



John A. Morris

March 31, 2025

212.561.7760
jmorris@pszjlaw.com**LOS ANGELES**10100 SANTA MONICA BLVD. 13TH FL.
LOS ANGELES, CALIFORNIA 90067-4003
310.277.6910**NEW YORK**780 THIRD AVENUE, 34TH FL.
NEW YORK, NEW YORK 10017-2024
212.561.7700**WILMINGTON**919 NORTH MARKET STREET, 17TH FLOOR,
P.O. BOX 8705
WILMINGTON, DELAWARE 19899-8705
302.652.4100**HOUSTON**700 LOUISIANA STREET, STE. 4500
HOUSTON, TEXAS 77002
713.691.9385**SAN FRANCISCO**ONE SANSOME STREET, 34TH FL. STE. 3430
SAN FRANCISCO, CALIFORNIA 94104
415.263.7000**Via E-mail**Lyle M. Cayce
Clerk of Court
U.S. Court of Appeals for the
Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130Re: **Charitable DAF Fund, L.P., et al. v. Highland Capital Management, L.P. (In re Highland Capital Management, L.P.), No. 24-10880**

Dear Mr. Cayce:

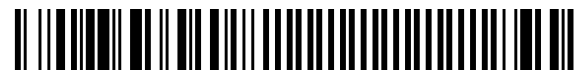
Highland Capital Management Fund Advisors, L.P. v. Highland Capital Management, L.P., No. 23-10534 (5th Cir. Mar. 18, 2025) ("Highland II"), has no bearing on this case.¹

Highland Capital Management, L.P. ("HCMLP") is the only remaining defendant in the underlying action² and is the debtor in the underlying bankruptcy case. As the debtor, HCMLP is protected by the "gatekeeper" and exculpation provisions of HCMLP's confirmed Plan. While *Highland II* limited the application of the Plan's "gatekeeper" provision in certain respects, it did not disturb those provisions *as applied to HCMLP* in any way.³

¹ The mandate in *Highland II* has not issued.

² The Complaint named two other defendants. One, Highland CLO Funding, Ltd., was dismissed with prejudice on December 7, 2021 (Bankr. Case No. 19-34054 (Bankr. N.D. Tex.), Adv. Pro. No. 21-03067-sgj, Docket No. 80). The other, Highland HCF Advisors, Ltd., was never served with the Summons and Complaint.

³ The "contempt order" Appellants reference is a red herring; the contempt order implicated a different "gatekeeper" provision, one which this Court observed is valid, final, and not subject to collateral attack. *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.*, 28 F.4th 419, 438 n.15 (5th Cir. 2022) ("Highland I").





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While the gatekeeper indisputably protects HCMLP, it was never used to bar Appellants from amending their complaint.⁴ Appellants were denied leave to replead for myriad reasons—none of which concerned a gatekeeper.

Finally, the gatekeeper was never used to bar Appellants from asserting negligence or gross negligence claims. Instead, amendment to assert such claims was deemed futile because of (a) the *exculpation* provisions in the Plan affirmed in *Highland I*, (b) *CLO Holdco, Ltd. v. Kirschner (In re Highland Cap. Mgmt., L.P.)*, 102 F.4th 286 (5th Cir. 2024), and (c) the reasons set forth by the Bankruptcy and District Courts—none of which concerned a gatekeeper.

Sincerely,

/s/ John A. Morris

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⁴ In fact, the District Court denied Appellants’ “formal motion” to amend *without prejudice*. 3:21-cv-00842-B (N.D. Tex. 2021), Docket No. 8.