be liable to Mr. Terry.</p> <p>11 A. Yes. They were aware of that risk, so</p> <p>12 they underwrote that risk.</p> <p>13 Q. And did they buy the equity at a discount</p> <p>14 based upon that risk?</p> <p>15 A. No. They bought it at a fair market</p> <p>16 value.</p> <p>17 Q. How was the fair market value of the</p> <p>18 equity determined?</p> <p>19 A. I don't know the specifics. I -- I just</p> <p>20 know the prices were between 40, 60 cents on the</p> <p>21 dollar.</p> <p>22 It was about 20 to 30 percent less</p> <p>23 than similar deals done in the market of similar</p> <p>24 vintage, so they were -- but the -- the -- the</p> <p>25 methodology was scrutinized heavily by both sides,</p>

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23 (Pages 86 to 89)

<p style="text-align: right;">Page 86</p> <p>1 and I know it was a -- as fair a market value as 2 they could get to it at the time. 3 Q. Who was negotiating on behalf of Acis with 4 regard to bringing in this third-party investor in 5 the equity of the CLOs? 6 A. I would -- it would have been Hunter and 7 Price in the portfolio. 8 As a business person, Trey was 9 involved also on bringing the investor in. And then 10 there would have been somebody from legal on the 11 team too. 12 Q. And you're talking about Trey Parker? 13 A. Yes. 14 Q. If these refs and resets, coupled with a 15 transfer of the management agreements, went forward, 16 this Highland affiliate, Highland CLO 17 Management, L.L.C., would receive the revenue from 18 the CLOs under these new collateral management 19 agreements, right? 20 A. Yeah. The revenue and -- and all the work 21 and responsibility in terms of managing them, 22 administering them, keeping the accounting, and 23 doing everything else that is -- is part of that 24 business. It's not a high-margin business. 25 Q. The margins depend on, to some degree, the</p>		<p style="text-align: right;">Page 88</p> <p>1 answered. 2 A. Do you want more specifics? 3 Q. (BY MR. SHAW) I just asked the question. 4 If you got an answer, then let me know. 5 A. The Acis brand is toxic. I think taping 6 and baiting partners for a year-and-a-half, suing 7 your former employer aggressively, I mean, just 8 nobody wants to get near it. 9 Q. When do you believe that the Acis brand 10 became toxic? 11 A. I don't know, as -- as everything became 12 public. 13 Q. All right. Became public in September of 14 2016, right? 15 A. Let's see. 16 Q. In September of 2016? 17 A. Thereabouts or thereafter. 18 Q. And it became public through a lawsuit 19 filed by Highland against Mr. Terry, right? 20 A. I think -- I don't remember exactly, but I 21 think ours was very brief and not specific and 22 nonsalacious. 23 Q. You didn't accuse Mr. Terry of having a 24 sexual relationship with an attorney that worked for 25 Highland in that pleading?</p>
<p style="text-align: right;">Page 87</p> <p>1 arrangement between Highland, who is providing the 2 shared services and the subadvisory agreement or 3 services, and the portfolio manager, whether that be 4 Acis or this new Highland CLO Management, L.L.C., 5 right? 6 A. I mean, some of it depends on the transfer 7 pricing being accurate, which I think is what you're 8 asking. 9 But across the industry, it's no more 10 than a 15 to 20 percent margin business, period. 11 Where we're not the only ones who do CLOs, it's at 12 best 15, 20, 25 percent margin business in the best 13 of cases. 14 Q. Did -- was there a discussion or any kind 15 of communications with regard to between Highland 16 CLO Management, L.L.C., and Highland with regard to 17 what fees would be charged pursuant to the shared 18 services and subadvisory agreements that would be 19 required to -- to have Highland CLO Management 20 manage these collateral -- collateral management 21 agreements? 22 A. Not that I'm aware of. 23 Q. Do you know why Goldman passed on this 24 deal? 25 MR. CRUCIANI: Objection; asked and</p>		<p style="text-align: right;">Page 89</p> <p>1 A. I thought it was multiple. But I don't -- 2 I don't know. I don't remember specifically. 3 Q. I guess salacious is in the eye of the 4 beholder, right? 5 A. Yes. 6 (Trial Exhibit 105 referenced.) 7 Q. (BY MR. SHAW) I'm showing you what's been 8 marked as Exhibit Number 105. 9 A. (Examined exhibit.) 10 Q. Have you ever seen that document? 11 A. No. 12 Q. You've never seen the judgment that was 13 entered against Acis Capital Management and Acis 14 Capital Management, GP, L.L.C.? 15 A. Nope. 16 Q. Are you aware that a final judgment was 17 entered by the state court against Acis, GP, and 18 Acis, LP? 19 A. I -- I don't know if it was valid or held 20 to be valid. I don't -- I -- I'd be -- I don't 21 know. 22 Q. All right. So this was -- this Acis or 23 this judgment was entered on December 18th, 2017. 24 The next day, December 19th, 2017, this agreement 25 was executed, Exhibit Number 184.</p>

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24 (Pages 90 to 93)

<p style="text-align: right;">Page 90</p> <p>1 (Trial Exhibit 184 referenced.) 2 A. (Examined exhibit.) 3 Q. (BY MR. SHAW) Do you recognize that 4 document? 5 A. No. 6 Q. You're familiar with your sister's 7 handwriting and signature that's on page 8 of 12? 8 A. That looks like it. 9 Q. And then the next page is Mr. Okada, 10 right? 11 A. Yep. 12 Q. And you worked with Mr. Okada for a long 13 time, correct? 14 A. Yes. 15 Q. Did you talk to Mr. Okada about this 16 assignment transfer and amendment agreement? 17 A. No. 18 Q. When was the last time you talked to 19 Mr. Okada? 20 MR. CRUCIANI: About anything, you 21 mean, or . . . 22 Q. (BY MR. SHAW) About anything. 23 A. Yesterday. 24 Q. So the Dugaboya Investment Trust, we know 25 that you're a ultimate beneficiary of that trust,</p>		<p style="text-align: right;">Page 92</p> <p>1 think, and I trust, are capable as internal and 2 external counsel, so no. 3 Q. Did you ask anybody to divest the trust of 4 its interest in Acis, LP, or Acis GP? 5 A. I -- I don't recall. 6 Q. Did you have any written communications 7 with regard to this Neutra transfer? 8 A. No. 9 Q. Who owns Neutra? 10 A. I don't know. 11 Q. Who would? 12 A. I'd have to check with counsel. 13 Q. When you say "counsel," do you mean 14 internal or external? 15 A. Internal. 16 Q. So would that be Mr. Ellington? 17 A. Or Isaac, if Isaac was the corporate rep. 18 Q. And when you say "Isaac," you mean 19 Mr. Leventon? 20 A. Yes. 21 Q. Who controls Neutra? 22 A. It's -- it's affiliated with Highland, but 23 I -- I don't know. 24 Q. Okay. There was an Exhibit Number 184 in 25 front of you, I believe.</p>
<p style="text-align: right;">Page 91</p> <p>1 right? 2 A. Yes. 3 Q. All right. And this document, 4 Exhibit Number 184, executed the day after the 5 judgment was entered, the Dugaboya trust transfers 6 its interests in Acis, LP, and Acis, GP, to Neutra 7 Limited. 8 Do you see that? 9 A. Yes. 10 Q. Why? 11 A. You'll have to ask -- you'll have to ask 12 the -- and I don't think there's a structuring. 13 You'll have to ask the lawyers and -- I was going to 14 say the accountants, but the accountants wouldn't 15 know. You'd have to ask the lawyers. 16 But it seems -- assumes, like, there 17 was consistency to get a Cayman business in the 18 Caymans, you know, between the manager and the -- 19 the interests here too, but I -- I don't -- you'll 20 have to ask the lawyers. 21 Q. Did you talk to Nancy Dondero, your 22 sister, about why she signed this agreement 23 transferring the trust's interest in Acis to a 24 Cayman entity? 25 A. No, I have -- even more so my sister. I</p>		<p style="text-align: right;">Page 93</p> <p>1 MR. CRUCIANI: What is it? 2 MR. SHAW: It's the assignment 3 transferring the amendment agreement that's 4 regarding -- let's see. Am I on the right one? I 5 might be on the wrong one. Hold on. That's the 6 wrong one. My apologies. 7 Q. (BY MR. SHAW) Real quick. Does -- does 8 internal counsel for Highland represent your sister, 9 Ms. Dondero? 10 MR. CRUCIANI: Objection; overbroad. 11 A. Sometimes, but not always. 12 Q. (BY MR. SHAW) How is that determined? 13 A. I don't know. 14 Q. There is a document in front of you called 15 "Assignment and Transfer Agreement." It's one of 16 the documents we reviewed early on to talk about the 17 assets of Acis as of October 20th, 2017. 18 MR. CRUCIANI: Is that the 19 December 19, Dondero 2? 20 MR. SHAW: Yes. 21 MR. CRUCIANI: It's this one. You can 22 use my copy. 23 A. (Examined exhibit.) Okay. 24 Q. (BY MR. SHAW) All right. So this is -- 25 we've got the judgment entered on December 18th, and</p>

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25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 then we have this document on December 19th, the 2 same date as the -- that Neutra transaction we were 3 just talking about. 4 Are you familiar with this document? 5 A. (Examined exhibit.) No. 6 Q. If you go to page 233 at the bottom 7 right-hand corner. 8 A. (Complied.) Yes. 9 Q. Is that your signature or is that your 10 assistant's signature? 11 A. (Examined exhibit.) Looks like mine. 12 Q. Did you review this document before you 13 signed it? 14 A. No. I reviewed it when we talked about it 15 earlier. 16 Q. Did you authorize, on behalf of Acis, the 17 transfer of these interests that are listed in 18 Schedule A to this Highland Holdings, Limited, this 19 Cayman entity? 20 A. Yes, I approved it. 21 Q. Why? 22 A. Because I was told or advised by counsel 23 to do it. 24 MR. CRUCIANI: And that's fine. Just 25 don't get into any of the substance, but your answer</p>		<p style="text-align: right;">Page 96</p> <p>1 opposed to posing the question that way. 2 Were any of these transactions that 3 we've discussed today intended to make it more 4 difficult for Mr. Terry to collect his judgment? 5 A. Not that I'm aware of or not that I 6 orchestrated or not that I approved. Everything was 7 done to react to changes in facts and circumstances 8 and do what was best for the investors that are 9 suffering the longer these deals don't refinance. 10 Q. What about doing what's best for Acis? 11 How does doing what's best for Acis and its 12 creditors factor into your decision to enter into 13 the transactions we've talked about today? 14 A. Again, the first obligation is to the 15 investors. Any obligation to Acis is secondary to 16 that. The obligations to Acis are fairly and 17 honorably weighed, alongside obligations and 18 fairness to Highland and other constituents. 19 Q. You have many masters, right? 20 MR. CRUCIANI: Objection; vague. 21 A. Are you waiting for me? 22 Q. (BY MR. SHAW) Yeah. 23 A. What do you mean by "masters"? 24 Q. Well, you wear a lot of different hats. 25 Is that fair?</p>
<p style="text-align: right;">Page 95</p> <p>1 as it was is fine. 2 THE WITNESS: Yeah. 3 MR. CRUCIANI: Are you done with that? 4 THE WITNESS: Yeah. Sorry. 5 Q. (BY MR. SHAW) I assume you're gonna tell 6 the bankruptcy judge when you testify at trial that 7 none of these transactions were intended to make it 8 harder for Mr. Terry to collect his judgment. Is 9 that fair? 10 MR. CRUCIANI: Objection; speculation 11 as to what he may or may not tell the bankruptcy 12 judge. 13 A. I'd rather keep it a secret. 14 Q. (BY MR. SHAW) Will you tell the 15 bankruptcy judge that none of the transactions that 16 we've talked about today were done in order to make 17 it more difficult for Mr. Terry to collect his 18 judgment? 19 MR. CRUCIANI: Same objection; 20 speculation on what his testimony may be at trial. 21 A. I'd like to keep my trial testimony secret 22 until I'm ... 23 Q. (BY MR. SHAW) Okay. 24 A. Yeah. 25 Q. Well, then I'll ask you the question as</p>		<p style="text-align: right;">Page 97</p> <p>1 MR. CRUCIANI: Objection; vague. 2 A. What do you mean by "wear a lot of hats"? 3 Q. (BY MR. SHAW) Okay. Let's just talk 4 about two of the hats you wear. One hat is that you 5 are the president of Acis, GP, right? 6 A. Yes. 7 Q. Another hat that you wear is that you are 8 the president of Highland, correct? 9 A. Yes. 10 Q. And Highland, we know, is a creditor of 11 Acis, right? 12 A. And it's also a service provider. 13 Q. And it's a service provider, and the 14 creditor status of -- of Highland is by virtue of 15 that sev- -- those services? 16 A. That's a transaction we talked about 17 earlier, right, the note and the -- is that what 18 you're speaking of or just the services in general 19 or ... 20 Q. The services in general -- I mean, part of 21 Highland's status as a creditor of Acis is by virtue 22 of amounts owed to it under shared services 23 agreement and subadvisory agreements? 24 A. Yes. 25 Q. You also have -- wear the hat as the</p>

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26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 ultimate authority for Highland and these Highland 2 affiliates, where these assets are being transferred 3 to, for example, the Highland CLO Holdings, Limited, 4 that became an entity? 5 MR. CRUCIANI: Objection; vague. 6 A. The Highland entities are affiliates of 7 Highland. 8 Q. (BY MR. SHAW) Right. For example, 9 Highland CLO Holdings, Limited, which is the 10 transferee of particular assets from Acis, that's an 11 entity that is affiliated with Highland, right? 12 A. Right. 13 Q. And you are the ultimate authority at 14 Highland? 15 A. I'm the ultimate authority at Highland, 16 but I've never seen a document regarding HC or 17 whatever, and I've never -- whatever. I've never 18 seen a document, and I've never been to the location 19 where it's located. I've never -- you know, 20 whatever, so, I mean, it's affiliated, but I -- 21 "control" isn't the right word. 22 Q. Throughout the litigation with Mr. Terry, 23 Acis has paid all of the legal expenses incurred. 24 MR. CRUCIANI: May I ask for a 25 clarification whether you're talking about the</p>		<p style="text-align: right;">Page 100</p> <p>1 Acis was footing the bill for the Terry litigation. 2 Do you have any reason to dispute 3 that? 4 A. I don't know, so . . . 5 Q. And who would? 6 A. Corporate rep or you could ask Scott. 7 Q. All right. Now, after Mr. Terry was 8 terminated in June of 2016, Highland and Acis 9 renegotiated the terms of the shared services 10 agreements and the subadvisory agreements. 11 Do you recall that? 12 A. Generally. 13 Q. And that was done on multiple occasions? 14 Are you familiar with that? 15 A. And if you say so, but I don't know. 16 Q. The fees paid to Highland under those 17 shared services agreements and subadvisory 18 agreements were increased. Is that fair? 19 A. I believe that's the case. 20 Q. Why was that done? 21 A. You'll -- you'll have to ask the 22 accountants and lawyers, but I would suggest that 23 they looked at the cost of operating Acis, managing 24 the Acis CLOs with a more objective light subsequent 25 to Josh being gone.</p>
<p style="text-align: right;">Page 99</p> <p>1 arbitration agreement or these bankruptcy 2 proceedings? 3 MR. SHAW: Well, I guess if Highland's 4 paying for the -- I -- I don't know. Is Highland 5 paying for the bankruptcy proceedings? I -- 6 MR. CRUCIANI: I -- I -- no, I'm -- 7 MR. SHAW: I thought I asked that 8 question. 9 MR. CRUCIANI: -- I'm just asking for 10 clarification is all. I'm not suggesting anything 11 by it. I'm just asking for clarification. But 12 that's fine. If you don't want to clarify it, 13 that's fine. 14 Q. (BY MR. SHAW) I mean, is Highland paying 15 for -- 16 A. I don't know. 17 Q. Let me -- let me get the question out 18 because it doesn't read very well if we do that. 19 But is Highland paying for any of the 20 attorneys in this room? 21 A. I mean, clearly our internal counsel, 22 right, but otherwise, I -- I don't know. 23 Q. Now, with regard to the arbitration and 24 the state court proceedings, up and to -- up until 25 the date that the involuntary petitions were filed,</p>		<p style="text-align: right;">Page 101</p> <p>1 Q. And when you say "a more objective light," 2 what -- what do you mean? 3 A. I -- I think the expenses or the shared 4 services allocations were light compared to the 5 amount of people at Highland working on Acis-related 6 things, and I -- I think there was an adjustment to 7 make it -- the shared services basis points more 8 reflective of actual costs. That's my understanding 9 of it. 10 Q. The increase in the costs for shared 11 services and subadvisories has decreased the 12 financial performance of Acis, LP, right? 13 A. I -- I would guess. 14 Q. You're aware that Acis was -- or Acis's 15 bank accounts were garnished at the end of 2017? 16 A. I -- what is -- what do you mean by 17 "garnished"? 18 Q. Frozen. 19 A. I believe -- yeah, I believe I heard -- 20 heard something like that. I know the accounts were 21 frozen somewhere. 22 Q. Acis opened a new bank account. Are you 23 aware of that? 24 A. No. 25 Q. So you don't know anything about Texas</p>

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27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1 Capital Bank and a bank account that was opened for 2 Acis? 3 A. No. 4 Q. So we talked about, in general, those 5 changes in the subadvisory agreement and shared 6 services. 7 Who, on behalf of Acis, negotiated the 8 terms of the shared services and subadvisory 9 agreements? 10 A. I -- I believe when we divided 11 responsibilities trying to get to overall balance of 12 fairness, I think it was Scott that oversaw and 13 negotiated that. 14 Q. So, I mean, was it a scenario where Scott 15 is sitting there saying, "Well, no, Jim, you're -- 16 you're trying to charge Acis too much on behalf of 17 Highland, so I think you ought to decrease the 18 amount of basis points that you're charging for the 19 services"? 20 A. I -- I wasn't -- I'm not -- I'm not the 21 ringmaster in these -- middle of these 22 conversations. These were conversations had between 23 Scott, other attorneys internally, most likely Tim 24 representing Highland, and then with the 25 accountants, and then probably the blessing of</p>		<p style="text-align: right;">Page 104</p> <p>1 for speculation. 2 A. No. I mean, the -- the intent is to do 3 what's best for the investors in Acis, and -- yeah, 4 I don't know what business Acis would do in the 5 future, maybe more work again with Josh and he can 6 find investors that want to come into Acis. I -- I 7 don't know. But we need to take care of the 8 investors that are in there. 9 Q. (BY MR. SHAW) Well, I guess my question 10 is: If you transfer the management of all of these 11 CLOs to a Highland affiliate -- 12 A. I -- I wouldn't characterize it that way. 13 Q. How would you characterize it? 14 A. These deals have to be refinanced. It's 15 like having a 9 percent home mortgage when you could 16 have a 3 percent home mortgage. To the extent that 17 you don't, you're killing your equity holders, the 18 equity has to be refinanced. 19 There's no investors and there's no 20 underwriters that will deal with Acis on a refi. So 21 you have to refi with a manager beyond Acis, right? 22 And that's what we're trying to do here. 23 Q. Does it have to be a Highland affiliate 24 who you refi and transfer the management agreements 25 to?</p>
<p style="text-align: right;">Page 103</p> <p>1 external, whatever, but I'm not in those meetings. 2 Q. But ultimately, you approved those shared 3 services agreement amendments and subadvisory 4 amendments, right? 5 A. Yeah, ultimately, I get something like 6 this, sign this, you know, and so it gets signed. 7 MR. SHAW: Let's take a quick break, 8 if you don't mind. I might be kinda close. 9 MR. CRUCIANI: Sure. 10 THE VIDEOGRAPHER: We're off the 11 record at 4:50 p.m. 12 (A recess was taken from 4:50 p.m. to 13 5:07 p.m.) 14 THE VIDEOGRAPHER: We are back on the 15 record. The time is approximately 5:07 p.m. 16 Q. (BY MR. SHAW) You previously testified 17 that the Acis brand is -- is, quote/unquote, 18 "toxic"; is that right? 19 A. Toxic, tarnished, whatever -- yes, 20 whatever. 21 Q. And in your role as the president of Acis, 22 GP, do you have an intent to -- outside this 23 bankruptcy, if this bankruptcy was not there, to 24 wind down the operations of Acis? 25 MR. CRUCIANI: Objection; vague, calls</p>		<p style="text-align: right;">Page 105</p> <p>1 A. The investors would have to believe that 2 another entity other than Highland could do a better 3 job than Highland, and the investors would have to 4 find a manager willing to -- in each of these 5 transactions, it takes a few million dollars to 6 handle the risk retention or bridge it. I don't 7 know exactly what for. But on each of them, the 8 businesspeople have come to me and say it takes two 9 or three million dollars more to refinance them. 10 So they'd have to find somebody who 11 they think could do a better job and who'd be 12 willing to put in a -- a few million dollars to make 13 the transactions happen, which I think would be 14 difficult. 15 Q. But we don't know because we haven't 16 tried, right? 17 A. You mean, have we explored moving or 18 refinancing the Acis deals away from Acis but to 19 somebody other than Highland? 20 Q. Right. Like say Angelo Gordon or Carlisle 21 and get some compensation flowing to Acis in 22 exchange for the transfer of the collateral 23 management agreement? 24 MR. CRUCIANI: Objection; assumes 25 facts not in evidence.</p>

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28 (Pages 106 to 109)

<p style="text-align: right;">Page 106</p> <p>1 A. Yeah, they wouldn't -- they wouldn't give 2 any money for it -- I mean, they -- they would -- 3 if -- they would refinance the deals and want the 4 management fee going forward. They wouldn't pay 5 anything to Acis for refinancing. 6 Q. (BY MR. SHAW) They wouldn't pay anything 7 to Acis for transferring the management agreements 8 either. 9 Is that what your testimony is? 10 A. Because it wouldn't be transferring, it 11 would be refinancing. They have to refinance them 12 with somebody, and Carlisle or KKR would say thank 13 you for picking us, but they wouldn't pay for that. 14 Q. Now, kind of getting back to the -- my 15 original question was: If these collateral 16 management agreements are transferred -- and I know 17 that you have a problem with that because it's a 18 reset and a refi. But if it's a reset and a refi, 19 the ultimate -- ultimately, if that goes through, 20 Acis will no longer be the collateral manager of 21 those CLOs, right? 22 A. Yes. 23 Q. What would Acis do if it's no longer the 24 collateral manager under any of these collateral 25 management agreements?</p>		<p style="text-align: right;">Page 108</p> <p>1 Q. (BY MR. SHAW) What about Ms. Patel's 2 firm, are you gonna threaten them as well? 3 MR. CRUCIANI: Objection; assumes 4 facts not in evidence. 5 A. We don't threaten, ever. And I'm -- I'm 6 not aware of liability that she has yet. 7 Q. (BY MR. SHAW) You've sued law firms 8 before on behalf of Highland, haven't you? 9 A. I believe we have. 10 Q. All right. You've sued Lackey -- and 11 let's see. Lackey -- you had Lackey Hershman file a 12 lawsuit against Looper Reed, right, in the Pat 13 Daugherty litigation? 14 A. Yes. 15 Q. And that case was dismissed and affirmed 16 on appeal, right? 17 A. I -- I don't know. 18 Q. Highland sued Haynes and Boone before, 19 right? 20 A. I don't -- I don't recall that one. I -- 21 I recall the \$12 million we got from Orrick, but I 22 don't recall the Haynes Boone one, though. 23 Q. Highland sued Winstead, PC, right? 24 A. Yes. We've gotten a firm to take it on 25 contingency there, so we're optimistic on that one.</p>
<p style="text-align: right;">Page 107</p> <p>1 A. It has very good claims against your firm 2 and Josh Terry that could be worth boatloads of 3 money down the road. 4 Q. What is your theory against my law firm? 5 MR. CRUCIANI: Objection. Don't get 6 into any -- 7 THE WITNESS: Yeah, yeah. I can't -- 8 MR. CRUCIANI: Excuse me, excuse me. 9 Let me make my objection. 10 THE WITNESS: Sorry. Okay. 11 MR. CRUCIANI: Do not get into any 12 discussions you've had with counsel about any 13 potential claims against Mr. Shaw's law firm. 14 Q. (BY MR. SHAW) Okay. I don't want to hear 15 what you talked to your lawyer about. 16 But what theories do you have, not 17 based upon what you've talked to your lawyers about, 18 against my law firm? 19 MR. CRUCIANI: And if you can answer 20 that without disclosing, that's fine -- 21 THE WITNESS: Yeah, I was going to 22 say. 23 MR. CRUCIANI: -- but if you can't -- 24 A. All -- all my theories come from the -- 25 the lawyers.</p>		<p style="text-align: right;">Page 109</p> <p>1 Q. So other than these litigation claims that 2 you say would remain, is there anything else that 3 Acis would do? 4 If it's not managing collateralized 5 management agreements . . . 6 A. Well, the -- there's -- I don't know. I 7 mean, there'll be some assets left in there, and 8 there's always an ability for an RIA to resurrect 9 its reputation, and if it's got a unique and 10 differentiated product offering, you can raise money 11 for new investors. 12 Performance -- performance is always 13 the Phoenix, so -- but I do believe the litigation 14 business is a good business. I mean, we -- we -- we 15 run six, eight litigators internally. It's a big 16 business for us. I think it could be an important 17 part of Acis going forward. 18 Q. Yeah, you have a litigation claims 19 business that you're a partner in with 20 Mr. Ellington, right? 21 A. Yes. 22 Q. Now, you've been in the kind of distressed 23 debt space for a long time. Is that fair? 24 A. Yes. 25 Q. You've been involved in involuntary</p>

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29 (Pages 110 to 113)

<p style="text-align: right;">Page 110</p> <p>1 bankruptcy petitions before?</p> <p>2 A. Very rarely. You have to be careful. I</p> <p>3 usually get advised by counsel not to do it because</p> <p>4 it opens up a whole can of worms and liabilities if</p> <p>5 you're not careful. So, yes, we are -- we are -- we</p> <p>6 are aware of distress situations.</p> <p>7 Q. And you recall the Seven Seas bankruptcy?</p> <p>8 A. Vaguely.</p> <p>9 Q. That was one where Highland or its</p> <p>10 affiliates put a debtor into an involuntary</p> <p>11 bankruptcy?</p> <p>12 A. Yeah, that was -- yeah, that was -- it was</p> <p>13 a fraud on a mine or an oil discovery that didn't</p> <p>14 exist, but I don't remember much beyond that.</p> <p>15 Q. Now, you said that you were going to -- or</p> <p>16 looking to sue my law firm and --</p> <p>17 A. I didn't say that.</p> <p>18 MR. CRUCIANI: Yeah, don't misquote</p> <p>19 him.</p> <p>20 Q. (BY MR. SHAW) Let's -- let's go back up</p> <p>21 to that. Let's see where that was.</p> <p>22 I believe you said that the ongoing</p> <p>23 business -- this is your quote -- was -- and this is</p> <p>24 my question:</p> <p>25 "What would Acis do if it's no longer</p>		<p style="text-align: right;">Page 112</p> <p>1 the long run, and that's how we've operated.</p> <p>2 Q. (BY MR. SHAW) You said that you have</p> <p>3 claims against my firm, and you've never made that</p> <p>4 threat before in the arbitration, right?</p> <p>5 A. I -- I don't -- I don't know.</p> <p>6 Q. So is the -- this threat based upon the</p> <p>7 filing of the bankruptcy petition?</p> <p>8 MR. CRUCIANI: Objection;</p> <p>9 mischaracterizes. Never used the word "threat."</p> <p>10 That's your word.</p> <p>11 A. Yeah, that's -- I objected to that once</p> <p>12 already, but I -- I never used the word "threat."</p> <p>13 Q. (BY MR. SHAW) Yeah. Because I -- and I</p> <p>14 don't know if you told your counsel to say this, but</p> <p>15 Mr. Cruciani, at a hearing after we filed the</p> <p>16 involuntary bankruptcy court petition in state</p> <p>17 court, told us that we needed to go talk to our</p> <p>18 insurance carrier.</p> <p>19 Did you tell Mr. Cruciani to say that?</p> <p>20 A. He's a smart man. He didn't need me to</p> <p>21 tell you that.</p> <p>22 Q. Did you tell Mr. Cruciani to threaten my</p> <p>23 law firm with a lawsuit?</p> <p>24 A. No, I never told him that.</p> <p>25 Q. Now, you said that this refi transaction</p>
<p style="text-align: right;">Page 111</p> <p>1 the collateral manager under any of these collateral</p> <p>2 manager agreements?"</p> <p>3 And your answer was, "It was very --</p> <p>4 it has very good claims against your firm and Josh</p> <p>5 Terry that would be worth boatloads of money down</p> <p>6 the road."</p> <p>7 Do you recall that statement?</p> <p>8 A. Yes.</p> <p>9 Q. And you understand you're under oath</p> <p>10 today, right?</p> <p>11 A. Yes.</p> <p>12 Q. And when you say my firm, you mean my law</p> <p>13 firm, right?</p> <p>14 A. Yes.</p> <p>15 Q. And so you're saying that Acis would have</p> <p>16 a claim against my law firm?</p> <p>17 MR. CRUCIANI: And, again, don't get</p> <p>18 into any privileged discussions you've had with</p> <p>19 respect to the nature of any discussions or the</p> <p>20 nature of any types of claims. I think you've</p> <p>21 testified you believe you have it, so you've already</p> <p>22 testified to that, but don't get into anything --</p> <p>23 A. Yeah, that's -- that's how I'd like to</p> <p>24 leave it. We're a very righteous group. We like to</p> <p>25 hold people accountable. We believe in fairness in</p>		<p style="text-align: right;">Page 113</p> <p>1 that was slated to go forward in February did not go</p> <p>2 forward because of some action taken by Mr. Terry;</p> <p>3 is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And what action was that?</p> <p>6 A. The filing of the bankruptcy and the</p> <p>7 freezing of activity or -- or whatever. I don't --</p> <p>8 I don't know exactly, but it's very rare for a</p> <p>9 transaction to get pulled between pricing and close.</p> <p>10 I think that happens once a decade, but we managed</p> <p>11 to have a transaction that priced but didn't close.</p> <p>12 Q. You were aware that Judge Jernigan told</p> <p>13 Mr. Warner on the record that she would consider a</p> <p>14 motion filed, and to approve the transaction if Acis</p> <p>15 put up a adequate protection-like payment.</p> <p>16 Are you aware of that?</p> <p>17 MR. CRUCIANI: Objection;</p> <p>18 mischaracterizes the record. If you have something</p> <p>19 to show him instead of mischaracterizing it, I'm</p> <p>20 happy to have him answer that question.</p> <p>21 A. I don't have any awareness of that anyway.</p> <p>22 Q. (BY MR. SHAW) Your counsel did not seek</p> <p>23 any relief with the bankruptcy court and request</p> <p>24 that that transaction be approved with the payment</p> <p>25 of an adequate protection payment?</p>

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30 (Pages 114 to 117)

<p style="text-align: right;">Page 114</p> <p>1 A. I have no awareness. 2 Q. You're aware that Judge Goldstein, the 3 state court judge, entered various orders in that 4 case. 5 Are you familiar with that? 6 A. No. 7 Q. Are you familiar with the fact that she 8 ordered that the manager not be changed until 9 further order, and that was on January 24th? 10 A. No. 11 Q. What duty does Josh Terry owe to these 12 investors that you claim are going to pursue him? 13 MR. CRUCIANI: Objection; 14 mischaracterizes his testimony. And objection to 15 the extent it calls for a legal conclusion. 16 A. And I'd like that to be the answer. I 17 don't want to make a legal conclusion. 18 Q. (BY MR. SHAW) Have you directed any of 19 the investors to pursue Mr. Terry with a lawsuit? 20 A. No. 21 Q. You didn't call Grant Scott, your college 22 roommate, and tell him to file an appearance in this 23 case? 24 A. No. 25 Q. Who controls the Acis bank accounts?</p>		<p style="text-align: right;">Page 116</p> <p>1 promissory note and all of its collateral management 2 agreements? 3 MR. CRUCIANI: And I don't -- I don't 4 know that it does, Mr. Dondero, but given the nature 5 of the question, to the extent that your answer 6 would involve any privileged communications, don't 7 answer. If you can otherwise answer, please do. 8 A. It's -- I think I testified already, it's 9 advice of counsel was that it wasn't necessary -- 10 MR. CRUCIANI: Wait, wait, wait, wait. 11 THE WITNESS: Or I'm sorry. Or I -- 12 MR. CRUCIANI: Timeout. Just stop 13 talking for one second. The instruction was -- and 14 you may have to repeat the question, given the 15 interchange. But the pending was if you can answer 16 it without getting into advice of counsel, do so. 17 If you cannot -- 18 THE WITNESS: Okay. 19 MR. CRUCIANI: -- then I'm going to 20 instruct you not to answer. If you need the 21 question repeated so you know what it was at this 22 point. 23 THE WITNESS: No, I -- I can ... 24 MR. CRUCIANI: Okay. 25 Q. (BY MR. SHAW) Can you answer the question</p>
<p style="text-align: right;">Page 115</p> <p>1 MR. CRUCIANI: You mean before they 2 were garnished or now? 3 MR. SHAW: Whichever. 4 MR. CRUCIANI: Well, object; it's 5 vague, then. Please clarify. 6 Q. (BY MR. SHAW) Who controls the Acis bank 7 accounts? 8 A. I don't know. 9 Q. Who approves wire transfers from the Acis 10 bank accounts? 11 A. I don't know. 12 Q. So you knew that the November 3rd 13 transaction, 2017, was going to be scrutinized 14 afterwards, right? 15 A. I knew this was going to be a heavy, 16 extended litigation. 17 Q. And you knew the transaction would be 18 scrutinized, right? 19 A. Yes. 20 Q. So why not go out and get outside 21 valuations for what -- for that transaction, for the 22 November 3rd transaction? Why not get a third party 23 to say -- come out and bless it, say this is 24 reasonable equivalent value, that Acis isn't getting 25 in return for transferring this \$9 million</p>		<p style="text-align: right;">Page 117</p> <p>1 without revealing any attorney/client privileged 2 information? 3 A. Yeah. I just said, repeating pieces of 4 prior testimony, we did not believe it was plausible 5 to market contracts that would have 30 or 60 days 6 left to run and would be in an entity mired in 7 complex, cantankerous litigation. We didn't believe 8 it was plausible or likely to result in any 9 meaningful number. That was -- that's what I 10 testified to earlier, so repeat that as Point Number 11 1. 12 Point Number 2, under abundance of 13 caution, we made the consideration be \$3 million 14 more than it needed or should have been, to maintain 15 clean hands and maintain clean behavior in terms of 16 the whole process. 17 Q. Why not test that idea of plausibility? 18 MR. CRUCIANI: Objection; asked and 19 answered. 20 A. You know what, I can't say for sure other 21 people -- I -- I know I never pointed anybody to 22 that direction because I didn't think it was 23 plausible or reasonable or whatever. I don't know 24 if other people tried. I don't know if that was a 25 hurdle mentioned by you guys earlier or if anybody</p>

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31 (Pages 118 to 121)

<p style="text-align: right;">Page 118</p> <p>1 tried.</p> <p>2 But my -- my testimony -- my</p> <p>3 recollection, my opinion is that it was -- would</p> <p>4 have been a -- a fool's errand. People -- it -- to</p> <p>5 make decisions, any financial institution that it</p> <p>6 keeps throwing out KKR, Carlisle or whatever, it</p> <p>7 takes them 30 days to make a decision, 45 days to</p> <p>8 make a decision for something that's gonna last 60</p> <p>9 days.</p> <p>10 I mean, like I said, it's comical, but</p> <p>11 maybe someone else in the organization tried or</p> <p>12 looked at it differently or maybe counsel looked at</p> <p>13 it different, but I -- I have no idea.</p> <p>14 Q. (BY MR. SHAW) What do you mean it was</p> <p>15 gonna last 60 days?</p> <p>16 A. Because in fairness and in obligation to</p> <p>17 the investors that we, as manager, or Acis, as</p> <p>18 manager, or Highland, to all of our investors have,</p> <p>19 first obligation that you guys will be held</p> <p>20 accountable for screwing over to the extent that</p> <p>21 you're involved in that. Okay?</p> <p>22 It -- they deserve to have a 3 percent</p> <p>23 mortgage if interest rates are 3 percent instead of</p> <p>24 having a 10 percent mortgage. And every day you</p> <p>25 prevent them from doing that, you're harming them.</p>	<p style="text-align: right;">Page 120</p> <p>1 fair?</p> <p>2 A. Yes.</p> <p>3 Q. So that's not a foreign concept to you,</p> <p>4 that -- that in order to provide transparency and in</p> <p>5 order that a transaction does not look conflicted,</p> <p>6 you go out and get a third-party valuation so that</p> <p>7 you have some check on a potential conflict of</p> <p>8 interest; isn't that right?</p> <p>9 A. If it's a security. If it's an asset. If</p> <p>10 you ask me to go price, how about I take the garbage</p> <p>11 out before 7:00 every day for the next two weeks</p> <p>12 instead of doing it at 8:00, how much is that worth?</p> <p>13 Get three major firms to give me a bid on that</p> <p>14 service that's gonna end in two weeks, how much is</p> <p>15 it worth to do it an hour earlier?</p> <p>16 Q. Well, how about a 9 --</p> <p>17 A. But that's --</p> <p>18 MR. CRUCIANI: Let's -- I'm sorry. I</p> <p>19 don't think he's finished.</p> <p>20 Q. (BY MR. SHAW) Sorry.</p> <p>21 A. But that's -- it's -- something --</p> <p>22 something that's got 30 or 60 days to run that's</p> <p>23 mired in conflict, that needs to be refinanced,</p> <p>24 doesn't have value or it's got negligible value.</p> <p>25 It's not a security, and it's not something that's</p>
<p style="text-align: right;">Page 119</p> <p>1 So they need -- all those deals need to be</p> <p>2 refinanced as quickly as possible; otherwise, it</p> <p>3 starts shredding the equity value of those</p> <p>4 investors.</p> <p>5 Q. Do you have communications with those</p> <p>6 investors wherein they're making this request for</p> <p>7 this refi or reset?</p> <p>8 MR. CRUCIANI: Objection; vague.</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. (BY MR. SHAW) Why hadn't this been done</p> <p>11 before the arbitration award?</p> <p>12 A. The mark --</p> <p>13 MR. CRUCIANI: Objection; assumes</p> <p>14 facts not in evidence.</p> <p>15 A. We tried at different times. The market</p> <p>16 didn't move enough for these deals to refinance</p> <p>17 until more recently, and it was -- I think it was</p> <p>18 started -- it was actually started in the months</p> <p>19 beforehand, but the market wasn't -- rates weren't</p> <p>20 low enough to get it done sooner.</p> <p>21 Q. (BY MR. SHAW) Now, in your business --</p> <p>22 you obviously know it a lot better than I do -- but</p> <p>23 there are instances where you go out and get marks</p> <p>24 on particular assets, some third-party determination</p> <p>25 about the value of a particular asset. Is that</p>	<p style="text-align: right;">Page 121</p> <p>1 significant or defiant.</p> <p>2 Q. What about that 9 -- promissory note, the</p> <p>3 original amount was \$12.6 million is worth 9 on --</p> <p>4 when it was transferred to the Cayman entity.</p> <p>5 That's a good quality asset, isn't it?</p> <p>6 A. No, it's not.</p> <p>7 Q. Why not?</p> <p>8 A. What did Highland get when the note was</p> <p>9 put in place? It's a \$12 million note. Did</p> <p>10 Highland get \$12 million? Did Highland get</p> <p>11 \$13 million? Did Highland get an asset? No.</p> <p>12 Highland got a promise from Acis to</p> <p>13 pay it management fees that Acis was gonna get over</p> <p>14 the next three or four years, and the amortization</p> <p>15 was tied to fees as they came in, and Highland got</p> <p>16 them.</p> <p>17 So when Highland got fees, it paid</p> <p>18 down -- it paid the money to Acis to pay off the</p> <p>19 note. But there was -- you refinance those deals.</p> <p>20 There's no more money coming into Acis. There</p> <p>21 was -- no more moneys gonna be paid to Highland.</p> <p>22 You finance those deals over the next 60 days.</p> <p>23 Highland got nothing for its \$9 million.</p> <p>24 Was Highland supposed to give</p> <p>25 \$9 million to Acis for nothing? There's no -- there</p>

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32 (Pages 122 to 125)

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<p>1 was no value, and the value that was to be given to 2 Highland was never gonna happen. \$3 million was a 3 gift. That loan -- that -- that note for the next 4 60 days wasn't gonna be worth a million dollars. 5 Q. And I guess I'm wondering what hat you're 6 wearing when you're talking about whether that was a 7 good asset or not. Are you talking about -- are you 8 wearing your hat as -- as Highland's president or it 9 wasn't a good asset as Acis's president? 10 MR. CRUCIANI: Objection; vague. 11 A. The responsibility to the investors trump 12 it all. Beyond that, there needs to be fairness and 13 spirit of agreements between related entities, 14 especially when Highland is the dominant partner in 15 all of them, right? You know, there needs -- there 16 needs to be fairness, and trying to pay one entity 17 that Highland owns all of \$9 million it doesn't 18 deserve from another entity that Highland controls 19 more of wouldn't be fair. You have to look at 20 things in the context of facts and circumstances and 21 what's happened since and over time. 22 Q. (BY MR. SHAW) But that's the deal you 23 struck. I mean, you struck it on both sides of that 24 deal. You gave -- you gave High -- you gave Acis a 25 note from Highland for \$12.6 million that had -- was</p>	<p>1 MR. SHAW: Just a three-minute break, 2 and then I'm probably done. 3 THE WITNESS: I don't -- I don't need 4 a break. 5 MR. CRUCIANI: Well, let's keep going. 6 MR. SHAW: Well, I want a break, so I 7 can take a break when I want one. 8 MR. CRUCIANI: You can, but let's keep 9 it -- and I think we're almost out of time. 10 So how much time do we have? 11 THE VIDEOGRAPHER: You have 11 minutes 12 left. 13 MR. SHAW: All right. 14 MR. CRUCIANI: Okay. Is three minutes 15 enough? 16 MR. SHAW: All right. Just -- let me 17 just clean up. I may -- I might be done, 18 Mr. Dondero. 19 MR. CRUCIANI: Okay. Fair enough. 20 THE VIDEOGRAPHER: We're off the 21 record at 5:36 p.m. 22 (A recess was taken from 5:36 p.m. to 23 5:41 p.m.) 24 THE VIDEOGRAPHER: We are back on the 25 record. The time is approximately 5:41 p.m.</p>
Page 123	Page 125
<p>1 not -- did not have any precondition about the 2 payments. It was just due. 3 And so that's what I don't understand. 4 How was that not a good asset, that promissory note 5 that was transferred out? It's a promise to pay. 6 It's not conditioned on the performance of the CLOs. 7 A. And there's facts and circumstances, and 8 Acis was supposed to pay an annuity stream equal to 9 more than the \$12 million for Highland to pay the 10 \$12 million back. It was a tax transaction. It was 11 never an economic transaction there. 12 Q. But even presuming what you're saying is 13 true, that -- that it was a bad deal for Highland, 14 tough luck, Highland, right? If you struck a bad 15 deal, you gave them a \$12 million promissory note 16 that you say ended up not being a good deal, doesn't 17 mean that you can just transfer the asset out, does 18 it? 19 A. That's -- I don't want to repeat myself 20 anymore. 21 Q. So going back to it, why not go out and 22 say, hey, we've got this \$9 million promissory note 23 that Highland Capital Management is the maker on, 24 what would this sell for out on the market? 25 A. We didn't do that.</p>	<p>1 Q. (BY MR. SHAW) What entities do you 2 believe have claims against Mr. Terry with regard to 3 the filing of the involuntary petitions? 4 MR. CRUCIANI: Objection; calls for 5 speculation, calls for a legal conclusion. 6 Instruct you not to answer to the 7 extent it's based on discussions with counsel. 8 A. I can't answer, given that. 9 Q. (BY MR. SHAW) What entities do you 10 believe have claims against Clouse Dunn by virtue of 11 the filing of the involuntary bankruptcy petitions? 12 MR. CRUCIANI: Same question; object 13 as calling for speculation, calling for a legal 14 conclusion. 15 Instruct you not to answer to the 16 extent it's based on discussions with counsel. 17 A. Yeah, same answer. I -- you guys are 18 smart. You can put it together, but I can't say 19 anything. 20 MR. SHAW: Pass the witness. 21 MR. CRUCIANI: Okay. Shall we? 22 Thanks, guys. 23 MR. SHAW: Thank you. 24 THE VIDEOGRAPHER: We are off the 25 record. The time is approximately 5:42 p.m.</p>

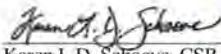

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33 (Pages 126 to 129)

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<p>1 THE COURT REPORTER: I have a</p> <p>2 question.</p> <p>3 MR. CRUCIANI: Yes, ma'am.</p> <p>4 THE COURT REPORTER: Would you like</p> <p>5 the witness to read and sign?</p> <p>6 MR. CRUCIANI: Yes. I know it's</p> <p>7 expedited, but we'd like the witness to read and</p> <p>8 sign.</p> <p>9</p> <p>10 (Deposition concluded at 5:42 p.m.,</p> <p>11 March 20, 2018.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I, JAMES DONDERO, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same</p> <p>3 is true and correct, except as noted above.</p> <p>4</p> <p>5</p> <p>6 JAMES DONDERO</p> <p>7</p> <p>8 THE STATE OF _____)</p> <p>9 COUNTY OF _____)</p> <p>10</p> <p>11 Before me, _____, on</p> <p>12 this day personally appeared JAMES DONDERO, known to</p> <p>13 me (or proved to me under oath or through</p> <p>14 _____) (description of</p> <p>15 identity card or other document) to be the person</p> <p>16 whose name is subscribed to the foregoing instrument</p> <p>17 and acknowledged to me that they executed the same</p> <p>18 for the purposes and consideration therein</p> <p>19 expressed.</p> <p>20 Given under my hand and seal of office this</p> <p>21 _____ day of _____, 2018.</p> <p>22</p> <p>23</p> <p>24 NOTARY PUBLIC IN AND FOR</p> <p>25 THE STATE OF _____</p>																																																																					
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<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: JAMES DONDERO</p> <p>3 DATE: MARCH 20, 2018</p> <table border="1"><thead><tr><th>PAGE/LINE</th><th>CHANGE</th><th>REASON</th></tr></thead><tbody><tr><td>4</td><td></td><td></td></tr><tr><td>5</td><td></td><td></td></tr><tr><td>6</td><td></td><td></td></tr><tr><td>7</td><td></td><td></td></tr><tr><td>8</td><td></td><td></td></tr><tr><td>9</td><td></td><td></td></tr><tr><td>10</td><td></td><td></td></tr><tr><td>11</td><td></td><td></td></tr><tr><td>12</td><td></td><td></td></tr><tr><td>13</td><td></td><td></td></tr><tr><td>14</td><td></td><td></td></tr><tr><td>15</td><td></td><td></td></tr><tr><td>16</td><td></td><td></td></tr><tr><td>17</td><td></td><td></td></tr><tr><td>18</td><td></td><td></td></tr><tr><td>19</td><td></td><td></td></tr><tr><td>20</td><td></td><td></td></tr><tr><td>21</td><td></td><td></td></tr><tr><td>22</td><td></td><td></td></tr><tr><td>23</td><td></td><td></td></tr><tr><td>24</td><td></td><td></td></tr><tr><td>25</td><td></td><td></td></tr></tbody></table>	PAGE/LINE	CHANGE	REASON	4			5			6			7			8			9			10			11			12			13			14			15			16			17			18			19			20			21			22			23			24			25			<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 IN RE: _____) CASE NO. 18-30264-SGJ7</p> <p>5 ACIS CAPITAL MANAGEMENT _____) CHAPTER 7</p> <p>6 L.P. _____)</p> <p>7 ALLEGED DEBTOR. _____)</p> <p>8</p> <p>9 IN RE: _____) CASE NO. 18-30265-SGJ7</p> <p>10 ACIS CAPITAL MANAGEMENT GP, _____) CHAPTER 7</p> <p>11 L.L.C. _____)</p> <p>12 ALLEGED DEBTOR. _____)</p> <p>13</p> <p>14 REPORTER'S CERTIFICATE</p> <p>15</p> <p>16</p> <p>17 DEPOSITION OF JAMES DONDERO - 30(b)(6)</p> <p>18 TAKEN MARCH 20, 2018</p> <p>19</p> <p>20</p> <p>21 I, Karen L. D. Schoeve, Certified Shorthand</p> <p>22 Reporter, Registered Diplomate Reporter, Certified</p> <p>23 Realtime Reporter, and Realtime Systems</p> <p>24 Administrator, residing in the State of Texas, do</p> <p>25</p>
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<p>1 hereby certify that the foregoing proceedings were 2 reported by me and that the foregoing transcript 3 constitutes a full, true, and correct transcription 4 of my stenographic notes, to the best of my ability 5 and hereby certify to the following: 6 That the witness, JAMES DONDERO, was duly 7 sworn by the officer and that the transcript of the 8 oral deposition is a true record of the testimony 9 given by the witness; 10 That the original deposition was delivered to 11 GARY CRUCIANI, custodial attorney; 12 That a copy of this certificate was served on 13 all parties and/or the witness shown herein on 14 _____. 15 I further certify that pursuant to FRCP No. 16 30(f)(i) that the signature of the deponent was 17 requested by the deponent or a party before the 18 completion of the deposition and the signature is to 19 be returned within 30 days from date of receipt of 20 the transcript. 21 If returned, the attached Changes and 22 Signature Page contains any changes and the reasons 23 therefore. 24 That pursuant to information given to the 25 deposition officer at the time said testimony was</p>		<p>1 in the action in which this proceeding was taken, 2 and further that I am not financially or otherwise 3 interested in the outcome of the action. 4 Subscribed and sworn to on this the 20th 5 day of March, 2018. 6 7 8 9 10   11 Karen L.D. Schoeve, CSR, RDR, LRR 12 Realtime Systems Administrator 13 Texas CSR No. 3354, Exp.: 12-31-2018 14 NCRA Exp. Date: 09-31-18 15 COMPLETE LEGAL 16 Firm Registration No. 289 17 2650 Renaissance Tower 18 1201 Elm Street 19 Dallas, Texas 75270 20 214-746-5400 21 22 23 24 25</p>
<p>Page 131</p> <p>1 taken, the following includes counsel for all 2 parties of record: 3 4 APPEARING ON BEHALF OF DEBTOR AND THE WITNESS: 5 GARY CRUCIANI, ESQUIRE 6 CARSON D. YOUNG, ESQUIRE 7 McKOOL SMITH 8 300 Crescent Court, Suite 1500 9 Dallas, Texas 75201 10 D: 214.978.4009 (Mr. Cruciani) 11 D: 214.978.6368 (Mr. Young) 12 T: 214.978.4000 13 F: 214.978.4044 14 gcruciani@mckoolsmith.com 15 cyoung@mckoolsmith.com 16 17 APPEARING ON BEHALF OF THE PETITIONER CREDITOR 18 JOSHUA N. TERRY: 19 BRIAN P. SHAW, ESQUIRE 20 CLOUSE DUNN LLP 21 1201 Elm Street, Suite 5200 22 Dallas, Texas 75270 23 D: 214.239.2707 24 T: 214.220.3888 25 F: 214.220.3833 shaw@clousedunn.com --AND-- RAKHEE V. PATEL, ESQUIRE WINSTEAD PC 2728 N. Harwood Street, Suite 500 Dallas, Texas 75201 D: 214.745.5250 T: 214.745.5400 rpatel@winstead.com I further certify that I am neither counsel for, related to, nor employed by any of the parties</p>		

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236 4:16	70:20,23 71:15	7th 62:6 63:17		
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27 5:13	40 5:15 34:12,14	8-31-2017 38:7,13		
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289 132:13	42 5:11	9		
29 5:6	43 5:18 50:21,23	9 67:4 104:15		
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118:22,23 122:2	5:42 2:15 125:25	991,180.13 49:18		
3:00 45:15,16	126:10			

Complete Legal

214-746-5400

HCL0M00288486

EXHIBIT 106

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)

Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)

Maxim B. Litvak (Texas Bar No. 24002482)

Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)

10100 Santa Monica Blvd., 13th Floor

Los Angeles, CA 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward

Texas Bar No. 24044908

MHayward@HaywardFirm.com

Zachery Z. Annable

Texas Bar No. 24053075

ZAnnable@HaywardFirm.com

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

)
) Chapter 11
)
) Case No. 19-34054-sgj11
)
)
) **Re: Docket No. 247**
)

NOTICE OF FILING OF DEBTOR'S AMENDED SCHEDULES

PLEASE TAKE NOTICE that the above-captioned debtor and debtor-in-possession (the "Debtor") hereby files its *Amended Schedules of Assets and Liabilities – Schedule E-F* (the "Amended Schedules").

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



PLEASE TAKE FURTHER NOTICE that the following changes were made to the Amended Schedules attached hereto as **Exhibit 1**:

- Schedule E/F – add claims of Andrew Parmentier (E-2.2; F-3.15)
- Schedule E/F – Change name from Highland CLO Holdco (previously F-3.64 & F-3.65) to Highland CLO Management, Ltd. (F-3.65 & F-3.66).

PLEASE TAKE FURTHER NOTICE that, other than the changes listed above, there are no other changes to the Debtor's Schedules.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], any creditor affected by this notice may file a proof of claim no later than thirty (30) days after the date that the notice of the Amended Schedules is served on the entity.

PLEASE TAKE FURTHER NOTICE that, notwithstanding the filing of the Amended Schedules, the Debtor reserves the right to further amend, in any way and at any time, the schedules of assets and liabilities filed in this chapter 11 case, consistent with the provisions of title 11 of the United States Code (the "Bankruptcy Code") and the Federal Rules of Bankruptcy Procedure.

[Remainder of Page Intentionally Left Blank]

Dated: September 22, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Maxim B. Litvak (TX Bar No. 24002482)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
mlitvak@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

Exhibit 1

**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
	§	
Debtor.	§	
	§	

**GLOBAL NOTES AND STATEMENT OF LIMITATIONS,
METHODS, AND DISCLAIMER REGARDING DEBTOR'S AMENDED SCHEDULES
OF ASSETS AND LIABILITIES**

Highland Capital Management, L.P. (the "Debtor") submits its Amended Schedules of Assets and Liabilities (the "Schedules") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). The Debtor, with the assistance of its advisors and management, prepared the Schedules in accordance with section 521 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

These Global Notes and Statement of Limitations, Methods, and Disclaimer Regarding the Debtor's Schedules (collectively, the "Global Notes") pertain to, are incorporated by reference in, and comprise an integral part of the Schedules. These Global Notes should be referred to, and reviewed in connection with any review of the Schedules.² These Global Notes are intended to supplement the Global Notes filed at Docket No. 247 and 248 which remain applicable to the Schedules and Statement of Financial Affairs ("SoFA") filed at Docket No. 247 and 248, respectively and, to the extent not revised, shall be applicable to the attached Schedules.

The Schedules have been prepared by the Debtor with the assistance of its professionals and are unaudited and subject to further review and potential adjustment and amendment. In preparing the Schedules, the Debtor and its professionals relied on financial data derived from the Debtor's books and records that was available at the time of preparation. The Debtor and its professionals have made reasonable efforts to ensure the accuracy and completeness of such financial information, however, subsequent information or discovery of other relevant facts may result in material changes to the Schedules and inadvertent errors, omissions, or inaccuracies may exist. The Debtor reserves all rights to amend or supplement its Schedules and SoFA.

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

² These Global Notes are in addition to any specific notes contained in the Debtor's Schedules or SoFA. The fact that the Debtor has prepared a "general note" with respect to any of the Schedules and SoFA and not to others should not be interpreted as a decision by the Debtor to exclude the applicability of such general note to any of the Debtor's remaining Schedules and SoFA, as appropriate.

Reservation of Rights. The Debtor reserves all rights to amend the SoFA and Schedules in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.” Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other applicable non-bankruptcy laws.

Description of the Case and “As Is” Information Date. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”) under Chapter 11 of the Bankruptcy Code. The Debtor is managing its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On December 4, 2019, the Delaware Bankruptcy Court entered an Order transferring this case to the Bankruptcy Court [Docket No. 1].

Asset information in the Schedules reflects the Debtor’s best estimate of asset values as of the Petition Date, unless otherwise noted. No independent valuation has been obtained.

Basis of Presentation. The Schedules and SoFA do not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles (“GAAP”), nor are they intended to fully reconcile to any financial statements otherwise prepared and/or distributed by the Debtor.

Although these Schedules and SoFA may, at times, incorporate information prepared in accordance with GAAP, the Schedules and SoFA neither purport to represent nor reconcile to financial statements prepared and/or distributed by the Debtor in accordance with GAAP or otherwise. Moreover, given, among other things, the valuation and nature of certain liabilities, to the extent that the Debtor shows more assets than liabilities, this is not a conclusion that the Debtor was solvent at the Petition Date. Likewise, to the extent that the Debtor shows more liabilities than assets, this is not a conclusion that the Debtor was insolvent at the Petition Date or any time prior to the Petition Date.

Estimates. To timely close the books and records of the Debtor, the Debtor and its professionals must make certain estimates and assumptions that affect the reported amounts of assets and liabilities and reported revenue and expenses. The Debtor reserves all rights to amend the reported amounts of assets, liabilities, revenue, and expenses to reflect changes in those estimates and assumptions.

Confidentiality. There may be instances within the Schedules and SoFA where names, addresses, or amounts have been left blank. Due to the nature of an agreement between the Debtor and the third party, concerns of confidentiality, or concerns for the privacy of an individual, the Debtor may have deemed it appropriate and necessary to avoid listing such names, addresses, and amounts.

Intercompany Claims. Any receivables and payables between the Debtor and affiliated or related entities in this case (each an “Intercompany Receivable” or “Intercompany Payable” and, collectively, the “Intercompany Claims”) are reported as assets on Schedule B or liabilities on Schedule E and Schedule F. These Intercompany Claims include the following components, among others: 1) loans to affiliates or related entities, 2) accounts payable and payroll disbursements made out of an affiliate’s or related entity’s bank accounts on behalf of the Debtor, 3) centrally billed expenses, 4) corporate expense allocations, and 5) accounting for trade and other intercompany transactions. These Intercompany Claims may or may not result in allowed or enforceable claims by or against the Debtor, and by listing these claims the Debtor is not indicating a conclusion that the Intercompany Claims are enforceable. Intercompany Claims may also be subject to set off, recoupment, and netting not reflected in the Schedules. In situations where there is not an enforceable claim, the assets and/or liabilities of the Debtor may be greater or lesser than the amounts stated herein. All rights to amend intercompany Claims in the Schedules and SoFA are reserved.

The Debtor has listed the intercompany payables as unsecured claims on Schedule F. The Debtor reserves its rights to later change the characterization, classification, categorization, or designation of such items.

Insiders. For purposes of the Schedules and SoFA, the Debtor defines “insider” pursuant to section 101(31) of the Bankruptcy Code. Payments to insiders are set forth on Question 3.c. of the SoFA.

Persons listed as “insiders” have been included for informational purposes only. The Debtor did not take any position with respect to whether such individual could successfully argue that he or she is not an “insider” under applicable law, including without limitation, the federal securities laws, or with respect to any theories of liability or for any other purpose. Inclusion of any party in the Schedules and SoFA as an insider does not constitute an admission that such party is an insider or a waiver of such party’s right to dispute insider status.

Excluded Accruals and GAAP Entries. The Debtor’s balance sheet reflects liabilities recognized in accordance with GAAP; however, not all such liabilities would result in a claim against the Debtor. Certain liabilities (including but not limited to certain reserves, deferred charges, and future contractual obligations) have not been included in the Debtor’s Schedules. Other immaterial assets and liabilities may also have been excluded.

Classification and Claim Descriptions. Any failure to designate a claim on the Schedules as “disputed,” “contingent” or “unliquidated” does not constitute an admission by the Debtor that such amount is not “disputed,” “contingent” or “unliquidated.” The Debtor reserves the right to dispute, or to assert offsets or defenses to, any claim reflected on its Schedules as to amount, liability or classification or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.”

Listing a claim (i) in Schedule D as “secured,” (ii) in Schedule E as “priority” or (iii) in Schedule F as “unsecured nonpriority,” or listing a contract in Schedule G as “executory” or “unexpired,” does not constitute an admission by the Debtor of the legal rights of the claimant or a waiver of the Debtor’s right to recharacterize or reclassify such claim or contract.

Moreover, the Debtor reserves all rights to amend the SoFA and Schedules, in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as “disputed,” “contingent” or “unliquidated.” Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other relevant non-bankruptcy laws.

Credits and Adjustments. The claims of individual creditors for, among other things, goods, products, services or taxes are listed as the amounts entered on the Debtor’s books and records and may not reflect credits, allowances or other adjustments due from such creditors to the Debtor. The Debtor reserves all of its rights respecting such credits, allowances or other adjustments.

Setoffs. The Debtor may incur setoffs from third parties in its business. Setoffs in the ordinary course can result from various routine transactions, including intercompany transactions, pricing discrepancies, warranty claims and other disputes between the Debtor and third parties. Certain of these constitute normal setoffs consistent with the ordinary course of business in the Debtor’s industry. In such instances, such ordinary course setoffs are excluded from the Debtor’s responses to Question 13 of the SoFA. The Debtor reserves all rights to enforce or challenge, as the case may be, any setoffs that have been or may be asserted.

Specific Notes. These general notes are in addition to the specific notes set forth below or in the related Statement and Schedules hereinafter.

General Disclaimer

The Debtor has prepared the Schedules and the SoFA based on the information reflected in the Debtor’s books and records. However, inasmuch as the Debtor’s books and records have not been audited or formally closed and evaluated for proper cut-off on the Petition Date, the Debtor cannot warrant the absolute accuracy of these documents. The Debtor has made a diligent effort to complete these documents accurately and completely. To the extent additional information becomes available, the Debtor will amend and supplement the Schedules and SoFA.

Specific Schedules Disclosures

a. **Schedule E/F - Creditors Who Have Unsecured Claims.**

Part 1 - Creditors with Priority Unsecured Claims. Pursuant to the *Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (11) Granting Related Relief* [Docket No. 39] (the “Wage Order”), the Debtor received authority to pay certain prepetition obligations,

including to pay employee wages and other employee benefits, in the ordinary course of business. The Debtor believes that any non-insider employee claims for prepetition amounts related to ongoing payroll and benefits, whether allowable as a priority or nonpriority claim, which were due and payable at the time of the Petition Date have been or will be satisfied as permitted pursuant to the Wage Order. The Debtor filed the *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 177] pursuant to which the Debtor sought authority to pay and honor certain prepetition bonus programs. The Court granted certain relief with respect to this motion at Docket No. 380. Employee claims related to these programs are shown in the aggregate amounts in Schedule E/F for privacy reasons. Additional information is available by appropriate request to the Debtor. The listing of a claim on Schedule E/F, Part 1, does not constitute an admission by the Debtor that such claim or any portion thereof is entitled to priority status.

Part 2 - Creditors with Nonpriority Unsecured Claims. The liabilities identified in Schedule E/F, Part 2, are derived from the Debtor's books and records. The Debtor made a reasonable attempt to set forth its unsecured obligations, although the actual amount of claims against the Debtor may vary from those liabilities represented on Schedule E/F, Part 2. The listed liabilities may not reflect the correct amount of any unsecured creditor's allowed claims or the correct amount of all unsecured claims.

Schedule E/F, Part 2 reflects liabilities based on the Debtor's books and records.

Schedule E/F, Part 2, contains information regarding threatened or pending litigation involving the Debtor. The amounts for these potential claims are listed as "unknown" and are marked as contingent, unliquidated, and disputed in the Schedules and Statements. Additionally, the amounts of certain litigation claims may be estimates based on the allegations asserted by the litigation counterparty, and do not constitute an admission by the Debtor with respect to either liability for, or the amount of, such claims.

Schedule E/F, Part 2, reflects certain prepetition amounts owing to counterparties to executory contracts and unexpired leases. Such prepetition amounts, however, may be paid in connection with the assumption or assumption and assignment of an executory contract or unexpired lease. In addition, Schedule E/F, Part 2, does not include claims that may arise in connection with the rejection of any executory contracts and unexpired leases, if any, that may be or have been rejected.

As of the time of filing of the Schedules and Statements, the Debtor had not received all invoices for payables, expenses, and other liabilities that may have accrued prior to the Petition Date. Accordingly, the information contained in Schedules D and E/F may be incomplete. The Debtor reserves its rights to amend Schedules D and E/F if and as it receive such invoices.

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 206Sum
Summary of Assets and Liabilities for Non-Individuals

12/15

Part 1: Summary of Assets

1. **Schedule A/B: Assets-Real and Personal Property** (Official Form 206A/B)

1a. Real property: Copy line 88 from <i>Schedule A/B</i>	\$ <u>523,970.00</u>
1b. Total personal property: Copy line 91A from <i>Schedule A/B</i>	\$ <u>409,580,813.30</u>
1c. Total of all property: Copy line 92 from <i>Schedule A/B</i>	\$ <u>410,104,783.30</u>

Part 2: Summary of Liabilities

2. Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D) Copy the total dollar amount listed in Column A, <i>Amount of claim</i> , from line 3 of <i>Schedule D</i>	\$ <u>34,862,225.94</u>
3. Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)	
3a. Total claim amounts of priority unsecured claims: Copy the total claims from Part 1 from line 5a of <i>Schedule E/F</i>	\$ <u>13,650.00</u>
3b. Total amount of claims of nonpriority amount of unsecured claims: Copy the total of the amount of claims from Part 2 from line 5b of <i>Schedule E/F</i>	+\$ <u>244,753,977.33</u>
4. Total liabilities Lines 2 + 3a + 3b	\$ <u>279,629,853.27</u>

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 Date or dates debt was incurred 2019 Last 4 digits of account number Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Employee Wages & Bonuses Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown Unknown
2.2	Priority creditor's name and mailing address Andrew Parmentier 1821 Redwood Ave. Boulder, CO 80304 Date or dates debt was incurred 5/31/2019 Last 4 digits of account number Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Separation and Release Agreement Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$13,650.00 \$13,650.00

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

Debtor Name	Case number (if known)	
Highland Capital Management, L.P.	19-34054-SGJ	
3.1 Nonpriority creditor's name and mailing address 45 Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred <u>2017, 2018 & 2019</u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Deferred Awards</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
3.2 Nonpriority creditor's name and mailing address 46 Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred <u>2018</u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Prior year employee bonuses</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,758,166.67
3.3 Nonpriority creditor's name and mailing address Abrams & Bayliss 20 Montchanin Road, Suite 200 Wilmington, DE 19807 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$108,399.83
3.4 Nonpriority creditor's name and mailing address ACA Compliance Group 8403 Colesville Road Suite 870 Silver Spring, MD 20910 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$26,324.25
3.5 Nonpriority creditor's name and mailing address Acis Capital Management c/o Brian P. Shaw Rogge Dunn Group PC 500 N. Akard Street Ste 1900 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
3.6 Nonpriority creditor's name and mailing address Acis Capital Management, L.P. c/o Brian P. Shaw Rogge Dunn Group, PC 500 N. Akard Street Ste 1900 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
3.7 Nonpriority creditor's name and mailing address Action Shred of Texas 1420 S. Barry Ave Dallas, TX 75223 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3,825.00

Debtor	Highland Capital Management, L.P. Name	Case number (if known)	19-34054-SGJ
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3.8	Nonpriority creditor's name and mailing address Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue Suite 4100 Dallas, TX 75201 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$113,947.86
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3.9	Nonpriority creditor's name and mailing address All Employees 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Employee Bonuses</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
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3.10	Nonpriority creditor's name and mailing address Allen ISD Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>2301</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,522.33
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3.11	Nonpriority creditor's name and mailing address Allen ISD Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>9351</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,188.30
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3.12	Nonpriority creditor's name and mailing address Alston & Bird LLP 1201 W. Peachtree Street Atlanta, GA 30309-3424 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,234.00
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3.13	Nonpriority creditor's name and mailing address American Arbitration Association 120 Broadway, 21st Floor New York, NY 10271 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$55,511.80
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3.14	Nonpriority creditor's name and mailing address American Solutions for Business NW#7794 PO Box 1450 Minneapolis, MN 55485-7794 Date(s) debt was incurred _____ Last 4 digits of account number _____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$7,470.04
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Debtor	Highland Capital Management, L.P. Name	Case number (if known)	19-34054-SGJ
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3.15	Nonpriority creditor's name and mailing address Andrew Parmentier 1821 Redwood Ave. Boulder, CO 80304 Date(s) debt was incurred <u>5/31/2019</u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Seperation and Release Agreement</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$136,350.00
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3.16	Nonpriority creditor's name and mailing address Andrews Kurth 111 Congress Ave Suite 1700 Attn: Scott Brister Austin, TX 78701 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$137,637.81
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3.17	Nonpriority creditor's name and mailing address Arkadin, Inc. Lockbox #32726 Collection Center Dr Chicago, IL 60693-0726 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$647.59
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3.18	Nonpriority creditor's name and mailing address ASW Law Limited Crawford House 50 Cedar Avenue Hamilton HM11 Bermuda Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$77,044.60
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3.19	Nonpriority creditor's name and mailing address AT&T PO BOX 5001 Carol Stream, IL 60197-5001 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$927.16
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3.20	Nonpriority creditor's name and mailing address AT&T Mobilty PO Box 6444 Carol Stream, IL 60197-6444 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$6,728.59
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3.21	Nonpriority creditor's name and mailing address Bates White, LLC 2001 K Street, NW North Building, Suite 500 Washington, DC 20006 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$90,855.79
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3.22	Nonpriority creditor's name and mailing address Bell Nunnally & Martin LLP 3232 MCKINNEY AVE STE 1400 DALLAS, TX 75204 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$6,934.79
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3.23	Nonpriority creditor's name and mailing address Bloomberg Finance LP 731 Lexington Ave. New York, NY 10022 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$25,384.89
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3.24	Nonpriority creditor's name and mailing address Boies, Schiller & Flexner LLP 5301 Wisconsin Ave NW Washington, DC 20015-2015 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$115,714.80
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3.25	Nonpriority creditor's name and mailing address Brandywine Process Servers, Ltd. PO Box 1360 Wilmington, DE 19899 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$69.00
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3.26	Nonpriority creditor's name and mailing address Caledonian Directors Limited PO Box 1043 George Town Grand Cayman KY1-1002 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$325.00
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3.27	Nonpriority creditor's name and mailing address Canteen Vending Services PO Box 417632 Boston, MA 02241-7632 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$4,233.60
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3.28	Nonpriority creditor's name and mailing address Carey International, Inc. 7445 New Technology Way Frederick, MD 21703 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Uncompleted Transaction</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,059,337.01
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3.29	Nonpriority creditor's name and mailing address Carey Olsen PO Box 10008 Willow House, Cricket Square Grand Cayman KY1-1001 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$38,930.00
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3.30	Nonpriority creditor's name and mailing address Case Anywhere LLC 21860 Burbank Blvd. Ste 125 Woodland Hills, CA 91367 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$417.20
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3.31	Nonpriority creditor's name and mailing address CBIZ Valuation Group, LLC ATTN: ACCOUNTS RECEIVABLE PO BOX 849846 DALLAS, TX 75284-9846 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$545.77
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3.32	Nonpriority creditor's name and mailing address CDW Direct PO Box 75723 Chicago, IL 60675-5723 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$4,998.70
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3.33	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: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,155.00
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3.34	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: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$155.81
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3.35	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: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Contractual Obligation</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$11,340,751.26
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3.36	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: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$198,760.29
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3.37	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: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$52,500.00
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3.38	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: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$4,090.46
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3.39	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: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$118,831.25
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3.40	Nonpriority creditor's name and mailing address Crescent Research PO Box 64-3622 Vero Beach, FL 32964 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,200.00
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3.41	Nonpriority creditor's name and mailing address CSI Global Deposition Services Accounting Dept-972-719-5000 4950 N. O'Connor Rd, 1 st Fl Irving, TX 75062-2778 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$826.01
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3.42	Nonpriority creditor's name and mailing address CT Corp PO Box 4349 Carol Stream, IL 60197-4349 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$515.25
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3.43	Nonpriority creditor's name and mailing address CVE Technologies Group Inc. 1414 S. Gustin Rd. Salt Lake City, UT 84104 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,500.00
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3.44	Nonpriority creditor's name and mailing address Dallas County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>3150</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$47,809.87
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3.45	Nonpriority creditor's name and mailing address Daniel Sheehan & Associates, PLLC 8150 N. Central Expressway Suite 100 Dallas, TX 75206 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$21,226.25
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3.46	Nonpriority creditor's name and mailing address Debevoise & Plimpton LLP c/o Accounting Dept. 28th Floor 909 Third Ave New York, NY 10022 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$20,658.79
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3.47	Nonpriority creditor's name and mailing address Denton County PO Box 90223 Denton, TX 76202 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0DEN</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$553.46
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3.48	Nonpriority creditor's name and mailing address Denton County PO Box 90223 Denton, TX 76202 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>5DEN</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3.68
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3.49	Nonpriority creditor's name and mailing address DLA Piper LLP (US) 1900 N Pearl St, Suite 2200 Dallas, TX 75201 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,318,730.36
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3.50	Nonpriority creditor's name and mailing address Dow Jones & Company, Inc. 1211 Avenue of the Americas New York, NY 10036 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,038.26
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3.51	Nonpriority creditor's name and mailing address DTCC ITP LLC PO Box 27590 New York, NY 10087-7590 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3.30
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3.52	Nonpriority creditor's name and mailing address Duff & Phelps, LLC c/o David Landman Benesch, Friedlander, Coplan & Aronoff 200 Public Sq. Suite 2300 Cleveland, OH 44114-4000 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$350,000.00
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3.53	Nonpriority creditor's name and mailing address Elite Document Technology 403 North Stemmons Freeway Suite 100 Dallas, TX 75207 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,837.30
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3.54	Nonpriority creditor's name and mailing address Epiq eDiscovery Solutions Dept 2651 PO Box 122651 Dallas, TX 75312-2651 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$9,972.65
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3.55	Nonpriority creditor's name and mailing address Eric Girard 312 Polo Trl Colleyville, TX 76034 Date(s) debt was incurred <u>10/14/2019</u> Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Consulting fee</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$11,430.14
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3.56	Nonpriority creditor's name and mailing address Felicity Toubé QC 3-4 South Square Gray's Inn London, WC1R 5HP Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,546.65
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3.57	Nonpriority creditor's name and mailing address Foley Gardere 2021 McKinney Ave Suite 1600 Dallas, TX 75201 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,446,136.66
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3.58	Nonpriority creditor's name and mailing address Four Seasons Landscaping, LLC 139 Turtle Creek Blvd. Dallas, TX 75207-6807 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$108.95
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3.59	Nonpriority creditor's name and mailing address Gardner Haas PLLC 2501 N. Harwood Street Suite 1250 Dallas, TX 75201 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$522.72
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3.60	Nonpriority creditor's name and mailing address Gold's Gym International Attn: Corporate Billing 125 E John Carpenter Frwy Suite 1300 Irving, TX 75062 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$561.75
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3.61	Nonpriority creditor's name and mailing address Greenwood Office Outfitters 2951 Suffolk Drive Suite 640 Fort Worth, TX 76133-1149 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,371.07
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3.62	Nonpriority creditor's name and mailing address Greyline Solutions PO Box 733976 Dallas, TX 75373-3976 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$11,250.00
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3.63	Nonpriority creditor's name and mailing address Harder LLP 132 S. RODEO DRIVE FOURTH FLOOR BEVERLY HILLS, CA 90212 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,464.13
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Debtor	Highland Capital Management, L.P. Name	Case number (if known)	19-34054-SGJ
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3.64	Nonpriority creditor's name and mailing address Highland Capital Management (Singapore) 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred <u>Prior to 12/31/2018</u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>The balance shown is updated annually for service fees and has not been updated since 12/31/2018</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$248,745.28
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3.65	Nonpriority creditor's name and mailing address Highland CLO Management Ltd. PO Box 309 Ugland House Grand Cayman KY1-1104 Cayman Island Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Interest payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$599,187.26
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3.66	Nonpriority creditor's name and mailing address Highland CLO Management Ltd. PO Box 309 Ugland House Grand Cayman KY1-1104 Cayman Island Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Note payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$9,541,446.00
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3.67	Nonpriority creditor's name and mailing address Highland RCP Offshore, LP 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Unearned Revenue</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,447,870.00
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3.68	Nonpriority creditor's name and mailing address Highland RCP, LP 300 Crescent Ct. Suite 700 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Unearned Revenue</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,945,067.00
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3.69	Nonpriority creditor's name and mailing address Hunton Andrews Kurth LLP 1445 Ross Avenue Suite 3700 Dallas, TX 75202-2799 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$107,221.92
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3.70	Nonpriority creditor's name and mailing address ICE Data Pricing & Reference Data, LLC PO Box 98616 Chicago, IL 60693 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,565.23
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Debtor	Highland Capital Management, L.P. Name	Case number (if known)	19-34054-SGJ
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3.71	Nonpriority creditor's name and mailing address Intralinks P.O. Box 10259 New York, NY 10259 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$7,995.00
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3.72	Nonpriority creditor's name and mailing address JAMS, Inc PO Box 512850 Los Angeles, CA 90051-0850 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,352.27
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3.73	Nonpriority creditor's name and mailing address Joshua & Jennifer Terry c/o Brian P. Shaw, Esq. Rogge Dunn Group, PC 500 N. Akard Street, Suite 1900 Dallas, TX 75201 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$425,000.00
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3.74	Nonpriority creditor's name and mailing address Katten Muchin Rosenman LLP 525 W Monroe St Chicago, IL 60661-3693 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$16,695.00
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3.75	Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0606</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$585.09
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3.76	Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0600</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3,090.25
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3.77	Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0600</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$125.05
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Debtor	Highland Capital Management, L.P. Name	Case number (if known)	19-34054-SGJ
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3.78	Nonpriority creditor's name and mailing address Kaufman County Attn: Elizabeth Weller 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207 Date(s) debt was incurred <u>2019</u> Last 4 digits of account number <u>0600</u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Ad Valorem Taxes</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,732.15
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3.79	Nonpriority creditor's name and mailing address Legalpeople LLC 134 N LaSalle Street Suite 800 Chicago, IL 60602 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$34,425.72
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3.80	Nonpriority creditor's name and mailing address Levinger PC 1445 Ross Avenue Suite 2500 Dallas, TX 75202 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3,778.01
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3.81	Nonpriority creditor's name and mailing address Lexitas PO Box 734298 Dept. 2012 Dallas, TX 75373-4298 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,583.66
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3.82	Nonpriority creditor's name and mailing address Loews Coronado Bay Resort 4000 Coronado Bay Road Coronado, CA 92118 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$57,628.65
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3.83	Nonpriority creditor's name and mailing address Lynn Pinker Cox & Hurst, LLP 2100 Ross Ave Suite 2700 Dallas, TX 75201 Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$436,538.06
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3.84	Nonpriority creditor's name and mailing address Maples and Calder UGLAND HOUSE PO BOX 309GT; S CHURCH ST George Town Grand Cayman Date(s) debt was incurred <u> </u> Last 4 digits of account number <u> </u>	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$25,800.11
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Debtor Highland Capital Management, L.P.		Case number (if known) 19-34054-SGJ
Name		
3.85	Nonpriority creditor's name and mailing address MarkitWSO Corporation Three Lincoln Centre 5430 LBJ Frwy; Ste 800 Dallas, TX 75240 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$12,015.91 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
3.86	Nonpriority creditor's name and mailing address McKool Smith 300 Crescent Court Suite 1500 Dallas, TX 75201 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$2,163,976.00 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
3.87	Nonpriority creditor's name and mailing address Meta-e Discovery LLC Six Landmark Square Fourth Floor Stamford, CT 06901 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$780,645.36 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
3.88	Nonpriority creditor's name and mailing address Nick Meserve 11835 Brandywine Ln Houston, TX 77024 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$300.00 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
3.89	Nonpriority creditor's name and mailing address NWCC, LLC c/o of Michael A. Battle Barnes & Thornburg, LLP 1717 Pennsylvania Ave N.W. Ste 500 Washington, DC 20006 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$375,000.00 <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Litigation Claim Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
3.90	Nonpriority creditor's name and mailing address Opus 2 International, Inc. 100 Pine Street Suite 560 San Francisco, CA 94111 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$15,669.86 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
3.91	Nonpriority creditor's name and mailing address PACER Service Center P.O. Box 5208 Portland, OR 97208-5208 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> \$435.30 <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes

Debtor Name	Case number (if known)	
Highland Capital Management, L.P.	19-34054-SGJ	
3.92 Nonpriority creditor's name and mailing address Patrick Daugherty c/o Thomas A. Uebler McCollom D'Emilio Smith 2751 Centerville Rd #401 Wilmington, DE 19808 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$11,700,000.00
3.93 Nonpriority creditor's name and mailing address Pitney Bowes- Purchase Power PO Box 371874 Pittsburgh, PA 15250-2648 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,611.00
3.94 Nonpriority creditor's name and mailing address ProStar Services, Inc PO Box 110209 Carrollton, TX 75011 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,064.58
3.95 Nonpriority creditor's name and mailing address Quintairos, Prieto Wood & Boyer 865 S. Figueroa St 10th FL Los Angeles, CA 90017 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$8,608.17
3.96 Nonpriority creditor's name and mailing address Redeemer Committee - Highland Crusader Attn: Eric Felton 731 Pleasant Ave. Glen Ellyn, IL 60137 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	\$189,314,946.00
3.97 Nonpriority creditor's name and mailing address Reid Collins & Tsai 810 Seventh Ave Ste 410 New York, NY 10019 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$258,526.25
3.98 Nonpriority creditor's name and mailing address Scott Douglass & McConnico LLP 303 Colorado St Ste 2400 Austin, TX 78701 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,478.59

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3.99	Nonpriority creditor's name and mailing address Secured Access Systems, LLC 1913 Walden Court Flower Mound, TX 75022 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$24.37
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3.100	Nonpriority creditor's name and mailing address Siepe Services, LLC 5440 Harvest Hill Road Suite 100 Dallas, TX 75230 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$80,183.88
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3.101	Nonpriority creditor's name and mailing address Southland Property Tax Consultants, Inc 421 W. 3rd Street Ste 920 Fort Worth, TX 76102 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$309.11
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3.102	Nonpriority creditor's name and mailing address Squire Patton Boggs (US) LLP PO Box 643051 Cincinnati, OH 45264 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$5,208.40
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3.103	Nonpriority creditor's name and mailing address Stanton Advisors LLC 300 Coles Street Apt. 802 Jersey City, NJ 07310 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$10,000.00
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3.104	Nonpriority creditor's name and mailing address Stanton LLP 9400 N Central Expwy Ste 1304 Dallas, TX 75231 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$90,712.65
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3.105	Nonpriority creditor's name and mailing address State Street Global Exchange Elkins/McSherry, LLC One Lincoln Street Boston, MA 02111 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,500.00
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Debtor	Highland Capital Management, L.P. Name	Case number (if known)	19-34054-SGJ
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3.106	Nonpriority creditor's name and mailing address Stinson Leonard Street LLP PO Box 843052 Kansas City, MO 64184 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$246,802.54
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3.107	Nonpriority creditor's name and mailing address Thomson West PO Box 64833 St. Paul, MN 55164-0833 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$1,158.52
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3.108	Nonpriority creditor's name and mailing address UBS AG, London Branch c/o Andrew Clubock, Esq. Latham & Watkins LLP 555 11th Street NW #1000 Washington, DC 20004 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
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3.109	Nonpriority creditor's name and mailing address UBS Securities LLC c/o Andrew Clubock Latham & Watkins LLP 555 11th Street NW #1000 Washington, DC 20004 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: <u>Litigation Claim</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
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3.110	Nonpriority creditor's name and mailing address UPS Supply Chain Solutions 28013 Network Place Chicago, IL 60673-1280 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$90.45
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3.111	Nonpriority creditor's name and mailing address Wakefield Quin Victoria Place 31 Victoria St Hamilton, HM10 Bermuda Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>See Exhibit A</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,334.80
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3.112	Nonpriority creditor's name and mailing address Wilks, Lukoff & Bracegirdle, LLC 4250 Lancaster Pike #200 Wilmington, DE 19805 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Trade Payable</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$3,411.87
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Debtor	Highland Capital Management, L.P.	Case number (if known)	19-34054-SGJ
Name			
3.113	Nonpriority creditor's name and mailing address Xerox Corporation PO Box 650361 Dallas, TX 75265 Date(s) debt was incurred ____ Last 4 digits of account number ____	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$2,348.31

Part 3: List Others to Be Notified About Unsecured Claims

4. List in alphabetical order any others who must be notified for claims listed in Parts 1 and 2. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for unsecured creditors.

If no others need to be notified for the debts listed in Parts 1 and 2, do not fill out or submit this page. If additional pages are needed, copy the next page.

Name and mailing address	On which line in Part1 or Part 2 is the related creditor (if any) listed?	Last 4 digits of account number, if any
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Part 4: Total Amounts of the Priority and Nonpriority Unsecured Claims

5. Add the amounts of priority and nonpriority unsecured claims.

5a. Total claims from Part 1

5b. Total claims from Part 2

5c. Total of Parts 1 and 2
Lines 5a + 5b = 5c.

Total of claim amounts	
5a.	\$ 13,650.00
5b. +	\$ 244,753,977.33
5c.	\$ 244,767,627.33

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 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 **Amended Schedule E/F and Summary of assets and liabilities for non-individuals**
- ☐ *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

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

Executed on September 22, 2020

x

Signature of individual signing on behalf of debtor

Printed name

Position or relationship to debtor