



Patrick Daugherty, (“Daugherty”) hereby files this Witness and Exhibit List for the hearing scheduled for September 4, 2025, at 9:30 a.m. (Central Time) in connection with Daugherty’s *Motion to Dismiss* [Docket No. 5] and Highland Capital Management, L.P.’s (A) *Objection to Patrick Daugherty’s Motion to Dismiss* and (B) *Cross Motion for Relief from a Final Order Pursuant to Bankruptcy Rule 9024* [Docket Nos. 9 and 10] and Patrick Daugherty’s (A) *Reply in Support of His Motion to Dismiss* and (B) *Response to Plaintiff’s Cross Motion for Relief from a Final Order Pursuant to Bankruptcy Rule 9024* [Docket No. 15].

### **I. WITNESSES**

Daugherty does not intend to call any witnesses at the hearing at this time. Daugherty reserves the right to cross-examine any witness called by any other party.

### **II. EXHIBITS**

Daugherty designates the following exhibits:

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>	<b>M A R K E D</b>	<b>O F F E R E D</b>	<b>O B J E C T</b>	<b>A D M I T T E D</b>
PD-1	Settlement Agreement between Highland Capital Management, L.P. and Patrick Daugherty. (Main Case Docket No. 3089-1 in Case 19-34054-sgj)				
PD-2	Complaint for (1) Disallowance of Claim No. 205 In Its Entirety, (2) Estimation of Claim No. 205 For Allowance Purposes, Or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty in Adversary Proceeding No. 25-03055-sgj, <i>Highland Capital Management, L.P. v. Patrick Hagaman Daugherty</i> (Docket No. 1)				

EXHIBIT NUMBER	DESCRIPTION	M A R K E D	O F F E R E D	O B J E C T	A D M I T T E D
PD-3	Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith (Main Case Docket No. 3088 in Case 19-34054-sgj)				
PD-4	Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 (Main Case Docket No. 1281 in Case 19-34054-sgj)				
PD-5	Transcript Regarding Hearing Held 11/17/2020 Regarding Motion for Temporary Allowance of Claim (Main Case Docket No. 1426 in Case 19-34054-sgj)				
PD-6	Tolling Agreement Extending Claim Objection Deadline (Main Case Docket No. 4255-60 in Case 19-34054-sgj)				
PD-7	Amendment No. 1 to Tolling Agreement Extending Claim Objection Deadline (Main Case Docket No. 4255-61 in Case 19-34054-sgj)				
PD-8	Amendment No. 2 to Tolling Agreement Extending Claim Objection Deadline (Main Case Docket No. 4255-62 in Case 19-34054-sgj)				
PD-9	Amendment No. 3 to Tolling Agreement Extending Claim Objection Deadline (Main Case Docket No. 4255-63 in Case 19-34054-sgj)				
PD-10	Patrick Daugherty's Motion to Dismiss (Docket No. 5)				

EXHIBIT NUMBER	DESCRIPTION	M A R K E D	O F F E R E D	O B J E C T	A D M I T T E D
PD-11	Patrick Daugherty's (A) Reply in Support of His Motion to Dismiss and (B) Response to Plaintiff's Cross Motion for Relief from a Final Order Pursuant to Bankruptcy Rule 9024 (Docket No. 15)				
PD-	Any document entered or filed in the Debtor's chapter 11 bankruptcy case, including any exhibits thereto				
PD-	Any exhibits identified by or offered by any other party at the hearing				
PD-	Any exhibits offered for impeachment and/or rebuttal purposes				

Daugherty reserves the right to supplement or amend this Witness and Exhibit List any time prior to the hearing. This Witness and Exhibit List is not intended to limit Daugherty at the hearing or to imply that Daugherty may not seek introduction of evidence that is not on this list. Daugherty reserves the right to use any of the exhibits designated by any other party in this case.

Respectfully submitted this 29th day of August 2025.

GRAY REED

By: /s/ Andrew K. York

Jason S. Brookner

Texas Bar No. 24033684

Andrew K. York

Texas Bar No. 24051554

Joshua D. Smeltzer

Texas Bar No. 24113859

Drake M. Rayshell

Texas Bar No. 24118507

1601 Elm Street, Suite 4600

Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com

dyork@grayreed.com

jsmeltzer@grayreed.com

draysehll@grayreed.com

*Counsel to Patrick Daugherty*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing instrument was served on all Parties or counsel of record herein on this 29th day of August 2025, via the CM/ECF system and/or email.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz

[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)

John A. Morris

[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)

Gregory V. Demo

[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

Hayley R. Winograd

[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

10100 Santa Monica Blvd., 13th Floor

Los Angeles, CA 90067

HAYWORD PLLC

Melissa S. Hayward

[MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com)

Zachery Z. Annable

[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

10501 N. Central Expy, Suite 106

Dallas, Texas 75231

*Counsel for Highland Capital Management, L.P.*

/s/ Andrew K. York

ANDREW K. YORK

**PD-1**

## **EXHIBIT 1**



Final Execution Copy

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Settlement”) is made and entered into by and between (i) Highland Capital Management, L.P., as reorganized debtor (“HCMLP” or the “Debtor”), and (ii) Patrick Hagaman Daugherty (“Daugherty” and together with HCMLP, the “Parties,” and individually as a “Party”). This Settlement provides for the treatment of certain claims asserted by Daugherty against the Debtor, and for the Parties to take certain other specified actions in settlement thereof.

### RECITALS

WHEREAS, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the “Bankruptcy Code”);

WHEREAS, the Debtor’s chapter 11 case (the “Bankruptcy”) is pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”);

WHEREAS, on February 2 and 3, 2021, the Court conducted a confirmation hearing with respect to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Docket No. 1808] (the “Plan”);

WHEREAS, on February 8, 2021, the Court rendered an opinion from the bench in which it confirmed the Plan [Docket No. 1924];

WHEREAS, on February 22, 2021, the Court issued an order confirming the Plan [Docket No. 1943];

WHEREAS, on August 11, 2021, the Effective Date (as defined in the Plan) occurred [Docket No. 2700];

WHEREAS, Daugherty is a former employee and limited partner of the Debtor and has

served in other positions with affiliates and former affiliates of the Debtor;

WHEREAS, at the time of his resignation, Daugherty owned 19.1% of the preferred units of Highland Employee Retention Assets LLC (“HERA”), an employee deferred compensation vehicle managed by the Debtor and Highland ERA Management, LLC (“ERA”) and contends that he owned or had the right to own all of the preferred units of HERA;

WHEREAS, prior to his resignation from HCMLP, Daugherty was awarded units of HERA, which vehicle owned interests in Restoration Capital Partners, LP (“RCP”), an HCMLP managed private equity fund, and other investments;

WHEREAS, in April 2012, the Debtor commenced an action against Daugherty in Texas state court (the “Texas Action”), and Daugherty subsequently asserted counterclaims for breach of contract and defamation, and third-party claims against HERA and others;

WHEREAS, after a three-week trial, the jury returned a verdict partially in favor of the Debtor, but Daugherty prevailed on his claims against the Debtor and James Dondero (“Dondero”) for defamation with malice and a third-party claim against HERA and was awarded damages of \$2.6 million against HERA, plus prejudgment and post-judgment interest at 5% (the “HERA Judgment”);<sup>1</sup>

WHEREAS, in July 2017, after being unable to collect on the HERA Judgment, Daugherty commenced an action against the Debtor, Dondero, HERA, and ERA Management in the Delaware Chancery Court (the “Delaware Court”), in a case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and fees on fees (the “Highland Delaware Case”);

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<sup>1</sup> The Debtor prevailed on its claims against Mr. Daugherty for breach of contract and breach of fiduciary duty for non-monetary damages and obtained an award of \$2.8 million in attorney’s fees. The HERA Judgment was affirmed on appeal on December 1, 2016.

WHEREAS, the Delaware Court in the Highland Delaware Case (i) found that the Dondero-related defendants improperly withheld dozens of documents in discovery on privilege grounds, and (ii) ruled that there was “a reasonable basis to believe that a fraud has been perpetrated” such that the Delaware Court applied the “crime-fraud exception” to the attorney-client privilege assertion, and such rulings have not been overturned;

WHEREAS, Daugherty asserts that such withholding of documents and the failure to search defendants’ and their employees personal electronic devices for stored documents and texts as well as other emails and domain names such as sasmtg.com and gmail.com which were in their possession and control and to provide required discovery injured him by undermining his attempts to build an evidentiary record to support his claims against the Debtor and the other defendants in the Highland Delaware Case;

WHEREAS, on October 14, 2019, the Highland Delaware Case proceeded to trial and two days later, on October 16, 2019, before the completion of the trial and before the Delaware Court ruled on Daugherty’s and the Debtor’s cross-motions for summary judgment regarding indemnification and fees on fees, the Debtor filed for bankruptcy;

WHEREAS, on December 1, 2019, Daugherty filed a separate lawsuit in the Delaware Court, captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against Dondero, HERA, ERA, Hunton Andrews Kurth LLP (“Andrews Kurth”), Marc Katz (“Katz”), Michael Hurst (“Hurst”), the Debtor’s Chief Compliance Officer, the Debtor’s then in-house counsel (Isaac Leventon (“Leventon”)), and the Debtor’s then general counsel (Scott Ellington (“Ellington”)), for conspiracy to commit fraud, among other claims (the “HERA Delaware Case” and together with the Highland Delaware Case, the “Delaware Cases”);

WHEREAS, on April 1, 2020, Daugherty filed a general, unsecured, non-priority claim

against the Debtor in the amount of at “least \$37,483,876.59,” and such claim was denoted by the Debtor’s claims agent as Proof of Claim No. 67 (“Proof of Claim No. 67”);

WHEREAS, on April 6, 2020, Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at “least \$37,482,876.62” that superseded Proof of Claim No. 67 and that was denoted by the Debtor’s claims agent as Proof of Claim No. 77 (“Proof of Claim No. 77”);

WHEREAS, on August 31, 2020, the Debtor commenced an adversary proceeding against Daugherty by filing a complaint (the “Complaint”) in which the Debtor: (1) objected to Proof of Claim No. 77 on various grounds (the “Claim Objection”), and (2) asserted a cause of action for the subordination of part of Daugherty’s claim pursuant to section 510(b) of the Bankruptcy Code. Adv. Proc. No. 20-03107 (the “Adv. Proc.”) [Adv. Docket No. 1] (the “Adversary Proceeding”);

WHEREAS, on September 29, 2020, Daugherty filed his answer to the Complaint [Adv. Docket No. 8] (the “Answer”);

WHEREAS, on September 24, 2020, Daugherty filed his *Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay* [Docket No. 1099] (the “Stay Motion”) pursuant to which he sought to sever the Debtor from the Highland Delaware Case and then consolidate the remaining claims in the Highland Delaware Case into the HERA Delaware Case and proceed with one case against the non-Debtor parties;<sup>2</sup>

WHEREAS, on October 23, 2020, Daugherty filed a motion seeking leave to amend his Proof of Claim No. 77 [Docket No. 1280] (the “POC Amendment Motion”). The amended proof

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<sup>2</sup> On October 8, 2020, the Debtor commenced a second adversary proceeding against Daugherty (the “Second Adversary Proceeding”), seeking to enjoin him from prosecuting the Delaware Cases. Adv. Proc. 20-03128 (“2d Adv. Proc.”) [2d Adv. Proc. Docket No. 1]. On January 29, 2021, the parties filed a Settlement that resolved the Second Adversary Proceeding, and the Second Adversary Proceeding was subsequently dismissed with prejudice. [2d Adv. Proc. Docket No. 12].

of claim attached to the POC Amendment Motion increased Daugherty's general, unsecured, non-priority claim against the Debtor to the amount of at "least \$40,410,819.42" and sought to supersede Proof of Claim No. 67 and Proof of Claim No. 77;

WHEREAS, on October 23, 2020, Daugherty filed his *Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion*, seeking for his Claim to be temporarily allowed for voting purposes in this amount of \$40,410,819.42 [Docket No. 1281] (the "3018 Motion");

WHEREAS, on November 3, 2020, the Court granted the Stay Motion [Docket No. 1327];

WHEREAS, the Debtor opposed the 3018 Motion, and after conducting an evidentiary hearing for the limited purpose of determining the 3018 Motion, the Court entered an order temporarily allowing Daugherty's Claim only for voting purposes in the amount of \$9,134,019 [Docket No. 1474];

WHEREAS, on December 10, 2020, the Court entered an order [Docket No. 1533] granting the POC Amendment Motion, and Daugherty was permitted to file an amendment to his proof of claim. On December 23, 2020, Daugherty filed an amended proof of claim, designated by the Debtor's claim agent as Proof of Claim No. 205 ("Proof of Claim No. 205" or the "Daugherty Claim"). Proof of Claim No. 205 superseded Proof of Claim No. 77 and increased the amount of the Daugherty's Claim to \$40,710,819.42;

WHEREAS, on November 30, 2020, Daugherty filed his Motion to Lift the Automatic Stay (the "Lift Stay Motion") [Docket No. 1491] seeking to lift the automatic stay to allow him to finish his trial in the Delaware Court and liquidate his claims. The Debtor opposed the Lift Stay Motion, and after a hearing was held on December 17, 2020, the Court denied the relief requested in the Lift Stay Motion [Docket No. 1612];

WHEREAS, except with respect to the Reserved Claim (as defined below), the Parties have agreed to settle and resolve all claims and disputes between them and their respective current affiliates, managed entities, and employees, including the Daugherty Claim, on the terms set forth in this Settlement:

### AGREEMENT

**NOW, THEREFORE**, after good-faith, arms-length negotiations, and in consideration of the foregoing, it is hereby stipulated and agreed that:

1. Allowed Claims: In full satisfaction of the entirety of the Daugherty Claim against the Debtor and HCMLP Released Parties (defined below), excluding the Reserved Claim, Daugherty shall receive (a) an allowed general unsecured Class 8 claim in the amount of \$8,250,000; (b) an allowed subordinated general unsecured Class 9 claim in the amount of \$3,750,000; and (c) a one-time lump sum cash payment in the amount of \$750,000 to be paid within 5 business days of Bankruptcy Court approval of this Settlement Agreement.

2. Recovery: The Debtor makes no representation or warranty as to the recovery on Class 8 or Class 9 claims under the Plan.

3. Observation Access: As soon as practicable following entry of an order of the Bankruptcy Court approving this Settlement, HCMLP shall use reasonable efforts to petition the Claimant Trust Oversight Board<sup>3</sup> to permit Daugherty to have access as an observer to meetings of the Claimant Trust Oversight Board, subject to policies, procedures, and agreements applicable to other observers of the Claimant Trust Oversight Board, including policies, procedures, and agreements related to confidentiality and common interest. Whether Daugherty will be granted observer access and any continuing observer access is and will remain at the sole discretion of the

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<sup>3</sup> The Claimant Trust Oversight Board refers to the Oversight Board as defined in the August 11, 2021 Highland Claimant Trust Agreement establishing the Claimant Trust, as defined therein.

Claimant Trust Oversight Board.

4. RCP Track Record: HCMLP shall use reasonable efforts to provide Daugherty with data constituting the investment performance track record of RCP during Daugherty's tenure at HCMLP. Daugherty shall not be entitled to any compensation with respect to the performance of RCP. HCMLP makes no representations or warranties regarding such data and takes no responsibility with respect to the use of such data for any purposes.

5. Daugherty Releases: Except as specifically provided in this paragraph 5, and to the maximum extent permitted by applicable law, the Debtor, on behalf of itself and each of the HCMLP Entities and HCMLP Parties (as those terms are defined in paragraph 6 below), hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue Daugherty, his successors, affiliates, and assigns, (and in each such category to include their respective advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, and designees) (collectively, the "Daugherty Additional Release Parties" and together with Daugherty, the "Daugherty Released Parties"), in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, or the Delaware Cases, all existing as of the date hereof (collectively, the "HCMLP Released Claims"); provided, however, that such release shall not

apply with respect to any and all defenses that HCMLP or the HCMLP Entities may have to the Reserved Claim or the Reserve Motion (as those terms are defined herein) or Daugherty's obligations under this Settlement. For the avoidance of doubt, the HCMLP Released Claims include all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

6. HCMLP Releases: Except as specifically provided in this paragraph 6, and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Released Parties, hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (a)(i) HCMLP; (ii) Strand Advisors Inc.; (iii) the Claimant Trust; (iv) the Claimant Trust Oversight Board; (v) the Highland Litigation Sub-Trust; (vi) the Highland Indemnity Trust; (vii) any entity of which greater than fifty percent of the voting ownership is held directly or indirectly by HCMLP as of the date hereof and any entity otherwise directly or indirectly controlled by HCMLP as of the date hereof; and (viii) any entity managed by either HCMLP or a direct or indirect subsidiary of HCMLP, including Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Master, L.P. (and all of their respective general partners, feeder funds, managers, and affiliates) (the foregoing (a)(i) through (a)(viii) the "HCMLP Entities"), and (b) with respect to each such HCMLP Entity, such HCMLP Entity's respective current (meaning employed in their respective roles as of the date hereof) advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders (but not the shareholders of Strand Advisors Inc.), agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "HCMLP Parties," and together with the



HCMLP Entities, the “HCMLP Released Parties”),<sup>4</sup> in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, or the Highland Delaware Case (collectively, the “Daugherty Released Claims”); provided, however, that such release shall not apply with respect to the Reserved Claim or the Reserve Motion (as those terms are defined in paragraph 9 below) or HCMLP’s obligations under this Settlement. This release expressly applies to all current employees of HCMLP as the Reorganized Debtor (as defined in the Plan), in their capacities as such. For the avoidance of doubt, the Daugherty Released Claims includes all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

7. Reservation of Daugherty Rights: Notwithstanding anything contained herein to the contrary, the term HCMLP Released Parties shall not include (a) NexPoint Advisors, L.P. (or any of its subsidiaries and employees, advisors, or agents), (b) the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and any of their respective employees, advisors, or agents), (c) NexBank, SSB (or any of its subsidiaries, employees, advisors, or agents), (d) James Dondero or any trust in which Dondero or any of his family members are a trustee or beneficiary (or any trustee acting for such trust), including but not limited to Hunter

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<sup>4</sup> The Daugherty Additional Released Parties and the HCMLP Released Parties are collectively referred to as the “Additional Released Parties.”

Mountain Investment Trust, The Get Good Trust, Dugaboy Investment Trust, SLHC Investment Trust, (e) HERA (subject to paragraph 8 below), (f) ERA (subject to paragraph 8 below), (g) Grant Scott, (h) Mark Okada and any trust in which Mark Okada or any of his family members are a beneficiary (or any trustee acting for such trust in their respective capacities), (i) Ellington, (j) Leventon, (k) Katz, (l) Hurst, (m) Andrews Kurth, or (n) any other former employee (as of the date hereof) of the HCMLP Released Parties.

8. HERA and ERA: The Parties acknowledge and agree that as of the date hereof, HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released at or prior to the date hereof, and no claims against the HCMLP Released Parties. The allowed claims provided in paragraph 1 hereof are expressly agreed to in order to satisfy any liability the Debtor may have in connection with the HERA Judgment. To facilitate recovery of such potential claims – which expressly excludes any and all claims by or in the name of HERA and ERA against any of the HCMLP Released Parties -- HCMLP will transfer its interests in HERA and ERA to Daugherty. Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system. Such transfer will be without representation or warranty of any type; including, for the avoidance of doubt, without any representation or warranty as to the merits of the potential claims or the efficacy of the transfer of the potential claims. Such transfer will be without any liability or material cost to HCMLP or its affiliates or the other HCMLP Released Parties, including any liability in respect of any assets that HERA or ERA ever actually or allegedly owned, possessed, or controlled and that were actually or allegedly transferred, conveyed, sold, written off or otherwise disposed of (in any such case, a "Disposition"). In connection with the transfer, HERA and ERA have expressly released the HCMLP Released Parties from any and all claims, including any claims actions or remedies related

to any Disposition, either of them may have against any HCMLP Released Party now or in the future (the “HERA and ERA Release”). Daugherty on behalf of himself and each of the Daugherty Released Parties acknowledges, accepts, and agrees not to challenge the HERA and ERA Release or support any challenge thereto. A copy of the HERA and ERA Release is annexed hereto as **Exhibit A**. Daugherty acknowledges and agrees that even though HERA and ERA are not HCMLP Released Parties under this Agreement, Daugherty and all Daugherty Released Parties shall (a) not seek to hold any HCMLP Released Party liable for any action or inaction taken by or on behalf of HERA or ERA, including through any derivative, veil-piercing or similar cause of action or remedy; and (b) not seek to recover damages or obtain any form of relief against any HCMLP Released Party on account of any action or inaction taken by or on behalf of HERA or ERA, including through any veil piercing or similar cause of action or remedy. If, for any reason, HERA or ERA, or any person or entity acting on their behalf, recovers anything from any HCMLP Released Party, Daugherty shall promptly turnover to HCMLP or its successors and assigns any amounts actually recovered by Daugherty or any Daugherty Released Party, from HERA or ERA arising from, related to, or derived from any claim that HERA or ERA or any person or entity acting on their behalf has or may have against any HCMLP Released Party. HCMLP will provide reasonable assistance to Daugherty to assist with the preparation of any required HERA K-1s for 2021, but any requirement to provide such K-1s will be the obligation, if any, of HERA.

9. IRS Compensation Claim: In section 4(ii) of the Addendum to Proof of Claim No. 205, Daugherty contends that he has a contingent, unliquidated claim against the Debtor arising out of a 2008/2009 compensation letter (the “Reserved Claim”), which claim is also related to an audit/dispute between the Debtor and the Internal Revenue Service (the “IRS”) (the dispute between the Debtor and IRS being referred to herein as the “IRS Audit Dispute”). The Debtor

disputes the validity and amount of the Reserved Claim. Daugherty shall retain the Reserved Claim solely against the Debtor and not against any other HCMLP Released Party, and the Debtor reserves the right to assert any and all defenses thereto. Any litigation by and between the Debtor and Daugherty concerning the validity and amount of the Reserved Claim shall be stayed until the IRS makes a final determination with respect to the IRS Audit Dispute; provided, however, that Daugherty may file a motion with the Bankruptcy Court to have the Reserved Claim estimated for purposes of establishing a reserve as a “Disputed Claim” under the Debtor’s Plan (the “Reserve Motion”), and the Debtor (and any successor) reserves the right to assert any and all defenses thereto. Notwithstanding the foregoing, Daugherty may address any personal claim or personal liability to the IRS as a result of the IRS Audit Dispute, including settlement of any such claims; provided, however, Daugherty agrees to forego settling or addressing any claims with the IRS without the written consent of the Debtor until March 31, 2022.

10. Current HCMLP Employees: The HCMLP Parties set forth on **Appendix A** hereto are currently employed by the Debtor are HCMLP Released Parties. By executing a copy of this Settlement and delivering it to Daugherty, each of the persons on Appendix A agrees not to sue, attempt to sue, or threaten or work with or assist any entity or person to sue, attempt to sue, or threaten any Daugherty Released Party on or in connection with any claim or cause of action arising prior to the date of this Settlement.

11. Dismissal and Motions in Other Actions. Within ten business days after approval of this Settlement by the Bankruptcy Court, the Parties shall take all steps necessary (a) to dismiss with prejudice (i) the Highland Delaware Case, as against the Debtor and any HCMLP Released Party, and (ii) the HERA Delaware Case, as against every HCMLP Released Party, (b) to file an agreed motion and proposed order to partially vacate the final judgment entered against Daugherty

in the Texas Action, (c) withdraw HCMLP's objection to the Daugherty motion to recuse in the Texas Action, and (d) to dismiss the Adversary Proceeding with prejudice. The parties shall file the foregoing motions and withdrawals substantially in the form of the documents annexed hereto as **Exhibit B**.

12. Additional Third Party Claims Discovery: The Debtor (a) shall accept service of any subpoenas via email served by Daugherty in connection with the Delaware Cases on behalf of itself, the HCMLP Entities, the HCMLP Parties (but only in their capacity as employees of HCMLP); and (b) acknowledge and consent to the jurisdiction of the Delaware Chancery Court for purposes of enforcing any such subpoenas, subject in all respects to the rights that the HCMLP Entities and HCMLP Parties to defend the requested production, if any.

13. Settlement of Third Party Claims: Daugherty shall not settle any claims or causes of action against any current or former director, officer, employee, agent or representative of HCMLP or Strand Advisors Inc. (collectively, the "Potentially Indemnified Parties") to the extent such claims have been brought or could have been brought against any Potentially Indemnified Parties, if any such settlement designates, defines or describes the settled claims as arising out of or relating to simple negligence or as having otherwise been within the scope of employment of the Potentially Indemnified Party.

14. Claims Register: As soon as practicable after the Settlement Effective Date, HCMLP shall instruct the claims agent in the Debtor's chapter 11 case to adjust the claims register in accordance with this Settlement.

15. Daugherty Representations: Daugherty represents and warrants to each of the HCMLP Released Parties that (a) he has full authority to release the Daugherty Released Claims and has not sold, transferred, or assigned any Daugherty Released Claim to any other person or

entity and that (b) no person or entity other than Daugherty has been, is, or will be authorized to bring, pursue, or enforce any Daugherty Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) Daugherty.

16. HCMLP Representations: Each of HCMLP and each HCMLP Released Party who has signed this Settlement represents and warrants to Daugherty that (a) he, she or it has not sold, transferred, pledged, assigned or hypothecated any HCMLP Released Claim to any other person or entity and (b) he, she, or it has full authority to release any HCMLP Released Claims that such HCMLP Released Party personally has against Daugherty.

17. Additional HCMLP Representations: HCMLP represents and warrants that it is releasing the HCMLP Released Claims on behalf of the HCMLP Entities to the maximum extent permitted by any contractual or other legal rights HCMLP possesses. To the extent any of the HCMLP Entities dispute HCMLP's right to release the HCMLP Released Claims on behalf of any of the HCMLP Entities, HCMLP shall use commercially reasonable efforts to support Daugherty's position, if any, that such claims were released herein. For the avoidance of doubt, HCMLP will have no obligations to assist Daugherty under this paragraph if HCMLP has been advised by external counsel that such assistance could subject HCMLP to liability to any third party or if such assistance would require HCMLP to expend material amounts of time or money. HCMLP shall not argue in any forum that the non-signatory status of any of the HCMLP Entities to this Settlement shall in any way affect the enforceability of this Settlement vis-à-vis any of the HCMLP Entities. The Parties agree that all of the HCMLP Entities are intended third-party beneficiaries of this Release.

18. HCMLP Covenant: HCMLP and the HCMLP Entities covenant and agree that they will not pursue or seek to enforce any injunctions entered in the Texas Action against

Daugherty.

19. Entire Agreement; Modification: This Settlement contains the entire agreement between the Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between the Parties. This Settlement may not be modified other than by a signed writing executed by the Parties.

20. Bankruptcy Court Approval: Notwithstanding anything to the contrary contained herein, the effectiveness of HCMLP and the Claimant Trust's execution of this Settlement shall be subject to entry of an order of the Bankruptcy Court approving this Settlement. HCMLP shall take all steps necessary to file with the Bankruptcy Court a motion for an order approving this Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code (the "Motion"). The parties agree to cooperate in the preparation and prosecution of the Motion which shall be filed no later than 5 business day after execution of this Settlement, unless such time is extended by mutual agreement.

21. Counterparts: This Settlement may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument and shall be effective against a Party or Additional Released Party upon approval of the Settlement by the Bankruptcy Court.

22. Governing Law; Jurisdiction: This Settlement will be exclusively governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles, and all claims relating to or arising out of this Settlement, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Delaware, excluding Delaware's conflicts of law principles. The Bankruptcy Court will retain exclusive jurisdiction over all disputes relating to this Settlement.

23. Headings: Paragraph headings included herein are for convenience and shall have no impact whatsoever on the meaning or interpretation of any part of this Settlement.

[Remainder of page intentionally left blank]



In witness whereof, the parties hereto, intending to be legally bound, have executed this  
Settlement as of the day and year set forth below:

Dated: 11-2-21

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 

Name: James P. Seery, Jr.

Title: Chief Executive Officer

HIGHLAND CLAIMANT TRUST

By: 

Name: James P. Seery, Jr.

Title: Claimant Trustee

Dated: 11/22/21

PATRICK HAGAMAN DAUGHERTY

By: 

Name: Patrick Hagaman Daugherty

**EXHIBIT A**

## HERA RELEASE AGREEMENT

This HERA Release Agreement ("HERA Release Agreement") is entered into as of November 21, 2021 by and among Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), Patrick Hagaman Daugherty ("Daugherty"), Highland Employee Retention Assets, LLC ("HERA") and Highland ERA Management, LLC ("ERA" and together with HCMLP, and HERA, the "Parties," and individually as a "Party").

WHEREAS, reference is hereby made to the Settlement Agreement (the "Settlement") of even date herewith and attached hereto made and entered into by and between the Debtor, the Highland Claimant Trust, and Daugherty.

WHEREAS, the Settlement settles all of Daugherty's claims against the HCMLP Released Parties, including all claims against the HCMLP Released Parties relating to transfers of assets from HERA.

WHEREAS, the Settlement includes, among other things, the transfer by HCMLP to Daugherty of HCMLP's interests in HERA and ERA.

WHEREAS, under the Settlement such transfer is being made without any liability to any of the HCMLP Released Parties of any type and is conditional on the full release of, and covenant not to sue, each of the HCMLP Released Parties, by and from HERA, ERA, Daugherty and the Daugherty Released Parties.

WHEREAS, neither HERA nor ERA filed proofs of claim in the Bankruptcy and have no claims against HCMLP.

WHEREAS, out of an abundance of caution to confirm that HERA, ERA, Daugherty, and the Daugherty Released Parties have no claims against the HCMLP Released Parties, this HERA Release Agreement is being entered into contemporaneously with the Settlement and constitutes an

essential part thereof.

WHEREAS, capitalized terms used herein but not otherwise defined herein have the respective meanings set forth in the Settlement.

NOW, THEREFORE, in consideration of the entry into of the Settlement, the transfer of the equity interests in HERA and ERA to Daugherty in accordance with the Settlement, and for other good and valuable consideration, including the provisions set forth herein, the parties hereto further agree as follows:

1. Upon entry of an order of the Bankruptcy Court approving this Settlement and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Additional Release Parties, together with each of HERA and ERA (Daugherty, the Daugherty Additional Release Parties, HERA and ERA shall be collectively referred to herein as the "HERA Releasing Parties"), each hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, any of the HCMLP Released Parties for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, Highland Delaware Case, or the HERA Delaware Case (collectively, "Claims"), in each case that in any way arise from or otherwise in any way relate to HERA or ERA, including, without limitation, any actual or potential claims, whether known or unknown, in any way related to or

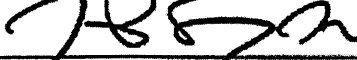
arising out of the formation, management, operation or assets of HERA, ERA or any of their respective predecessors or successors, including the transfer of any assets to or from HERA or ERA, it being understood that all remaining assets of HERA have been transferred to HCMLP prior to the date hereof, and in addition to the releases set forth above, each of the HERA Releasing Parties irrevocably waives and releases and covenants not to sue with respect to any Claims against any of the HCMLP Released Parties in any way related to any such transfers or assets, whether *in personam* with respect to the HCMLP Released Parties or *in rem* with respect to any of their assets (collectively, the "HERA Released Claims") or any other Disposition.

2. This Release constitutes a part of, and is supplemental to, the provisions of the Settlement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

In witness whereof, the parties hereto, intending to be legally bound, have executed this  
HERA Release Agreement as of the date set forth above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:   
Name: James P. Seery, Jr.  
Title: Chief Executive Officer


PATRICK HAGAMAN DAUGHERTY

By:   
Name: Patrick Hagaman Daugherty


HIGHLAND EMPLOYEE RETENTION ASSETS, LLC

By: Highland ERA Management, LLC, its manager

By: Highland Capital Management, LP

By:   
Name: James P. Seery, Jr.  
Title: Chief Executive Officer

HIGHLAND ERA MANAGEMENT, LLC

By:   
Name: James P. Seery, Jr.  
Title: Authorized Signatory

**EXHIBIT B**

	<b>CAUSE NO. 12-04005</b>	
<b>HIGHLAND CAPITAL</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiffs,</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>PATRICK DAUGHERTY,</b>	§	
	§	
<b>Defendant and Counter-Plaintiff,</b>	§	<b>DALLAS COUNTY, TEXAS</b>
	§	
<b>v.</b>	§	
	§	
<b>SIERRA VERDE, LLC, HIGHLAND</b>	§	
<b>EMPLOYEE RETENTION ASSETS</b>	§	
<b>LLC, JAMES DONDERO, PATRICK</b>	§	
<b>BOYCE, AND WILLIAM L. BRITAIN,</b>	§	
	§	
<b>Third-Party Defendants.</b>	§	
	§	
	§	<b>68<sup>th</sup> JUDICIAL DISTRICT</b>

**AGREED MOTION TO PARTIALLY VACATE THE FINAL JUDGMENT DATED  
JULY 14, 2014**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Highland Capital Management, LP (“Highland”) and Defendant Patrick Daugherty (“Daugherty” and together with Highland, the “Parties”) file this *Agreed Motion to Partially Vacate the Final Judgment dated July 14, 2014* (the “Motion”), and respectfully show the following:

1. On July 14, 2014, this Court entered a *Final Judgment* (the “Judgment”) that, among other things, granted Highland’s motion for injunctive relief against Daugherty.
2. The Judgment was amended on March 23, and June 23, 2017.
3. On October 16, 2019, filed a petition under chapter 11 in the United States Bankruptcy Court for the District of Delaware (“Highland’s Bankruptcy Case”). On October 24,



2019, as a result of the commencement of Highland's Bankruptcy Case, the Supreme Court of Texas issued an order abating a related case that Daugherty had brought in that court, Case No. 19-0758. Highland's Bankruptcy Case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas.

4. Daugherty asserted certain claims against Highland in Highland's Bankruptcy Case. The Parties have fully and finally resolved their disputes pursuant to a settlement agreement (the "Settlement Agreement") reached in the Highland Bankruptcy Case pursuant to which, among other things, (a) all of Daugherty's known and unknown claims against each of the Highland Released Parties (as those terms are defined in the Settlement Agreement) are resolved, and (b) this Motion seeking the *vacatur* of certain provisions of the Judgment specifically set forth below is being filed.

5. Highland and Daugherty hereby agree and stipulate that the Court has plenary power to issue an order granting this Motion because the Court retained authority to enforce the permanent injunction rendered in the Judgment, and that changed circumstances have now arisen such that the Court should dissolve the permanent injunction. Highland and Daugherty further agree and stipulate that this Motion shall be treated as an agreement of the Parties pursuant to Texas Rule of Civil Procedure 11, and is fully enforceable. *See Coale v. Scott*, 331 S.W.3d 829, 831-32 (Tex. App.—Amarillo 2011, no pet.) ("Irrespective of whether a trial court lost its plenary jurisdiction over its judgment, the trial court's authority to approve a Rule 11 agreement does not depend on whether it has such jurisdiction.").

6. Highland and Daugherty agree that the following portions of the Judgment shall be vacated pursuant to their settlement in the Highland Bankruptcy:

- a. The second full paragraph on Page 2 of the Judgment, which begins “The Court, after considering the jury’s findings regarding Daugherty’s breaches of contract and breaches of fiduciary duty . . .”;
- b. The permanent injunction rendered against Daugherty in the third full paragraph on Page 2 of the Judgment, which begins “It is therefore further ORDERED that Daugherty be and hereby is commanded to cease and desist from . . .”;
- c. The fourth and fifth full paragraphs on Page 2 of the Judgment awarding Highland a monetary judgment against Daugherty for reasonable and necessary attorney’s fees, as well as post-judgment interest on that award<sup>1</sup>; and
- d. The jury’s answers to Questions 1, 2, 5, 6, 9 and 12 in the Verdict, which was attached as Exhibit 1 to the Judgment.

7. Highland and Daugherty further agree that, as a result of the vacation of the permanent injunction in the Judgment, Highland hereby withdraws any pending motions to show cause or motions for contempt against Daugherty that allege Daugherty violated or is violating the permanent injunction. Highland also agrees not to seek to enforce the permanent injunction in any manner in the future.

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<sup>1</sup> Daugherty previously satisfied the monetary judgment awarded to Highland, and Highland filed a release of the monetary judgment. Although Highland and Daugherty have agreed to vacate the monetary judgment awarded to Highland, Daugherty waives and relinquishes any right or claim to recover any amount previously paid in satisfaction of the Judgment and Highland shall not be required to reimburse Daugherty for his prior satisfaction of the monetary judgment. To the extent Daugherty is entitled to indemnification for any liabilities, losses, and damages allegedly incurred by him for actions taken in connection with Highland’s business, including the liabilities Daugherty allegedly incurred in connection with this action and the Judgment, such indemnification claims have been fully and finally satisfied and resolved under the Settlement Agreement.

8. Concurrent with the filing of this Motion, Daugherty will file a motion to dismiss his as-yet unfiled petition for review pending before the Supreme Court of Texas under Case No. 19-0758.

9. Highland and Daugherty further agree that any portions of the Judgment that are not specifically vacated pursuant to this Motion shall remain in full force and effect.

WHEREFORE, Highland and Daugherty pray that the Court grant this Motion in its entirety, and for all further relief, at law or in equity, the Court deems necessary.

Respectfully submitted,

GRAY REED & McGRAW LLP

By: /s/ Sonya D. Reddy  
ANDREW K. YORK  
State Bar No. 24051554  
E-mail: [dyork@grayreed.com](mailto:dyork@grayreed.com)  
SONYA D. REDDY  
State Bar No. 24079188  
E-mail: [sreddy@grayreed.com](mailto:sreddy@grayreed.com)

1601 Elm Street, Suite 4600  
Dallas, Texas 75201  
(214) 954-4135  
(214) 953-1332 (Fax)

**ATTORNEYS FOR PATRICK DAUGHERTY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been transmitted by electronic transmission to all counsel of record on February \_\_, 2021, as follows:

Marc D. Katz  
Crystal J. Woods  
DLA PIPER LLP (US)  
1717 Main St., Suite 3700  
Dallas, Texas 75201  
214-743-4545 (Fax)  
[marc.katz@dlapiper.com](mailto:marc.katz@dlapiper.com)  
[crystal.woods@dlapiper.com](mailto:crystal.woods@dlapiper.com)

Attorneys for Highland Capital  
Management, L.P.

Michael K. Hurst  
A. Shonn Brown  
Jonathan Childers  
LYNN PINKER COX HURST, LLP  
2100 Ross Ave., Suite 2700  
Dallas, Texas 75201  
(214) 981-3839 (Fax)  
[mhurst@lynnllp.com](mailto:mhurst@lynnllp.com)  
[sbrown@lynnllp.com](mailto:sbrown@lynnllp.com)  
[jchilders@lynnllp.com](mailto:jchilders@lynnllp.com)

Attorneys for Third-Party Defendants HERA,  
Patrick Boyce, and William Britain

/s/ Sonya D. Reddy  
SONYA D. REDDY

**APPENDIX A (signatures to follow)**

1. James P. Seery, Jr.
2. Cameron Baynard
3. Nathan Burns
4. Timothy Cournoyer
5. Naomi Chisum
6. Stetson Clark
7. Sean Fox
8. Matthew Gray
9. Kristin Hendrix
10. David Klos
11. Vishal Patel
12. Thomas Surgent
13. Michael Throckmorton

**PD-2**

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  
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 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., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
v.	§	_____
	§	
PATRICK HAGAMAN DAUGHERTY,	§	
	§	
Defendant.	§	

**COMPLAINT FOR (1) DISALLOWANCE OF CLAIM NO. 205 IN ITS ENTIRETY, (2)  
ESTIMATION OF CLAIM NO. 205 FOR ALLOWANCE PURPOSES, OR (3)  
SUBORDINATION OF ANY ALLOWED PORTION OF  
CLAIM NO. 205 OF PATRICK HAGAMAN DAUGHERTY**

<sup>1</sup> Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P., the reorganized debtor (“Highland” or the “Debtor” as applicable) in the above-captioned chapter 11 case (“Bankruptcy Case”) and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), files the *Complaint for (1) Disallowance of Claim No. 205 in Its Entirety, (2) Estimation of Claim No. 205 for Allowance Purposes, or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty* (the “Complaint”), alleging upon knowledge of its own actions and upon information and belief as to all other matters as follows:

### **PRELIMINARY STATEMENT**<sup>2</sup>

1. Patrick Daugherty is a former employee of, and former limited partner in, the Debtor. Mr. Daugherty filed a claim (denoted as Claim No. 205) in which he asserted a myriad of claims against the Debtor. All of Mr. Daugherty’s claims were settled except his unliquidated, contingent claim that the Debtor has a continuing and indefinite obligation to make him whole if a tax refund he apparently received for tax year 2008 on account of his Partnership Interests is ever successfully challenged by the IRS.

2. As discussed below, in 2009, Mr. Daugherty was allocated his applicable losses from Highland for tax year 2008 on account of his Partnership Interests. The allocation of losses in 2009 fully satisfied the 2008 Refund line item in the 2009 Statement; Mr. Daugherty received exactly what he was entitled to receive from Highland. Accordingly, Mr. Daugherty’s Claim against the Debtor for additional compensation for 2008 has no basis and the Claim should be disallowed.

3. To avoid this result, Mr. Daugherty alleges the Debtor is required to make him whole if any portion of the tax refund he received for 2008 on account of his Partnership Interest

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<sup>2</sup> All capitalized terms used but not defined in this Preliminary Statement have the meanings given to them below.



is clawed back by the IRS—Highland’s 2008 tax return is currently subject to an IRS audit. But the 2009 Statement contains no future, ongoing obligations. Under the 2009 Statement, if Mr. Daugherty received the material equivalent of the “2008 Refund” (which he apparently did), Highland’s obligations have been satisfied in full. The 2009 Statement contains no ongoing obligation for Highland to defend Mr. Daugherty or indemnify him. And it would violate basic tenets of contract law to read vague and indefinite precatory language in the 2009 Statement as creating a specific continuing and binding payment obligation that can be enforced forever. This is particularly true where the agreement that governed Mr. Daugherty’s employment by the Debtor expressly provided that after his separation from the Debtor, the Debtor would have no further liability or obligation to Mr. Daugherty in connection with his employment.

4. However, even if Mr. Daugherty’s Claim is not disallowed in its entirety, it remains contingent on the outcome of the 2008 Audit. It is unclear when, how, or if the 2008 Audit will be finally resolved. Moreover, if the Claim is not disallowed, it will need to be estimated—after taking into account the likely outcome of the 2008 Audit, including adjustments that result therefrom—pursuant to 11 U.S.C. § 502(c). The Claim (in whatever amount) based on his partnership tax allocations must also be subordinated to the interests in Class 10 pursuant to 11 U.S.C. § 510(b).

### **JURISDICTION AND VENUE**

5. This Adversary Proceeding arises in and relates to Highland’s Bankruptcy Case.

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

7. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and, pursuant to Bankruptcy Rule 7008, Highland consents to the entry of a final order by the Court if

it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the U.S. Constitution.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

### **THE PARTIES**

9. Highland is a limited partnership formed under the laws of Delaware with a business address at 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

10. Upon information and belief, Defendant Patrick Daugherty is an individual residing at 3621 Cornell Avenue, Suite 830, Dallas, Texas 75205.

### **STATEMENT OF FACTS**

#### **I. The Bankruptcy Case and Mr. Daugherty's Claims**

11. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the Bankruptcy Case.

12. On April 1, 2020, Mr. Daugherty filed Proof of Claim No. 67 ("Claim 67"). On April 6, 2020, Mr. Daugherty filed Proof of Claim No. 77 ("Claim 77"), which superseded and replaced Claim 67 in its entirety. On December 23, 2020, Mr. Daugherty filed Proof of Claim No. 205 (the "Claim" or "Claim 205"), which superseded and replaced Claim 77 in its entirety.

13. On February 22, 2021, this Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943],<sup>3</sup> which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Docket No. 1808] (as amended, the "Plan"). The Plan became effective August 11, 2021 [Bankr. Docket No. 2700].

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<sup>3</sup> Bankr. Docket No. \_\_\_" refers to the docket maintained in Case No. 19-34054-sgj11.

14. On December 8, 2021, the Debtor filed *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Bankr. Docket No. 3088] (the "Settlement Motion").

15. This Court approved the Settlement Motion on March 8, 2022 [Bankr. Docket No. 3298] (the "Settlement Order"), disallowing Claim 67 and Claim 77 with prejudice and resolving all of Claim 205 other than Mr. Daugherty's claim for the 2008 Refund.

## **II. Mr. Daugherty Was Employed by the Debtor and Became a Limited Partner**

16. Mr. Daugherty was hired by the Debtor in 1998. Later, he became eligible to participate in the Debtor's long-term incentive plan (the "LTIP"). Pursuant to the LTIP, at various times, Mr. Daugherty received limited partnership interests in the Debtor (the "Partnership Interests") and became one of the Debtor's limited partners. At all relevant times with respect to Claim 205 as it relates to the 2008 Tax Refund, Mr. Daugherty's employment was governed by an *Amended and Restated Employment Agreement*, dated as of December 31, 2004 (the "Employment Agreement"). For the 2008 tax year, Mr. Daugherty was allocated 0.740262% of the taxable losses of the Debtor on account of his Partnership Interests.

17. Because the Debtor was a limited partnership, it was a pass-through entity for tax purposes and paid no federal income tax. The Debtor's limited partners, including Mr. Daugherty, were therefore required to pay individual federal income taxes (among other taxes) based on, among other things, their allocable share of the Debtor's income, if any, or could use their allocable share of any losses to offset other current income or, in certain circumstances, carry back losses, and receive a tax refund from the Internal Revenue Service (the "IRS"). Thus, because of his Partnership Interests, Mr. Daugherty was entitled to receive a pass through of his allocable share of any taxable gains or losses generated by the Debtor. Taxable gains increase tax liability; taxable losses decrease tax liability.

### III. The 2009 Statement and IRS Audit

18. On February 27, 2009, the Debtor provided Mr. Daugherty with a *Comprehensive Compensation and Benefits Statement* recapping all earnings, awards, and benefits Mr. Daugherty received in connection with his employment by and Partnership Interests in the Debtor during calendar year 2008 (the “2009 Statement”). A true and accurate copy of the 2009 Statement is attached hereto as **Exhibit A**. Such statements were provided to all employees each year at the conclusion of the annual performance review and bonus cycle.

19. The 2009 Statement included what Highland estimated to be the tax refund Mr. Daugherty could expect for tax year 2008 in the amount of \$1,475,816 (the “2008 Refund”). That amount purported to be an estimate of the pre-tax equivalent refund that Mr. Daugherty should have expected to receive from the IRS on account of the losses attributable to his Partnership Interests for the 2008 tax year.

20. The 2008 Refund was “an estimated amount” based on the notion that losses in 2008 would equal or exceed total partnership gains that had been allocated to Mr. Daugherty in tax years 2005, 2006, and 2007 and assuming a 27% effective tax rate for each year for all of the employee limited partners. The amount was then “grossed up” by 35% so that Mr. Daugherty could compare it to the value of the other benefits for being a Debtor partner and employee<sup>4</sup>. Finally, the estimated partner tax refund amount was calculated without reference to Mr. Daugherty’s other personal tax attributes for the 2008 tax year or prior years, and partners were advised that each person’s own actual refund may vary based on their own effective tax rate.

21. While the 2009 Statement vaguely noted that “[i]f actual refund deviates materially from estimate, other compensation will be fairly adjusted,” partners like Mr.

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<sup>4</sup> The calculation of the 2008 Refund was therefore 2005-2007 allocated income of \$3,552,890 x 27% or \$959,280. Then the \$959,280 was divided by 35% for a “pre-tax” calculated amount of \$1,475,816.

Daugherty were told that the tax refund amounts were “not guaranteed,” and that if refund amounts were different, Highland would merely “consider what action to take on a case-by case basis, considering several factors.”

22. As reflected on his K-1 for tax year 2008 (the “2008 K-1”), Mr. Daugherty was allocated ordinary business losses by Highland in excess of \$4 million, along with other losses that well-exceeded the allocated income from 2005-2007.<sup>5</sup> As shown in the 2008 K-1, Mr. Daugherty received what he was promised in the 2009 Statement, if not more.

23. After the obligations to Mr. Daugherty under the 2009 Statement had been satisfied, the IRS began an audit of Highland’s 2008 tax return (the “2008 Audit”).<sup>6</sup> On information and belief, the 2008 Audit is not yet fully resolved.

24. On October 31, 2011, Mr. Daugherty terminated his employment with Highland. Pursuant to the express conditions of his Employment Agreement, Mr. Daugherty acknowledged and agreed that the Debtor would “have no further liability or obligation to [Mr. Daugherty] under [the Employment Agreement] or in connection with his/her employment of termination.”

#### **IV. The Alleged Basis for the Claim**

25. In the Claim, Mr. Daugherty demands the Debtor pay him \$2,650,353, which consists of the full amount of the 2008 Refund (\$1,475,816) plus interest of \$1,174,537.<sup>7</sup> Mr.

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<sup>5</sup> In the simplest terms, to determine whether an individual owes additional taxes or is entitled to a refund, income or losses are multiplied by the applicable tax rate. As an example, in a vacuum, \$4 million of taxable losses allocated to an individual in the 27% bracket would result in \$1.1 million of benefit in terms of reduction to their taxes owed (\$4 million x 27% = \$1.1 million). Likewise, \$1 million of adjusted gross income resulting from W-2 wage income for an individual would result in \$270,000 of tax liability for an individual whose effective tax rate is 27%, all else equal.

<sup>6</sup> Strand Advisors, Inc. (“Strand”), is the Debtor’s “tax matters partner” for purposes of defending the 2008 Audit. Control of Strand reverted to James Dondero—the Debtor’s ousted founder—in 2021, and the Debtor has no role in the 2008 Audit or visibility into its current status or how it is being conducted. On information and belief, the 2008 Audit has not been resolved and is heading to court with a resolution not expected until approximately 2029.

<sup>7</sup> Mr. Daugherty has provided no statutory or other justification for his claim for interest nor has he provided a proposed interest rate.

Daugherty's theory seems to be that if, upon the conclusion of the 2008 Audit, he is required to reverse the tax loss he received as a limited partner, the Debtor must reimburse him for the entirety of the 2008 Refund with interest. In other words, Mr. Daugherty reads a continuing obligation into the 2009 Statement to indemnify him for personal income taxes he may owe, if any, as a result of the 2008 Audit.

26. However, and as set forth above, there is no such obligation in the 2009 Statement. Mr. Daugherty has no claim.

27. But even if Mr. Daugherty did have a claim (he does not), it would be unliquidated and contingent and subordinated as it arises solely from his Partnership Interests.

### **FIRST CLAIM FOR RELIEF**

#### **(Disallowance under Bankruptcy Code 11 U.S.C. § 502(a))**

28. Highland repeats and re-alleges as if set forth herein the foregoing factual allegations.

29. Under 11 U.S.C. § 502(a) a "claim ..., proof of which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a).

30. The ultimate burden of proof for a claim always lies with the claimant. *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

31. Mr. Daugherty received and has benefited for the past 16 years from the 2008 Refund, *i.e.*, the 2008 losses allocated to Mr. Daugherty as a Highland partner. The benefit he received from the IRS (either as a tax refund or liability reduced through offsetting of income) did not materially deviate from, and may have exceeded, the basis for the estimated 2008 Refund set forth in the 2009 Statement.

32. Accordingly, the Debtor satisfied its obligations (to the extent it even had any) under the 2009 Statement in full, and no additional, future obligations exist under the 2009 Statement. Because the Debtor has satisfied its obligations, Claim 205 should be disallowed in its entirety.

33. Moreover, even if the tax benefits he received related to tax year 2008 materially deviated from the 2009 Statement, Mr. Daugherty would not be able to recover from the Debtor based on the vague statement in the 2009 Statement that lacks the definiteness required to form a contractual obligation.

## **SECOND CLAIM FOR RELIEF**

### **(Estimation under Bankruptcy Code 11 U.S.C. § 502(c))**

34. Highland repeats and re-alleges as if set forth herein the foregoing factual allegations.

35. As set forth above, Mr. Daugherty has no Claim; however, to the extent the Court believes he has one, it is unliquidated and contingent on the final outcome of the 2008 Audit, including the magnitude of any adjustments. If the 2008 Audit is successfully defended, Mr. Daugherty will have no claim.

36. Under 11 U.S.C. § 502(c) “[t]here shall be estimated for purposes of allowance ... (1) any contingent or unliquidated claim, the fixing or liquidation of which ... would unduly delay the administration of the case ....”

37. The Plan was confirmed in February of 2021 and has been effective since August of 2021. Mr. Daugherty’s Claim is the last unresolved claim<sup>8</sup> against the estate.

38. It is currently unknown when, if, or how the 2008 Audit will be resolved.

---

<sup>8</sup> The Equity Interests in subordinated Class 10 and further subordinated Class 11 have not been allowed under the terms of the Plan.

39. Accordingly, the Debtor requests that this Court estimate the Claim—after taking into account the likelihood and degree to which the 2008 Audit will be successful or unsuccessful—under 11 U.S.C. § 502(c) for purposes of allowance and distribution.

### **THIRD CLAIM FOR RELIEF**

#### **(Subordination under Bankruptcy Code 11 U.S.C. § 510(b))**

40. Highland repeats and re-alleges as if set forth herein the foregoing factual allegations.

41. Under the Bankruptcy Code,

a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security ....

11 U.S.C. § 510(b). Section 510(b) requires the subordination of claims arising from the purchase of the equity itself and all claims arising thereafter as incidents of ownership. *In re SeaQuest Diving, LP*, 579 F.3d 411, 421 (5th Cir. 2009).

42. Section 510(b) applies to the ownership of limited partnership interests. *Templeton v. O'Cheskey (In re Am. Hous. Found.)*, 785 F.3d 143, 154 (5th Cir. 2015).

43. Mr. Daugherty owned the Partnership Interests, and his Claim is contingent on the IRS clawing back the 2008 Refund he received on account of those Partnership Interests through the 2008 Audit.

44. But for the Partnership Interests, Mr. Daugherty would not have been entitled to the 2008 Refund nor would Mr. Daugherty have any potential liability to the IRS from the 2008 Audit. A nexus or causal relationship exists between Claim 205 and the “purchase” of the Partnership Interests.



45. Accordingly, judgment should issue declaring that the Claim—to the extent it is not disallowed in full—is subordinated pursuant to 11 U.S.C. § 510(b) and shall, subject to such other defenses or objections as may exist with respect to the Claim, have the same rank and priority as Class 11 under the Plan.

**PRAYER**

WHEREFORE, Highland prays for judgment as follows:

1. For the disallowance of the Claim in its entirety;
2. For estimation for the Claim for purposes of allowance and distribution;
3. For subordination of the Claim;
4. For damages and costs of suit, including attorneys' fees, incurred in connection herewith; and
5. For such other and further relief as the Court deems just and proper.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: May 2, 2025.

**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

Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)

[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)

[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

---

Melissa S. Hayward

Texas Bar No. 24044908

[MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com)

Zachery Z. Annable

Texas Bar No. 24053075

[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.*

## **EXHIBIT A**

**PAT DAUGHERTY**

Date of Hire: 4/3/1998

**Comprehensive Compensation and Benefits Statement**

February 27, 2009

**EARNINGS AND AWARDS**

2008 Base Salary, as of 12/31/08 \$ [REDACTED] 0

**2009 Base Salary, effective March 1, 2009 : \$ [REDACTED] 0**

2008 Tax Refund \$ 1,475,816

Refund is an estimated amount. If actual refund deviates materially from estimate, other compensation will be fairly adjusted. Refund is expected to be received in approximately 4 months.

Loan Forgiven in 2009 as part of bonus:

2008 Other Awards

- 401K Match
- Defined Benefit

2008 Deferred Compensation

- Retention Award

Highland's Hedge Funds and Private Equity funds, for a variety of reasons, largely preclude redemptions and Highland Capital Management, L.P. may or may not be in a position to provide a cash equivalent upon triggering of any employee specific monetization. Therefore for this deferred compensation award and any previous awards of Option IT and STIP, Employee agrees to accept payment in kind settlement of any monetization if necessary. \_\_\_\_\_ (Please Initial)

**2008 Total Earnings and Awards** \$ [REDACTED]

**HIGHLAND PAID BENEFITS**

Medical  
Dental  
Basic and Dependent Life Insurance/AD&D  
Short Term Disability and Long Term Disability  
Executive LTD  
Daily Catered Lunches  
Blackberry  
Parking

**2008 Estimated Total Value of Highland Paid Benefits**

**TOTAL COMPENSATION PACKAGE** \$ [REDACTED]

**Waiver and Release Payments in 2008** \$ [REDACTED] 0

**ACCEPTED AND AGREED:**

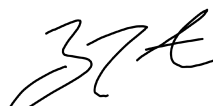
\_\_\_\_\_  
Patrick Daugherty

\_\_\_\_\_  
Date

B1040 (FORM 1040) (12/24)

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)		
<b>PLAINTIFFS</b>  Highland Capital Management, L.P.	<b>DEFENDANTS</b>  Patrick Hagaman Daugherty			
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, Tel.: (310) 277-6910; and Hayward PLLC, 10501 N. Central Expressway, Suite 106, Dallas, TX 75231, Tel.: (972) 755-7100	<b>ATTORNEYS</b> (If Known)			
<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)  Disallowance or estimation of claim under 11 U.S.C. 502 or subordination under 11 U.S.C. 510(b)				
<b>NATURE OF SUIT</b>  (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> <b>FRBP 7001(a) – Recovery of Money/Property</b>  <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property  <input type="checkbox"/> 12-Recovery of money/property - §547 preference  <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer  <input type="checkbox"/> 14-Recovery of money/property - other   <b>FRBP 7001(b) – Validity, Priority or Extent of Lien</b>  <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property   <b>FRBP 7001(c) – Approval of Sale of Property</b>  <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)   <b>FRBP 7001(d) – Objection/Revocation of Discharge</b>  <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)   <b>FRBP 7001(e) – Revocation of Confirmation</b>  <input type="checkbox"/> 51-Revocation of confirmation   <b>FRBP 7001(f) – Dischargeability</b>  <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims  <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation,                actual fraud  <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny   <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> <b>FRBP 7001(f) – Dischargeability (continued)</b>  <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support  <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury  <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan  <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation                (other than domestic support)  <input type="checkbox"/> 65-Dischargeability - other   <b>FRBP 7001(g) – Injunctive Relief</b>  <input type="checkbox"/> 71-Injunctive relief – imposition of stay  <input type="checkbox"/> 72-Injunctive relief – other   <b>FRBP 7001(h) Subordination of Claim or Interest</b>  <input checked="" type="checkbox"/> 81-Subordination of claim or interest   <b>FRBP 7001(i) Declaratory Judgment</b>  <input type="checkbox"/> 91-Declaratory judgment   <b>FRBP 7001(j) Determination of Removed Action</b>  <input type="checkbox"/> 01-Determination of removed claim or cause   <b>Other</b>  <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i>  <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court                if unrelated to bankruptcy case)           </td> </tr> </table>			<b>FRBP 7001(a) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(b) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(c) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(d) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(e) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(f) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  <div style="text-align: center;">(continued next column)</div>	<b>FRBP 7001(f) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(g) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(h) Subordination of Claim or Interest</b> <input checked="" type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(i) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(j) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$			
Other Relief Sought  Disallowance or estimation of claim under 11 U.S.C. 502				

B1040 (FORM 1040) (12/24)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.		BANKRUPTCY CASE NO. 19-34054-sgj11
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE May 2, 2025	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

## INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**PD-3**

PACHULSKI STANG ZIEHL & JONES LLP  
 Jeffrey N. Pomerantz (CA Bar No. 143717)  
 John A. Morris (NY Bar No. 266326)  
 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  
 Email: jpomerantz@pszjlaw.com  
 jmorris@pszjlaw.com  
 gdemo@pszjlaw.com  
 hwinograd@pszjlaw.com

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  
 Email: MHayward@HaywardFirm.com  
 ZAnnable@HaywardFirm.com

*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., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

**REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING  
 SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY (CLAIM NO. 205)  
 AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

<sup>1</sup> 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.





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## TABLE OF AUTHORITIES

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<i>Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)</i> , 119 F.3d 349 (5th Cir. 1997).....	11
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TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

Highland Capital Management, L.P., the above-captioned reorganized debtor (the “Reorganized Debtor” or “Debtor,” as applicable), files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement agreement (the “Settlement Agreement”),<sup>2</sup> a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion (“Morris Dec.”), that, among other things, fully and finally resolves the proof of claim filed by Patrick Hagaman Daugherty (“Mr. Daugherty”). In support of this Motion, the Reorganized Debtor represents as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Bankruptcy Rules.

---

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

## **RELEVANT BACKGROUND**

### **A. Procedural Background**

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the official committee of unsecured creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s case to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Court”). [Docket No. 186].<sup>3</sup>

6. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “Confirmation Order”) with respect to the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1808] (as subsequently modified, the “Plan”).

7. The Plan went effective on August 11, 2021 (the “Effective Date”) and, on that same date, the Reorganized Debtor filed the *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700]. The Reorganized Debtor has commenced making distributions on certain allowed claims in accordance with the terms of the Plan.

### **B. Procedural Overview of Mr. Daugherty’s Claim**

8. Mr. Daugherty is a former employee and limited partner of the Debtor and previously served in other positions with affiliates and former affiliates of the Debtor.

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<sup>3</sup> All docket numbers refer to the docket maintained by this Court.

9. At the time of his resignation, Mr. Daugherty owned 19.1% of the preferred units of Highland Employee Retention Assets LLC (“HERA”), an employee deferred-compensation vehicle managed by the Debtor and Highland ERA Management, LLC (“ERA Management”). Mr. Daugherty contends that he owned or had the right to own all of the preferred units of HERA.

10. In April 2012, following Mr. Daugherty’s resignation and while under the control of James Dondero (“Mr. Dondero”), the Debtor commenced an action against Mr. Daugherty in Texas state court (the “Texas Action”), and Mr. Daugherty subsequently asserted (i) counterclaims for breach of contract and defamation, and (ii) third-party claims against HERA and others.

11. After a three-week trial, (a) the Debtor obtained a verdict on its claims against Mr. Daugherty for breach of contract and breach of fiduciary duty and obtained an award of \$2.8 million in attorney’s fees; and (b) Mr. Daugherty obtained a verdict on his claims against the Debtor and Mr. Dondero for defamation with malice and a third-party claim against HERA and obtained an award of \$2.6 million against HERA (the “HERA Judgment”). The HERA Judgment was affirmed on appeal on December 1, 2016.

12. In July 2017, after being unable to collect on the HERA Judgment, Mr. Daugherty commenced an action against the Debtor, Mr. Dondero, HERA, and ERA Management in the Delaware Chancery Court (the “Chancery Court”) in a case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for, among other claims, fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and “fees on fees” (the “Highland Chancery Case”).

13. In the spring of 2019, the Chancery Court in the Highland Chancery Case (i) found that the Dondero-related defendants improperly withheld dozens of documents in discovery on privilege grounds, and (ii) ruled that there was “a reasonable basis to believe that a fraud has been perpetrated” such that the Chancery Court applied the “crime-fraud exception” to

the attorney-client privilege. Mr. Daugherty asserts that the defendants' failure to provide required discovery injured him by undermining his attempts to build an evidentiary record to support his claims against the Debtor and the other defendants in the Highland Chancery Case.

14. On October 14, 2019, the Highland Chancery Case proceeded to trial, but on October 16, 2019, before the trial was completed and before the Chancery Court ruled on Mr. Daugherty's and the Debtor's cross-motions for summary judgment regarding indemnification and fees on fees, the Debtor filed for bankruptcy.

15. On December 1, 2019, Mr. Daugherty filed a separate lawsuit in the Chancery Court captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against Mr. Dondero, HERA, ERA Management, Hunton Andrews Kurth LLP, Marc Katz, Michael Hurst, the Debtor's then-chief compliance officer, and the Debtor's then in-house counsel, Isaac Leventon and Scott Ellington, for conspiracy to commit fraud among other claims (the "HERA Chancery Case" and together with the Highland Chancery Case, the "Chancery Cases").

16. On April 1, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least \$37,483,876.59," and such claim was denoted by the Debtor's claims agent as Proof of Claim No. 67 ("Proof of Claim No. 67").

17. On April 6, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least \$37,483,876.59" that superseded Proof of Claim No. 67 and that was denoted by the Debtor's claims agent as Proof of Claim No. 77 ("Proof of Claim No. 77").

18. On August 31, 2020, the Debtor commenced an adversary proceeding against Mr. Daugherty by filing a complaint (the "Complaint") in which the Debtor: (1) objected to Proof of Claim No. 77 on various grounds (the "Claim Objection"), and (2) asserted a cause of action for the subordination of part of Mr. Daugherty's Claim pursuant to section 510(b) of the

Bankruptcy Code. *See* Adv. Proc. No. 20-03107 (the “Adv. Proc.”) [Adv. Docket No. 1] (the “Adversary Proceeding”).

19. On September 29, 2020, Mr. Daugherty filed his answer to the Complaint [Adv. Docket No. 8] (the “Answer”).

20. On September 24, 2020, Mr. Daugherty filed his *Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay* [Docket No. 1099] (the “Comfort Motion”) pursuant to which he sought to sever the Debtor from the Highland Chancery Case and then consolidate the remaining claims in the Highland Chancery Case into the HERA Chancery Case and proceed with one case against the non-debtors.<sup>4</sup>

21. On October 23, 2020, Mr. Daugherty filed a motion seeking leave to amend his Proof of Claim [Docket No. 1280] (the “POC Amendment Motion”). The amended proof of claim attached to the POC Amendment Motion increased Mr. Daugherty’s general, unsecured, non-priority claim against the Debtor to the amount of at “least \$40,710,819.42” and sought to supersede Proof of Claim No. 67 and Claim No. 77.

22. On October 23, 2020, Mr. Daugherty filed his *Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion* seeking for his Claim to be temporarily allowed for voting purposes in the amount of \$40,710,819.42 [Docket No. 1281] (the “3018 Motion”).

23. On November 9, 2020, the Debtor filed its *Objection to Patrick Hagaman Daugherty’s Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion* [Docket No. 1349] (the “3018 Objection”).

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<sup>4</sup> On October 8, 2020, the Debtor commenced a second adversary proceeding against Mr. Daugherty (the “Second Adversary Proceeding”), seeking to enjoin him from prosecuting the Chancery Cases. Adv. Proc. 20-03128 (“2d Adv. Proc.”) [2d Adv. Proc. Docket No. 1]. On January 29, 2021, the parties filed a Settlement that resolved the Second Adversary Proceeding, and the Second Adversary Proceeding was subsequently dismissed with prejudice. [2d Adv. Proc. Docket No. 12].

24. After conducting an evidentiary hearing with respect to the 3018 Motion, the Court entered an order temporarily allowing Mr. Daugherty's Claim for voting purposes in the amount of \$9,134,019 [Docket No. 1474] (the "Rule 3018 Order").

25. On November 3, 2020, the Court granted the Comfort Motion [Docket No. 1327].

26. On December 10, 2020, the Court entered an order [Docket No. 1533] granting the POC Amendment Motion permitting Mr. Daugherty to amend his proof of claim. On December 23, 2020, Mr. Daugherty filed an amended proof of claim, designated by the Debtor's claim agent as Proof of Claim No. 205 ("Proof of Claim No. 205" or the "Daugherty Claim"). Proof of Claim No. 205 increased the amount of the Daugherty Claim to \$40,710,819.42.

27. On November 30, 2020, Mr. Daugherty filed his *Motion to Lift the Automatic Stay* (the "Lift Stay Motion") [Docket No. 1491] seeking to lift the automatic stay to allow him to finish his trial in the Chancery Court and liquidate his claims. The Debtor opposed the Lift Stay Motion, and after a hearing was held on December 17, 2020, the Court denied the relief requested in the Lift Stay Motion [Docket No. 1612].

28. Except with respect to the Reserved Claim (as defined in the Settlement Agreement), the Parties have agreed to settle and resolve all claims and disputes between them, including the Daugherty Claim, on the terms set forth in the Settlement Agreement.

**C. Summary of Mr. Daugherty's Claim**

29. As generally described above, prior to the Petition Date, Mr. Daugherty on the one hand, and the Debtor, Mr. Dondero, other entities controlled by Mr. Dondero, and individuals then employed by the Debtor or otherwise associated with Mr. Dondero on the other hand, were embroiled in more than nine (9) years of highly contentious litigation involving a multitude of claims and counterclaims (the "Pre-Petition Litigation").



30. The Pre-Petition Litigation played out in front of a jury in Texas state court and wound its way through the state appellate courts. Thereafter, Mr. Daugherty opened a new front by commencing the Highland Chancery Case in the Chancery Court where he sought to hold the defendants to account for leaving HERA “judgment proof” and unable to satisfy the HERA Judgment that Mr. Daugherty had obtained.

31. While Mr. Dondero’s decision to sue Mr. Daugherty in the Texas Action was questionable, his decisions to (a) continue fighting the HERA Judgment rather than accepting the net economic benefits awarded, and (b) fraudulently transfer HERA’s assets leaving it “judgment proof” proved to be a disaster because it cost millions of dollars in legal fees and left the Debtor and related entities exposed to claims and liability for substantial wrongdoing.

32. The Daugherty Claim attaches and incorporates his operative complaint in the Highland Chancery Case and other voluminous documentation. The Daugherty Claim has the following components:

- Enforcement of the HERA Judgment against the Debtor, pursuant to unjust enrichment, promissory estoppel and fraudulent transfer claims, in the amount of \$2.6 million plus prepetition interest of \$1.22 million. (Mr. Daugherty contends that interest has continued to accrue post-petition);
- The estimated value of the HERA assets transferred to the Debtor on the theory that Daugherty owns 100% of HERA because the Debtor was not permitted to acquire the interests that it purchased from the former members and Daugherty was the last remaining interest holder. This allegedly leaves Mr. Daugherty by default as the 100% owner of the HERA Assets, which Mr. Daugherty asserts are worth at least \$26.2 million as a whole;
- Indemnification for attorneys’ fees, expenses, and interest of approximately \$5.4 million incurred in the Texas Action under the Debtor’s partnership agreement for actions Daugherty contends were taken in furtherance of his obligations to investors and funds under the Investment Advisors Act of 1940;
- Compensation as a former employee of the Debtor that Daugherty contends is contingent on the outcome of an audit of the Debtor’s 2008/2009 tax returns and related expenses. Mr. Daugherty estimates this claim at approximately \$2.7 million;

- Fee shifting and fees on fees that Daugherty contends are due to the bad faith actions of the Debtor, its officers, and agents in the Chancery Court. Daugherty estimates this claim at approximately \$2.5 million; and
- Other related claims described in the Daugherty Claim for approximately \$0.2 million.

33. The Debtor previously informed the Court that it does not object to Mr. Daugherty's claims related to the HERA Judgment (\$2.6 Million, plus interest calculated at approximately \$1.22 million as of about a year ago).

34. For a recitation of the Debtor's defenses to Daugherty's Claim, the Debtor incorporates by reference its 3018 Objection.

**D. The Parties Engage in Arm's-Length Settlement Discussions**

35. Although counsel for the Parties argued over the merits of, and the defenses to, the Daugherty Claim throughout the fall, they began discussing a possible resolution of Daugherty's Claim after the Court entered the 3018 Order.

36. In the days leading up to the Confirmation Hearing, those discussions evolved into substantive negotiations, and counsel for the parties exchanged various proposals and counterproposals in an effort to reach an agreement.

37. With the advice of counsel, James P. Seery, Jr., the Debtor's Chief Executive Officer, took the lead in the negotiations (directly and through counsel) and briefed the Independent Board on the progress.

38. The negotiations bore fruit. On February 2, 2021, at the commencement of the Confirmation Hearing, and with the unanimous approval of the Independent Board, Debtor's counsel announced that it had reached an agreement with Mr. Daugherty (subject to the execution of definitive documentation and Court approval) and read the principal terms into the record.

39. For a variety of reasons, documenting the agreement took more time than expected. For example, in the weeks and months that followed, (1) the principals and their counsel

addressed the implications of the Sentinel Disclosures (as that term is defined below); (2) the tasks related to getting to the Effective Date took a higher priority; (3) the Reorganized Debtor had to educate the newly appointed Oversight Board on the background and litigation concerning, and the proposed resolution of, the Daugherty Claim; (4) the parties exchanged numerous iterations of the Settlement Agreement and ancillary documents; and (5) frankly, it was difficult to get Mr. Daugherty to say “yes” as he sought very hard to improve the economic and non-economic terms of the deal based on certain revelations in the ensuing months (which, of course, was his right).

**E. Summary of Settlement Terms**

40. The Settlement Agreement contains the following material terms, among others:

- Mr. Daugherty shall receive an allowed general unsecured, non-priority Class 8 claim in the amount of \$8.25 million;
- Mr. Daugherty shall receive an allowed subordinated general unsecured, non-priority Class 9 claim in the amount of \$3.75 million;
- Mr. Daugherty shall receive a one-time lump sum payment in the amount of \$750,000 to be paid within five business days of Bankruptcy Court approval of this Settlement Agreement;
- Releases shall be exchanged as provided for in paragraphs 3 through 6 of the Settlement Agreement;
- The Reorganized Debtor shall transfer its interests in HERA and ERA to Mr. Daugherty in accordance with paragraph 6 of the Settlement Agreement;
- The Parties shall cooperate to terminate all litigation in accordance with paragraphs 9 and 10 of the Settlement Agreement; and
- The Parties shall adhere to certain other non-economic matters agreed to by them as specifically set forth in the Settlement Agreement.

*See generally* Morris Dec. Exhibit 1.<sup>5</sup>

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<sup>5</sup> With two exceptions, these settlement terms are materially the same as those announced on the record on February 2, 2021 in connection with the confirmation hearing on the Debtor’s Plan. The two exceptions are that (a) the Class 9 claim was increased by \$1 million, and (b) the Reorganized Debtor agreed to transfer its interests in HERA and ERA to Mr. Daugherty. The former change was intended to take into account the increased risk to the Debtor arising from

### **BASIS FOR RELIEF REQUESTED**

41. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

42. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound discretion of the bankruptcy court.” *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

43. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test “with a focus on comparing ‘the terms of the compromise with the rewards of litigation.’” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*,

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the post-confirmation discovery and disclosures related to Sentinel (the “Sentinel Disclosures”). *See UBS Secs. LLC v. Highland Capital Mgmt., L.P.*, Adv. Pro. No. 21-03020. The latter concerned Mr. Daugherty’s final demand that the Debtor agreed to because (i) Mr. Daugherty continues to retain his claims against HERA and ERA and their respective officers, directors, and agents; (ii) HERA and ERA no longer have any tangible assets; (iii) the HERA Releasing Parties are confirming that they have no claims against and are releasing the HCMLP Released Parties pursuant to the HERA and ERA Release; and (iv) Mr. Daugherty insisted on this final term which, in the overall package, was not material under the Debtor’s Plan or otherwise.

624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: “(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise.” *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

44. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

45. First, although the Reorganized Debtor believes that it has valid defenses to the Daugherty Claim, there is no guarantee that the Reorganized Debtor would succeed in its litigation with Daugherty. Indeed, to establish its defenses, the Reorganized Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, the events giving rise to Mr. Daugherty’s claims arose over five years ago, raising considerable questions about the reliability of those witnesses’ recollection.

46. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the Daugherty Claim—including the Texas Action and the Highland Chancery Case—proceeded *for years* and have already cost the Debtor’s estate millions of dollars in legal

fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive issues including, among other things, the conduct of Mr. Dondero and the other defendants in the pending Chancery Actions.

47. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Reorganized Debtor to: (a) avoid incurring substantial litigation costs; and (b) avoid the litigation risk associated with Daugherty's \$40 million claim. Notably, as set forth in its 3018 Objection, and regardless of whether this settlement is approved, the Debtor has already conceded liability of almost \$4 million in connection with the HERA Judgment, making the risk/reward analysis compelling.

48. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Reorganized Debtor's business judgment made after due deliberation of the facts and circumstances concerning Daugherty's Claim.

#### **NO PRIOR REQUEST**

49. No previous request for the relief sought herein has been made to this, or any other, Court.

#### **NOTICE**

50. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for Mr. Daugherty; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; and (d) parties requesting notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Reorganized Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 8, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 266326)  
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  
Email: jpomerantz@pszjlaw.com  
ikharasch@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  
Email: MHayward@HaywardFirm.com  
ZAnnable@HaywardFirm.com

*Counsel for Highland Capital Management, L.P.*

## **EXHIBIT A**



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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Reorganized Debtor.

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER GRANTING REORGANIZED DEBTOR’S MOTION FOR ENTRY OF AN  
ORDER APPROVING SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY  
(CLAIM NO. 205) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on the *Reorganized Debtor’s Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Docket No. \_\_\_\_] (the “Motion”)<sup>2</sup> filed by Highland Capital Management, L.P., the above-captioned reorganized debtor (the “Reorganized Debtor” or “Debtor”, as applicable); and this Court having considered (a) the Motion; (b) the *Declaration of*

<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

<sup>2</sup> Capitalized terms not otherwise defined in this order shall have the meanings ascribed to them in the Motion.

*John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Docket No. \_\_\_\_] (the "Morris Declaration") and the exhibits annexed thereto, including the Settlement Agreement attached as Exhibit 1 (the "Settlement Agreement"); and (c) the arguments and law cited in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is truly the product of arm's-length bargaining, and not of fraud or collusion; and this Court having found that the Reorganized Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and all other documents filed in support of the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.

2. The Settlement Agreement attached hereto as **Exhibit 1** is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

3. The Reorganized Debtor, Mr. Daugherty, and all other parties are authorized to take any and all actions necessary and desirable to implement the Settlement Agreement.

4. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

**PD-4**

Jason P. Kathman  
 State Bar No. 24070036  
 PRONSKE & KATHMAN, P.C.  
 2701 Dallas Pkwy, Suite 590  
 Plano, Texas 75093  
 (214) 658-6500 – Telephone  
 (214) 658-6509 – Telecopier  
 Email: jkathman@pronskepc.com

**COUNSEL FOR  
 PATRICK DAUGHERTY**

Thomas A. Uebler  
*Pro Hac Vice Pending*  
 Joseph L. Christensen  
*Pro Hac Vice*  
 MCCOLLOM D'EMILIO  
 SMITH UEBLER LLC  
 Little Falls Centre Two  
 2751 Centerville Road, Suite 401  
 Wilmington, Delaware 19808  
 (302) 468-5960 – Telephone  
 (302) 6691-6834 – Facsimile

**COUNSEL FOR  
 PATRICK DAUGHERTY**

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

**In re:** §  
 § **CASE NO. 19-34054-SGJ-11**  
**HIGHLAND CAPITAL MANAGEMENT,** §  
**L.P** § **CHAPTER 11**  
 §  
**Debtor.** §

**PATRICK HAGAMAN DAUGHERTY'S  
 MOTION FOR TEMPORARY ALLOWANCE OF CLAIM FOR  
 VOTING PURPOSES PURSUANT TO BANKRUPTCY RULE 3018**

TO THE HONORABLE STACEY G. C. JERNIGAN,  
 UNITED STATES BANKRUPTCY JUDGE:

Patrick Daugherty ("**Daugherty**") by and through his undersigned counsel, submits this motion (the "**Motion**") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Order**"), pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") temporarily allowing Daugherty's claims in full for plan voting purposes *only*. Daugherty also concurrently files his Memorandum of Law and Brief in Support of the Motion (the "**Brief**") and Appendix (the "**Appendix**") in support. In support of the Motion, Daugherty respectfully states as follows:



1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

2. On October 16, 2019 (the “**Petition Date**”), the Debtor filed its voluntary petition for bankruptcy under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Delaware Bankruptcy Court**”).

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the “**Committee**”) was appointed by the United States Trustee for in Delaware.

4. On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring this case to this Court.

5. On April 1, 2020, Daugherty filed Proof of Claim No. 67, in an amount not less than \$37,483,876.62, which was later amended on April 6, 2020 as Proof of Claim No. 77.

6. On August 31, 2020, the Debtor filed its Objection to Claim No. 77 of Patrick Hagaman Daugherty and (II) Complaint to Subordinate Claim of Patrick Hagaman Daugherty [Docket No. 1008] (the “**Adversary Complaint**”) in this case, initiating *Highland Capital Management, L.P. v. Daugherty*, Adversary No. 20-03107 before this Court (the “**Adversary Proceeding**”).

7. On September 21, 2020, the Debtor filed its First Amended Plan of Reorganization [Docket No. 1079] (the “**Plan**”) and Disclosure Statement [Docket No. 1080] (the “**Disclosure Statement**”). A hearing on Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of

Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice [Docket No. 1108], filed on September 28, 2020, is currently set for hearing on October 27, 2020 at 10:30 a.m. central.

8. Filed contemporaneously herewith, Daugherty has filed his Motion for Leave to Amend Proof of Claim No. 77 (the “**Motion to Amend POC**”). As explained more fully in the Motion to Amend POC, the proposed amendment to Daugherty’s proof of claim does not add any additional bases or claims, but rather provides a definitive amount for one aspect of the claim, and provides further clarity as to other parts of the claim. The proposed amended proof of claim attached to the Motion to Amend POC asserts a claim in the amount of \$40,710,819.42.

9. For the reasons identified and explained in the Brief, Daugherty respectfully requests that the Court enter an order allowing his claim, for voting purposes only, in the amount of \$40,710,819.42.

WHEREFORE, PREMISES CONSIDERED, Daugherty respectfully requests that the Court enter an order allowing his claim, for voting purposes only, in the amount of \$40,710,819.42 and granting such other and further relief to which the Debtor may be justly entitled.

Dated: October 23, 2020.

Respectfully submitted,

/s/ Jason P. Kathman

Jason P. Kathman

State Bar No. 24070036

Megan F. Clontz

State Bar No, 24069703

PRONSKE & KATHMAN, P.C.

2701 Dallas Pkwy, Suite 590

Plano, Texas 75056

(214) 658-6500 - Telephone

(214) 658-6509 – Telecopier

Email: jkathman@pronskepc.com

Email: mclontz@pronskepc.com

- And –

Thomas A. Uebler

*Pro Hac Vice to be filed*

Joseph L. Christensen

*Pro Hac Vice to be filed*

MCCOLLUM D’EMILIO

SMITH UEBLER LLC

Little Falls Centre Two

2751 Centerville Road, Suite 401

Wilmington, Delaware 19808

(302) 468-5960 – Telephone

(302) 6691-6834 – Facsimile

Email: tuebler@mdsulaw.com

Email: jchristensen@mdsulaw.com

**COUNSEL FOR DEFENDANT,  
PATRICK HAGAMAN DAUGHERTY**



**Exhibit A**

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

<b>In re:</b>	§	
	§	<b>CASE NO. 19-34054-SGJ-11</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P</b>	§	
	§	<b>CHAPTER 11</b>
	§	
<b>Debtor.</b>	§	

**PATRICK HAGAMAN DAUGHERTY’S MOTION FOR TEMPORARY ALLOWANCE  
OF CLAIM FOR VOTING PURPOSES PURSUANT TO BANKRUPTCY RULE 3018**

CAME ON FOR CONSIDERATION the Motion For Temporary Allowance of Claim For Voting Purposes Pursuant To Bankruptcy Rule 3018 (the “**Motion**”) filed by Patrick Hagaman Daugherty (“**Daugherty**”), and the Court finds that it has jurisdiction over this matter, that venue is proper, and that sufficient notice of the Motion has been given to all parties requiring notice. The Court has determined that the legal and factual bases set forth in the Motion and the Brief in Support of the Motion establish just cause for the relief granted herein. It is therefore

**ORDERED** that the Motion is **GRANTED**. It is further

**ORDERED** that any and all Objections to the Motion are **OVERRULED**. It is further

**ORDERED** that Patrick Hagaman Daugherty is **ALLOWED**, on a temporary basis and for voting purposes only, a claim in the amount of \$40,710,819.42. It is further

**ORDERED** that Daugherty may to vote to accept or reject the Debtor's First Amended Plan of Reorganization and/or subsequent plan amendments.

**### END OF ORDER ###**

Submitted by:

/s/ Jason P. Kathman

Jason P. Kathman

Texas Bar No. 24070036

Megan F. Clontz

Texas Bar No. 24069703

**PRONSKE & KATHMAN, P.C.**

2701 Dallas Parkway, Suite 590

Plano, Texas 75093

Telephone: 214.658.6500

Facsimile: 214.658.6509

Email: jkathman@pronskepc.com

Email: mclontz@pronskepc.com

-- AND --

Thomas A. Uebler

*Pro Hac Vice to be filed*

Joseph L. Christensen

*Pro Hac Vice to be filed*

MCCOLLUM D'EMILIO

SMITH UEBLER LLC

Little Falls Centre Two

2751 Centerville Road, Suite 401

Wilmington, Delaware 19808

(302) 468-5960 – Telephone

(302) 6691-6834 – Facsimile

Email: tuebler@mdsulaw.com

Email: jchristensen@mdsulaw.com

**COUNSEL FOR DEFENDANT,  
PATRICK HAGAMAN DAUGHERTY**

**PD-5**

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

In Re: ) **Case No. 19-34054-sgj-11**  
) Chapter 11  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) Tuesday, November 17, 2020  
) 1:30 p.m. Docket  
Debtor. )  
) PATRICK DAUGHERTY'S MOTION  
) FOR TEMPORARY ALLOWANCE OF  
) CLAIM FOR VOTING PURPOSES  
) [1281]  
)

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor: John A. Morris  
PACHULSKI STANG ZIEHL & JONES, LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
(212) 561-7700

For the Debtor: Jeffrey N. Pomerantz  
PACHULSKI STANG ZIEHL & JONES, LLP  
10100 Santa Monica Blvd.,  
13th Floor  
Los Angeles, CA 90067-4003  
(310) 277-6910

For Patrick Daugherty: Jason Patrick Kathman  
PRONSKE & KATHMAN, P.C.  
2701 Dallas Parkway, Suite 590  
Plano, TX 75093  
(214) 658-6500

For Patrick Daugherty: Thomas A. Uebler  
Joseph L. Christensen  
MCCOLLOM D'EMILIO SMITH UEBLER,  
LLC  
Little Falls Centre Two  
2751 Centerville Road, Suite 401  
Wilmington, Delaware 19808  
(302) 468-5960

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For the Official Committee of Unsecured Creditors: Matthew A. Clemente  
SIDLEY AUSTIN, LLP  
One South Dearborn  
Chicago, IL 60603  
(312) 853-7539

Recorded by: Michael F. Edmond, Sr.  
UNITED STATES BANKRUPTCY COURT  
1100 Commerce Street, 12th Floor  
Dallas, TX 75242  
(214) 753-2062

Transcribed by: Kathy Rehling  
311 Paradise Cove  
Shady Shores, TX 76208  
(972) 786-3063

1                   DALLAS, TEXAS - NOVEMBER 17, 2020 - 1:38 P.M.

2                   THE CLERK: All rise. The United States Bankruptcy  
3 Court for the Northern District of Texas, Dallas Division, is  
4 now in session, the Honorable Stacey Jernigan presiding.

5                   THE COURT: Good afternoon. Please be seated. We  
6 have a setting we'll start now in Highland, Case No. 19-34054.  
7 We have a motion of Patrick Daugherty to have his claim  
8 allowed for voting purposes under Bankruptcy Rule 3018. For  
9 Mr. Daugherty, who do we have appearing? Do we have Mr.  
10 Kathman and crew?

11                  MR. KATHMAN: Good afternoon, Your Honor. Jason  
12 Kathman on behalf of Mr. Daugherty. I'm also joined today by  
13 my co-counsel in Delaware, Tom Uebler and Joe Christensen with  
14 the firm McCollum D'Emilio Smith & Uebler, LLC. They've been  
15 admitted *pro hac vice* in this case and they're going to be  
16 handling the case this morning for our side, Your Honor. We  
17 also have on the phone and in the WebEx today Mr. Daugherty as  
18 well.

19                  THE COURT: All right. Very good. I see Mr. Morris  
20 up there. Are you going to be taking the lead for the Debtor  
21 this afternoon?

22                  THE CLERK: He's on mute.

23                  THE COURT: You're on mute, sir.

24                  MR. MORRIS: Thank you very much. Yes, I -- yes, I  
25 will, Your Honor. It's John Morris from Pachulski Stang Ziehl

1 & Jones for the Debtor.

2 With the agreement of all of the parties, before we begin  
3 my partner Mr. Pomerantz would like to just briefly update the  
4 Court on certain plan issues, and then we'd like to proceed to  
5 the matter on the schedule.

6 THE COURT: All right. That is fine. So, we'll --  
7 first off, I'm just going to note we have a lot of other  
8 participants showing on the video screen. I'm not going to  
9 take other appearances. I assume they're just interested  
10 observers today. The only pleadings on the contested matter  
11 were filed by Daugherty and the Debtor. But certainly if  
12 someone at some point has something to say regarding the case  
13 generally, I'm happy to hear anything people want to report.

14 So, with that, Mr. Pomerantz, what would you like to say?

15 MR. POMERANTZ: So, thank you, Your Honor. As Mr.  
16 Morris mentioned, I thought I would give Your Honor a brief  
17 update. We haven't been here in a couple of weeks, which has  
18 seemed like a lifetime, but I wanted to apprise the Court last  
19 Friday night the Debtor filed an amended plan and disclosure  
20 statement, pursuant to the Court's prior scheduling order. We  
21 also filed the infamous plan supplement, which was discussed  
22 in a lot of detail at the last hearing, which contained  
23 drafts, advance drafts of the principal plan implementation  
24 documents likely to be of interest to the creditors, including  
25 the Claimant Trust Agreement, the Liquidating Trust Agreement,



1 other corporate organizational documents, and a list of  
2 retained causes of action under the plan.

3 And I'm pleased to report that over the last couple of  
4 weeks the Debtor and the Committee have made substantial  
5 progress in addressing the disputed issues that were forefront  
6 at the hearing on October 27th.

7 Such progress included a resolution of the structure and  
8 consideration relating to the releases to be provided under  
9 the plan; the identity of the independent board members and  
10 the Liquidating Trustee, or Litigation Trustee, excuse me;  
11 substantial agreement on the form of the Claimant Trust  
12 Agreement and the Litigation Trust agreement; and the  
13 inclusion of a protocol to address how disputed claims will be  
14 resolved.

15 While there are a few issues left to be resolved and  
16 ironed out between the Debtor and the Committee, (audio gap)  
17 can be resolved by Monday. We believe that as it relates to  
18 the Committee's issues next week, the hearing will largely be  
19 consensual, and we extend the opportunity to other parties who  
20 objected, including UBS, who has already reached out to us  
21 with a couple of comments they have, as well as we suggest  
22 that Mr. Daugherty and HarbourVest also reach out to us in  
23 advance of that hearing so that we can work through as many  
24 issues.

25 So, we took Your Honor's comments last week to heart, and

1 I think the parties have worked cooperatively to streamline to  
2 what I think will be a narrow set of issues, if any, that will  
3 be up for hearing on Monday, Your Honor.

4 THE COURT: Okay. That's very good to hear. I'll  
5 just check: Is Committee counsel on the line and do you wish  
6 to respond to that?

7 MR. CLEMENTE: Your Honor, it's Matt Clemente at  
8 Sidley. Can you hear me?

9 THE COURT: I can.

10 MR. CLEMENTE: Oh, hi, yeah, good afternoon, Your  
11 Honor. As Mr. Pomerantz I think has accurately captured of  
12 the current state of play, so we took the time that Your Honor  
13 wisely gave us and I think we worked very, very hard and I  
14 think we have come to conclusion on, you know, a variety of  
15 the issues that we had. Mr. Pomerantz is correct, there's a  
16 hearing full of things that we still need to discuss, Your  
17 Honor. But I would expect that either we come to a resolution  
18 on those or those are things that, you know, ultimately can be  
19 dealt with in connection with plan confirmation itself. But I  
20 agree with Mr. Pomerantz's comments.

21 THE COURT: Okay. Very good. Well, I hope all of  
22 you will keep working at it. You've got almost a week until  
23 we're here next Monday. So, UBS and the others, I really hope  
24 you will accept the invitation of Mr. Pomerantz you heard just  
25 now to talk to him and see if you can get your issues worked

1 out.

2 All right. Well, we did note that you had filed the  
3 documents Friday night, and I think I know what my weekend  
4 activity is going to be besides, you know, watching my  
5 Longhorns: Reading the Highland disclosure statement and plan  
6 supplement. So, anyway, I look forward to doing that, and I  
7 will hope for a somewhat smooth hearing Monday, if not an  
8 entirely smooth hearing.

9 All right. Thank you for that report, Mr. Pomerantz.

10 MR. POMERANTZ: You're very welcome, Your Honor.

11 THE COURT: Okay. Thank you. All right. Well,  
12 let's turn to the matter at hand, the motion. You all have  
13 blessed me with lots of papers to read and exhibits for today.  
14 We have a two-hour time estimate, so I hope you will do your  
15 best to stick with that.

16 As far as your presentations today, let me tell you that I  
17 really don't need you to spend much time, if any, arguing the  
18 law, Bankruptcy Rule 3018(a), the case law construing it. I'm  
19 pretty familiar. It says such things as the Rule contemplates  
20 a summary estimation proceeding, not a full trial on the  
21 merits. The Court has a lot of discretion. So please don't  
22 argue the 20 or 30 cases that are out there that interpret  
23 Rule 3018. I'd really like to focus on the numbers more than  
24 anything else.

25 And so as far as opening statements, I'm going to turn to

1 -- I don't know if it will be Mr. Uebler or Mr. Christensen --  
2 and ask you right off the bat: Why is the Debtors' suggested  
3 compromise of \$9,134,019 not a fair resolution, when we all  
4 know that you can argue entitlement to every penny in that \$40  
5 million plus proof of claim ultimately in the adversary  
6 proceeding, in the trial on the proof of claim, but for now,  
7 it looks like the Debtor has put out a pretty reasonable olive  
8 branch? So let me just put you on the spot and ask you to  
9 start there in your opening statement.

10 MR. UEBLER: Thank you, Your Honor. This is Tom  
11 Uebler on behalf of Patrick Daugherty.

12 While it is a generous offer, it leaves disputed \$31 --  
13 approximately \$31 million with respect to Mr. Daugherty's  
14 claims. The Debtor has agreed to the amount of Mr.  
15 Daugherty's 2012 Texas court judgment, plus interest, and the  
16 Debtor has also agreed to the unjust enrichment and promissory  
17 estoppel damages from the Delaware case in the amount of  
18 approximately \$5 million. But what the Debtor refuses to  
19 agree to or acknowledge any potential liability for are the  
20 three other subparts of Mr. Daugherty's claim.

21 The first of those subparts is what we're calling the  
22 Reimbursement Claims, and that includes Mr. Daugherty's claims  
23 for contractual indemnification under Highland's partnership  
24 agreement. And it includes fees on fees -- at least that's  
25 how we refer to it in Delaware -- which are fees expended by

1 Mr. Daugherty in seeking to establish his indemnification  
2 rights in Delaware. And finally, fee shifting, for what we  
3 have laid out as a decade pattern of litigation misconduct by  
4 Highland against Mr. Daugherty.

5 The Debtor also disputes Mr. Daugherty's claim for the  
6 remaining 80.9 percent of the value of HERA, Highland Employee  
7 Retention Assets. That claim is valued at approximately \$21.2  
8 million.

9 And finally, --

10 THE COURT: Let me stop you. Let me stop you there,  
11 because that's obviously a big, big, big chunk of the  
12 disparity. Remind me. Either you lost on that in Delaware,  
13 or I'm trying to remember, you abandoned it, you somehow had  
14 an adverse ruling in Delaware. Remind me real quick what that  
15 was.

16 MR. UEHLER: We did. We had an adverse ruling. We  
17 brought claims in Delaware as part of Mr. Daugherty's original  
18 pleading in 2017. And those were claims for breach of  
19 fiduciary duty, aiding and abetting breach of fiduciary duty.  
20 Ultimately, Mr. Daugherty was seeking to put back into HERA  
21 the millions of dollars that Highland had taken from HERA in  
22 2013 and then to dissolve HERA. And it's Mr. Daugherty's  
23 position that he is the 100 percent owner of HERA at this  
24 point in time.

25 The Delaware Court of Chancery dismissed that portion of

1 Mr. Daugherty's pleading on *laches* grounds, finding that --

2 THE COURT: Yes.

3 MR. UEHLER: -- Mr. Daugherty should have filed that  
4 claim sooner. We argued that he was excused from the  
5 limitations period because there was an open question in the  
6 Texas courts about whether Mr. Daugherty remained a unit  
7 holder of HERA up through 2016. And that's an argument we  
8 plan to pursue on appeal.

9 To fully respond to your question, I want to note I read a  
10 footnote in the Debtors' opposition that said something like  
11 we've had a year to seek leave to file an appeal of that  
12 dismissal in Delaware. But we don't yet have a final  
13 appealable judgment in Delaware to appeal. That dismissal  
14 remains an interlocutory order. As Your Honor probably knows,  
15 we were in day three of trial on the claims that did survive  
16 the Debtors' motion to dismiss when this proceeding was filed.  
17 So we have not had an opportunity to appeal the dismissal of  
18 what we're calling the HERA 80 Percent Claim, but Mr.  
19 Daugherty intends to exercise those appellate rights in  
20 wherever the appropriate venue may be as this proceeds.

21 THE COURT: All right. Well, you know, courts always  
22 want to be pragmatic, as you know, in situations like this,  
23 3018 estimation proceedings. And my pragmatic view of things  
24 is, while, again, we may have a multi-day trial one day where  
25 you convince me on this \$21 million plus claim, that

1 notwithstanding the Delaware court's dismissal of it for  
2 laches, at the end of the day you ought to get this, it seems  
3 like a pragmatic place to draw the line here today for  
4 purposes of an estimation hearing. I'm not sure how you could  
5 convince me in two hours that this absolutely is likely enough  
6 to prevail that you ought to get to vote the claim.

7 Another area, as long as I'm talking about pragmatic ways  
8 to resolve this issue today, is the post-petition interest. I  
9 have a feeling that's only a couple of hundred thousand  
10 dollars or so. But nevertheless, it's argued here somewhat  
11 extensively that Daugherty ought to get to keep accruing post-  
12 judgment interest on the HERA judgment post-petition because,  
13 you know, it's not really a judgment against the Debtor, it's  
14 a judgment against HERA, and the general 502(b)(2) you can't  
15 accrue post-petition interest, unmatured interest, if you're  
16 an unsecured creditor, ought not to apply. I'm just telling  
17 you right now, that would be a nonstarter here for me today.  
18 Again, I have a feeling that's only a couple of hundred  
19 thousand dollars, right? Maybe it's more than that. It can't  
20 be. Right?

21 MR. UEBLER: That's --

22 THE COURT: Okay.

23 MR. UEBLER: That's correct, Your Honor.

24 THE COURT: So, --

25 MR. UEBLER: So I won't, I won't address that any

1 further.

2 THE COURT: Okay. So we can take that one off the  
3 table.

4 And then the other kind of pragmatic way I view things  
5 today is the attorney fee shifting. Now, you might be able to  
6 piece this together for me and show me that, contractually,  
7 under the indemnification provision, that there is some  
8 component of attorneys' fees that ought to be allowable, but,  
9 you know, to just generally kind of give a common law bad  
10 faith argument here, that I should depart from the *American*  
11 Rule -- you know, if there's no contractual entitlement, if  
12 there's no statutory entitlement -- that's a heavy lift.  
13 Again, you might prevail one day, but for purposes of a  
14 summary voting estimation claim context, I just don't see how  
15 you get there.

16 So, does that help narrow the issues today? I had trouble  
17 thinking how I'm ever going to get to the \$21 million claim in  
18 a summary 3018 context, the breakaway from the *American* Rule  
19 on attorneys fee shifting, and then the post-petition  
20 interest.

21 So if you carve those away, I don't know how close we are  
22 to the \$9,134,000 that the Debtor has proposed, but I guess  
23 we're still a few million away.

24 MR. UEHLER: We're getting closer, but let me respond  
25 to the pragmatic way of dealing with the HERA 80 Percent



1 Claim, which is \$21 million. We don't view that as at all a  
2 nothing amount for purposes of today. I might not convince  
3 you that Mr. Daugherty should be entitled to the entire \$21  
4 million, and I'm not -- I'm not going to try, because I do  
5 recognize that the claim was dismissed and that creates at  
6 least a procedural burden for us.

7 So, one result may be to award Mr. Daugherty a portion of  
8 that claim. But let me move on --

9 THE COURT: Okay.

10 MR. UEHLER: -- to address the fee issue. These are  
11 -- there are 30 different sources of Mr. Daugherty's rights to  
12 fee reimbursement, only one of which is the common law  
13 exception to the *American Rule*. And my thought was to just  
14 briefly outline what it is that we're asking for, break down  
15 Mr. Daugherty's claim, and then ask Mr. Daugherty to testify  
16 very briefly about how he calculated that amount and what out-  
17 of-pocket payments he's actually made throughout the course of  
18 this litigation, to give the Court an opportunity to see which  
19 of the different buckets the fees may fall into and how you  
20 may be able to resolve some or all of those amounts.

21 THE COURT: All right.

22 MR. UEHLER: So, the claim for indemnification and  
23 fee shifting, as I said, it has -- it has three components.  
24 The first, which we focused on in our reply, is the bad-faith  
25 fee shifting.

1 Now, in Mr. Morris's presentation that I expect him to  
2 show today, he'll refer to this as a new argument that wasn't  
3 in our Delaware complaint and was not in the proof of claim  
4 submitted by Mr. Daugherty. That's just not the case. This  
5 was an issue that was presented to the Delaware court in  
6 August 2019, before trial. We laid out why Mr. Daugherty  
7 should be entitled to fee shifting. And that's an issue that  
8 would have been addressed post-trial but for this bankruptcy.  
9 And that's based on the series of events that we laid out in  
10 detail -- probably too much detail for these purposes -- in  
11 our papers about shifting positions in litigation; attempts to  
12 put Mr. Daugherty in jail, which thankfully the Texas  
13 appellate court put a stop to; preventing Mr. Daugherty from  
14 collecting compensation that's rightfully his. All of that  
15 has cost Mr. Daugherty millions of dollars over the last ten  
16 years, and he hasn't recovered a dime.

17 So, the three legal doctrines are the bad-faith exception  
18 to the *American Rule*.

19 The second is contractual indemnification under Highland  
20 Capital's partnership agreement. This is a claim that was  
21 fully briefed on cross-motions for summary judgment in  
22 Delaware, and it was argued to the Delaware Vice Chancellor  
23 and submitted for a decision. The source of Mr. Daugherty's  
24 indemnification claim is Section 4.1(h) of Highland's  
25 partnership agreement, and that's Exhibit 39 in the papers we

1 submitted. I'll just read briefly what that provision is.

2 It states that a partnership -- that is, Highland Capital  
3 -- shall indemnify and hold harmless the general partner --  
4 which is a company called Strand -- and any director, officer,  
5 employee, agent, or representative of the general partner --  
6 again, Strand -- against all liabilities, losses, and damages  
7 incurred by any of them by reason of any act performed or  
8 omitted to be performed in the name of or on behalf of the  
9 partnership -- which is Highland -- or in connection with the  
10 partnership's business -- which is Highland's business --  
11 including, without limitation, attorney's fees and any amounts  
12 expanded in the settlement of any claims or liabilities,  
13 losses, or damages, to the fullest extent permitted by  
14 Delaware law.

15 Now, it was undisputed through summary judgment in the  
16 Delaware case and going I would say close to three years of  
17 litigation that Mr. Daugherty was a covered party under that  
18 provision. In other words, he was an officer, agent,  
19 representative of Strand who could be entitled to  
20 indemnification.

21 Highland admitted in every version of its answer in the  
22 Delaware case that Mr. Daugherty was, in fact, an officer or  
23 an agent of Strand through his resignation from Highland in  
24 2011. But in this Court now, we have Highland claiming that  
25 Mr. Daugherty ceased being an officer of Strand in 2009.

1 And, in fact, just a few hours ago I received a few  
2 documents from Mr. Morris showing that Mr. Daugherty was not  
3 listed as an officer of Strand after 2009. I'm still  
4 processing in my own mind why I'm just receiving these  
5 documents now, after three years of litigation, why Highland  
6 made previous judicial admissions to the contrary, and why we  
7 made it through summary judgment without this issue being  
8 raised.

9 But ultimately, it doesn't matter, because Mr. Daugherty  
10 will prove, consistent with Highland's prior admissions in the  
11 Delaware court, that he is a covered person under this  
12 indemnification clause, because, at a minimum, he was an agent  
13 and representative of Strand through 2011.

14 And he'll also prove that all of the Texas litigation and  
15 what has happened since the Texas litigation began in 2012  
16 really stems from what Mr. Daugherty did or did not do related  
17 to Highland's business. So the nexus requirement under the  
18 indemnification agreement is satisfied.

19 Again, this is an issue that was fully submitted to the  
20 Delaware court, but no decision was issued.

21 The third component of our reimbursement claim is fees on  
22 fees and the idea that, to the extent Mr. Daugherty is  
23 successful in establishing his contractual indemnification  
24 rights, he is also entitled to reimbursement for the cost of  
25 proving his entitlement to indemnification.

1 Now, if you put all of these three buckets together,  
2 you're left with \$7.8 million. That's not an insignificant  
3 amount, and it's -- it's more than the \$9 million that  
4 Highland has offered. And if any line is going to be drawn  
5 today, we submit that that line should be drawn to include  
6 this \$7.8 million for -- based on the law that we've provided  
7 in our papers and based on the facts that we have demonstrated  
8 and the exhibits and Mr. Daugherty's declarations and the  
9 brief testimony you'll hear today about the litigation that  
10 Mr. Daugherty defended and what he's had to deal with for the  
11 last ten years.

12 I'm going to stop there. Do you have any questions at  
13 this time about the fee reimbursement portion of the claim,  
14 which is \$7.8 million?

15 THE COURT: No questions on that.

16 MR. UEHLER: Okay. The one aspect of Mr. Daugherty's  
17 claim that we did not have an opportunity to talk about yet is  
18 what we're calling the 2008 Tax Refund Claim. And that's --  
19 that's an amount of \$2.6 million in Mr. Daugherty's proof of  
20 claim, and that amount should be allowed in full for voting  
21 purposes.

22 Now, I'm going to let Mr. Daugherty explain the factual  
23 background of this claim, but the short version is that Mr.  
24 Daugherty received compensation in 2008 from Highland Capital,  
25 and he received that compensation as an employee and in the

1 form of a tax refund. The IRS is still in the process of  
2 auditing Highland's tax treatment for 2008, so there's a  
3 possibility that in the future the IRS will claw back Mr.  
4 Daugherty's 2008 compensation that was approximately \$1.4  
5 million. And with that would come interest and penalties that  
6 we estimate could total \$2.6 million.

7 So, yes, it's correct that as of today there is no  
8 definite liability to the IRS. This is a contingent liability  
9 and we don't know what the total amount may be.

10 Now, if Highland hadn't come out and said in its adversary  
11 complaint that it's basically refusing to acknowledge any  
12 potential liability for this issue, we might not have a  
13 current claim to put before Your Honor today. But the fact  
14 that Highland has already come out and said it has no  
15 intention of either covering future tax liability or giving  
16 Mr. Daugherty substitute employee compensation for 2008 in the  
17 event that the IRS were to take that away, we think presents a  
18 live claim that Mr. Daugherty has sought to preserve through  
19 this proceeding.

20 He's not seeking a cash payment, ultimately. All he's  
21 looking for is some agreement by Highland to assume this  
22 liability or to put the money in escrow in the event of a  
23 clawback. But for voting purposes, we're asking that the full  
24 potential of \$2.6 million for this claim be permitted.

25 And, you know, you asked earlier about why \$9 million

1 isn't enough. It's a matter of degree. Mr. Daugherty is a  
2 creditor and he is entitled to a say in the plan, and that's  
3 what we're trying to establish today. And we think it's  
4 important that Mr. Daugherty have a voice, and that voice  
5 carry some weight, to enable Mr. Daugherty to have a seat at  
6 the table, have a voice in the plan.

7 I think the more that this Court would be willing to  
8 permit at this summary stage of the proceedings, where there's  
9 a presumption in favor of claims, even if they're disputed --  
10 I think that will be my only reference to 3018 law today -- we  
11 submit the Court should err on the side of more rather than  
12 less.

13 Mr. Morris and I had discussed doing mutual openings  
14 followed by Mr. Daugherty's testimony. I think now would be a  
15 good time to turn this over to Mr. Morris before we call Mr.  
16 Daugherty, if that works for you.

17 THE COURT: All right. That works for me. Mr.  
18 Morris?

19 MR. MORRIS: Good afternoon, Your Honor. John  
20 Morris; Pachulski Stand Ziehl & Jones, for the Debtor.

21 I really do appreciate Your Honor's preliminary  
22 projections of where we are. I had prepared a rather  
23 extensive presentation for the Court that I'm actually going  
24 to dispense with because I'd like to focus on the narrow  
25 issues that Your Honor has identified.

1 I want to begin by apologizing to the Court for having to  
2 engage in this process. We have tried very hard, I think as  
3 Your Honor has perceived, to fully resolve this particular  
4 motion. At the outset of the process, the Debtor readily  
5 acknowledged the validity of Mr. Daugherty's judgment in the  
6 amount of \$2.6 million, plus interest, through \$3.7 million.  
7 That's not an amount in dispute today. That won't be in  
8 dispute as a matter of his claim. We have admitted it, we  
9 acknowledge it, and it will be allowed in that amount.

10 We went one step further in the hope that it would resolve  
11 this motion by agreeing to allow the maximum amount that Mr.  
12 Daugherty's expert was prepared to testify to on the petition  
13 date for these promissory estoppel and other related claims.  
14 The expert at that time testified to a range of somewhere of  
15 four to about \$4-1/2, \$5-1/2 million, and that's how we  
16 arrived at the \$9.1 million.

17 Let me make it clear, Your Honor, that if the parties are  
18 unable to resolve this, the Debtor will contest that. But for  
19 this purpose, we felt by giving it one hundred percent  
20 validity, notwithstanding the fact that we will contest it on  
21 the merits if needed, that that was a fair resolution, that  
22 that was a very simple way to get this done. Unfortunately,  
23 we were not successful.

24 We're here today not because we like to litigate but  
25 because we're doing our best for these estates and its



1 stakeholders, including all unsecured creditors. Mr.  
2 Daugherty is entitled to a seat at the table. We have given  
3 him a seat at the table. He now sits with the third largest  
4 general unsecured claim that is going to be allowed, and that  
5 follows from the settlements with the Crusader and Redeemer  
6 Funds and with Acis. At \$3.7 million, he's already got the  
7 third largest allowed claim. And we're prepared to give him a  
8 vote of over \$9 million for this purpose. But what we don't  
9 do and we don't think our fiduciary duty will allow us to do  
10 is give him credit for claims that, in our view, clearly have  
11 no merit.

12 So let me just go through them very quickly. The first is  
13 a claim for over \$20 million arising from the assertion that  
14 somehow he is now entitled to one hundred percent of the HERA  
15 assets. Mr. Daugherty -- I don't know Mr. Daugherty. I have  
16 no animosity against Mr. Daugherty. One of the things that I  
17 and my colleagues and the board have dealt with throughout  
18 this case is that there's so much baggage here, Your Honor.  
19 And it's -- this has been our burden, this has been our  
20 challenge, is to cut through this and try to get to the  
21 merits. What's really fair and what's really reasonable? And  
22 it's what we try to do in our settlement negotiations and it's  
23 the only reason we're here today, because we thought we made a  
24 generous offer.

25 And Mr. Daugherty is well within his rights to say, Not

1 good enough. But we think, we think we've offered enough.  
2 When we think of his claim to a hundred percent of the HERA  
3 assets, he will testify, I assume, that when he left he had  
4 19.1 percent. He never thought he had more than 19.1 percent.  
5 Nobody ever promised him any more than 19.1 percent. His  
6 expert in Delaware was prepared to testify on damages based on  
7 19.1 percent. He actually pursued these claims, Your Honor,  
8 not just in Delaware, he actually started in Texas. He knew  
9 about this in 2013, right when it happened. It was part of  
10 his Texas action, and it was rejected. And you heard -- and  
11 we heard Mr. Uebler allude to it, right? So then he goes to  
12 -- he goes to Delaware and he tries to bring them again, maybe  
13 three years later, in 2017. These are undisputed facts, Your  
14 Honor. And they get dismissed.

15 Now, the interesting thing is, if you look at our Exhibit  
16 T, it's the Delaware -- I think it's V, actually. It's the  
17 Delaware court's order dismissing the claims. It didn't give  
18 a reason. But if you go back to Highland's brief, you'll see  
19 there's a multitude of reasons.

20 And when they use the phrase *laches*, Your Honor, it  
21 doesn't mean that Mr. Daugherty was found to have sat on his  
22 hands. The Delaware Chancery Court is a court of equity, and  
23 so they use equitable principles. What really happened is  
24 that the Delaware court found that the claim was barred by the  
25 statute of limitations because the cause of action arose in

1 2013, Mr. Daugherty knew that, and he didn't bring his action  
2 until 2017, more than, you know, more than the three-year  
3 statute of limitations.

4 But you'll see in the Debtors' brief, which we've cited,  
5 that Highland actually asserted a multitude of reasons why  
6 this claim should be barred. And we don't know exactly why  
7 the Chancery Court did it, but he's going to have to deal not  
8 just with *laches* -- which is the word, the phrase that's used  
9 for statute of limitations -- he's going to have to deal with  
10 promissory estoppel. He's going to have to -- not promissory  
11 estoppel; just estoppel generally. *Res judicata*. It's all in  
12 there. There is no chance he's going to succeed on this claim  
13 on appeal. And it's \$21 million, and he shouldn't be given  
14 the right to vote any portion of it. That's number one.

15 Number two, with respect to the tax claim, what's really  
16 interesting here, Your Honor, is that there is no claim that  
17 Highland has breached any duty today. There's no claim that  
18 he's breached a contract -- that Highland has breached a  
19 contract. There's no claim that Highland has committed any  
20 tort.

21 What happened was, back in 2008, Mr. Daugherty, according  
22 to him, was promised \$1.475 million as compensation. There  
23 was an agreement. That compensation was delivered to him not  
24 in cash but in the form of an allocation of losses from the  
25 Highland partnership. Mr. Daugherty was a limited partner.

1 He got over \$4 million in losses. Those losses were recorded  
2 on a K-1 that's going to be admitted into evidence. And Mr.  
3 Daugherty took those losses and shielded his income and his  
4 gains in other places in his life, I don't know. But the  
5 benefit of that was \$1.475 million.

6 Mr. Daugherty never says that Highland breached its  
7 agreement. He never says that Highland failed to perform. He  
8 never says that Highland did anything wrong. All that's  
9 happened here, Your Honor, is that the IRS is conducting an  
10 audit of Highland's 2008 taxes, including these losses. Okay?  
11 So, as we sit here today, Highland owes zero. There is no  
12 basis to give him any claim for voting purposes. There's  
13 just, there's no reason. It may be -- later that he should be  
14 getting. And what I would find to be very reasonable is that  
15 we are here on the merits and he asked the Court to establish  
16 a reserve. I think it's almost what Mr. Uebler asked for,  
17 that you establish some type of reserve for a contingent  
18 claim. You know, that would make sense. But that's not why  
19 we're here today. We're here to say whether or not he's  
20 allowed to vote this claim, a claim where Highland today  
21 admittedly owes nothing.

22 So, you know, I think that that dispenses with the tax  
23 issue.

24 The last one is this claim for attorneys' fees. I will  
25 tell you, Your Honor, I didn't have a good weekend myself this

1 past weekend because I had to flip through 2,600 pages of Mr.  
2 Daugherty's appendix. I don't have the experience here on  
3 (garbled), but I waded all through that stuff. And Mr. Uebler  
4 and I have a very cordial relationship, which I'm grateful  
5 for, and we were talking on Friday, and he said, Why do you  
6 guys say that he resigned from Strand in 2009? And I said, I  
7 don't know where I picked it up, but that's what I put in  
8 here. And he said, But that's not right. And I asked him, I  
9 said, If you have a letter of resignation, you have something,  
10 give it to me. And he didn't give me anything.

11 But last night -- and this is why it came up at the last  
12 minute. This is why it came up at the last minute. Last  
13 night, they filed a declaration from someone named Mr. Covlin  
14 or Colvin, who I hadn't heard of but who apparently was the  
15 Highland general counsel back when Mr. Daugherty was at  
16 Highland. And you'll see in Paragraph 5 of his declaration he  
17 says, I don't have a memory of Mr. Daugherty resigning from  
18 the Strand board before he left in 2011. And I said to  
19 myself, I don't -- I don't understand why people can't --  
20 there's got to be a letter of resignation, there's got to be  
21 something to prove the fact.

22 And so I called Highland this morning and I said, When did  
23 he resign? Do we have anything? I said, I want anything you  
24 can find. And we're going to put into evidence, Your Honor,  
25 two different exhibits, one of which, ironically, is a

1 Secretary's Certificate that was signed by Mr. Colvin. And it  
2 was signed in early 2009, where he certifies to the Strand  
3 board resolutions, which set forth the officers of the  
4 company, and Mr. Daugherty is not on it.

5 The second document, Your Honor, is even more significant.  
6 It is a periodic statement of the officers of Strand that are  
7 listed by individual with their title and each person signs  
8 it. And what the evidence is going to show is that Mr.  
9 Daugherty signed his statement as either Secretary or  
10 Assistant Secretary every single time from 2006 until about  
11 March of 2009. And then in the mid-2009 document, consistent  
12 with Mr. Colvin's certificate, Secretary's Certificate, he's  
13 no longer there, but Mr. Colvin was still signing all of his  
14 papers without Mr. Daugherty.

15 So I don't really know the record of Delaware. I'm doing  
16 the best I can, Your Honor. But I don't think that there's  
17 going to be any dispute at the end of all of this that Mr.  
18 Daugherty ceased to be a director or an officer of Strand  
19 sometime between March and May 2009.

20 Why is that significant? Because that is what he hangs  
21 his hat on in order to establish his claim for  
22 indemnification. We don't think there is any claim because he  
23 was no longer an officer of Strand after early 2009.

24 Even if he was, Your Honor, everything that he's seeking  
25 indemnification for now arose after he left in 2011. He's

1 trying to use the indemnification provision in order to  
2 recover his attorneys' fees, attorneys' fees that were  
3 recovered [sic] after 2011, that were incurred solely for his  
4 own personal benefit.

5 It's not as if he brought a claim derivatively on behalf  
6 of Highland. Instead, he pursued litigation where he would  
7 recover damages, where he was the plaintiff. In fact,  
8 Highland was a defendant, is a defendant in a lot of this  
9 litigation. I don't understand how anyone can fairly read an  
10 indemnification agreement that requires the indemnitee to act  
11 on behalf of the indemnitor, and that somehow suing an  
12 indemnitor is consistent with the concept of indemnification.  
13 It just, it doesn't make sense. He wasn't there. The fees  
14 accrued after the fact. There's just, there's no basis for  
15 it.

16 And fees on fees, that other concept that they're building  
17 upon, is fees on top of fees to pursue indemnity. So if the  
18 indemnity doesn't work, fees on fees don't work either, Your  
19 Honor.

20 And I'll just very briefly, the fee shifting thing, I  
21 heard Your Honor's point. But, again, I bear no ill will  
22 toward Mr. Daugherty, but a fair reading of the record says  
23 that nobody comes to this, none of those parties come here  
24 with unclean hands. Mr. Daugherty was found to have breached  
25 his fiduciary duty. The only judgments that have been

1 rendered by any court so far have him paying Highland 2.8 and  
2 Highland paying him 2.6. He complains that so many of  
3 Highland's causes of actions were dismissed. We could do a  
4 scorecard if you think it's necessary showing that Daugherty's  
5 claims and causes of action were dismissed.

6 I heard Mr. Uebler talk about, you know, the appellate  
7 court reversing the criminal issue. But you know what, Your  
8 Honor? The trial court actually agreed with Highland there.

9 So, again, fee shifting is an extreme remedy, the absolute  
10 extreme remedy in the United States. And, again, not to cast  
11 aspersions against Mr. Daugherty, but nobody comes here with  
12 unclean hands. There's no basis to do it in this particular  
13 case.

14 So we think \$9.1 million was very fair, Your Honor. We  
15 think the undisputed facts are going to show that the balance  
16 of these claims are without merit at the merit hearing, but  
17 certainly for this purpose, Your Honor. He doesn't -- he  
18 doesn't come close to the -- even the low bar that's needed  
19 for voting purposes.

20 Thank you, Your Honor.

21 THE COURT: All right. Thank you. Mr. Uebler, you  
22 can call your witness.

23 MR. UEHLER: Thank you, Your Honor. Mr. Daugherty,  
24 are you available?

25 MR. DAUGHERTY: Yes. I am here.



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1 THE COURT: All right. Mr. Daugherty, I'm going to  
2 swear you in.

3 PATRICK DAUGHERTY, CREDITOR PATRICK DAUGHERTY'S WITNESS, SWORN

4 THE COURT: Thank you. You may proceed.

5 (Note: Witness muffled throughout testimony.)

6 DIRECT EXAMINATION

7 BY MR. UEHLER:

8 Q Good afternoon, Mr. Daugherty.

9 A Good afternoon.

10 Q I'd like to begin by asking you a few questions about what  
11 we call the fee reimbursement portion of your claim. Would  
12 you explain to the Court what out-of-pocket payments are  
13 included as components of that claim?

14 A As far as category or number?

15 Q What's -- however you'd like to address it. Maybe  
16 categories and then number.

17 A Sure. There's (inaudible) I'm pursuing for the costs  
18 incurred pursuant to executing my release under Strand. And  
19 just to be clear, Strand reimburses not just for officers and  
20 executives, but also for representatives in any case, which is  
21 consistent with what Highland said in Delaware on multiple  
22 occasions.

23 Then there are fees on fees, which is, under Delaware law  
24 as I understand it, I'm entitled to the fees that I had to  
25 incur in order to gain -- in order to get Highland to make

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1 good on its promise in that original partnership agreement  
2 with Strand and Highland.

3 And then, let's see, indemnification, fees on fees. And  
4 then there's my claim for the fee-shifting. And I certainly  
5 understand the concept of the *American Rule* and the judge's  
6 point, and (inaudible), but what you have to remember here is  
7 there was a crime fraud finding in Delaware which caused  
8 Highland to lose its attorney-client privilege where we  
9 discovered that its in-house counsel -- Scott Ellington, Isaac  
10 Leventon, Thomas Surgent -- working with outside counsel,  
11 basically provided prima facie evidence of a fraud. So this  
12 moves far beyond just, you know, two parties going at it.  
13 This has been, again, that Highland sued based on, frankly,  
14 lying to that very same judge in Dallas County Court that Mr.  
15 Morris referred to. And not only the judge, the jury, where  
16 we have (inaudible) law from the various outside firms  
17 summarizing what these people -- you know, again, I generally  
18 refer to them as the cabal. But this just goes far beyond two  
19 parties having a good-faith battle with one another. This  
20 turns into, frankly, fraud. And I've had -- and by the way,  
21 Judge (inaudible) in Delaware Chancery Court, once he made  
22 this ruling, said that he sees evidence of fraud going all the  
23 way back to December of 2013, when Highland allegedly set up  
24 an escrow account on my behalf, and it never happened. And  
25 not only did it not happen, but again, they told Judge Hoffman

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1 down in Texas and they told the jury that it did happen. And  
2 (inaudible) and everyone else on multiple occasions that  
3 (inaudible), only to find out in December of 2016, after all  
4 appeals -- the appeal process was exhausted, that most of that  
5 money was never put into escrow. Again, they never  
6 (inaudible) Dondero (inaudible). And (inaudible), his  
7 counsel. But that what any of those assets were there would  
8 have been shifting -- and when I say they, I mean Scott  
9 Ellington and Isaac Leventon -- while they (inaudible) my  
10 house in Dallas, while they were claiming that I had  
11 (inaudible) and were seeking turnover in Dallas, while they  
12 were terrorizing my family and sending the cops on the house,  
13 they had all those assets shifted to themselves, kept quiet  
14 about it, and then proceeded to order me to make a \$3.1  
15 million (inaudible) for their attorneys' fees.

16 I don't think a fraud can get more absolute than that.  
17 And so that is, you know, that's my quick summary on the  
18 nature of those fees. And, again, I know this (inaudible),  
19 but this is just a little bit different than your, you know,  
20 run-of-the-mill situation.

21 Q Mr. Daugherty, you mentioned indemnification in your  
22 answer. Did Highland or its affiliates assert claims against  
23 you in Texas state court based on your conduct as a Highland  
24 employee?

25 A They did. I mean, I was accused of having (inaudible), of

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1 committing securities fraud violations, of not executing my  
2 duties to investors, when in fact I was doing just the  
3 opposite and (inaudible) protecting them from being defrauded.  
4 And some of those investors are on the Creditors' Committee  
5 today, as the Crusader and Redeemer Committee, is Eric Felton,  
6 (inaudible) Montgomery. Those were the people I was trying to  
7 protect from -- and by the way, at the end of the day, I felt  
8 like I protected Highland, too, to keep them from doing  
9 something stupid that could end us in this -- all of us in the  
10 situation where we are today.

11 So I was executing my duties as a portfolio manager. I  
12 was -- and by the way, that carried all the way through to  
13 January or February of 2012, after I left, because what Mr.  
14 Morris didn't tell you is in Mr. Colvin's affidavit I was  
15 enlisted by Highland to come to an exit interview after I had  
16 resigned, where they wanted to hear two categories of topics.  
17 One, the performance of the individual (inaudible) in the  
18 Crusader Fund, because Highland had lied to them (inaudible).  
19 They wanted to hear from me what I thought its true value was.  
20 One of those investments was Cornerstone, which we're all  
21 familiar with.

22 And then the other category of topics that they wanted to  
23 discuss with me was (inaudible) leaving Highland. And that  
24 included the timing, (inaudible) efforts. Money was being  
25 thrown at me, or offered to me, I should say, directly from

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1 Dondero, from Cornerstone, to pay me a (inaudible) in order to  
2 seek releases for Highland.

3 So, you add all these things up together, and I was  
4 performing my duties as their portfolio manager and as a  
5 fiduciary that basically superseded any duty that I had to  
6 Highland itself when it came to those clients, which was my  
7 fund, Crusader, that I managed and that ultimately the  
8 beneficiaries, the investors, led by, as I said, one of their  
9 UCC members, Eric Felton, (inaudible) at the time, who now  
10 leads the Crusader entity.

11 Q Mr. Daugherty, with that background about the different  
12 bases for your theory (inaudible) claim, could you quantify it  
13 for us, how you reached \$7.8 million?

14 A Well, the total fund, for the total 7.8, the answer is  
15 yes, I could break it down into individual components if it  
16 would be helpful to the judge because I believe the -- I  
17 believe the indemnification part of that, which the judge  
18 seemed to have issues with, was around 1.5, if I remember  
19 correctly. The rest of it was fees on fees, and defending  
20 myself against false accusations from the Debtor, and  
21 executing (inaudible) to defend those investors from --  
22 (inaudible) that they were getting ripped off by Highland, by  
23 Dondero.

24 Q Are there any other components to your -- the amount  
25 that's represented in your fee claim?

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1 A It's fees on fees. I think we touched on that. So that's  
2 related to the (inaudible).

3 Q You're -- you're saying that the claim included a  
4 reference to IRA penalties and --

5 A Oh, yeah. So, you know, when you have to proceed like  
6 this, and I know I've been presented as this rich greedy  
7 person, but there's a reason why Highland was wanting to get  
8 garnishment and wanting to seize my assets with the constable,  
9 because I got (inaudible) fighting this. And Judge Jernigan,  
10 I was in your case on another matter and you asked why there's  
11 not counsel, it's because I didn't have the money. And so one  
12 of the things I had to do was cash in my IRA, my wife's IRA.

13 Q What's --

14 A I had to take a mortgage on my house. I had -- with  
15 interest on that. And with penalties on the IRA. I did not  
16 (inaudible) -- I did not -- I hate this. I hate talking about  
17 this. Is that enough?

18 Q I want to talk briefly about this tax refund claim for  
19 2008 and the basis for it. What -- what is this tax refund  
20 that you received in 2008?

21 A (inaudible). In 2008, and I put it in a page in my  
22 declaration, Highland was in trouble (inaudible) of the  
23 crisis, you know, the various -- and we had talked about our  
24 credit facility with our banks, led by Bank of America  
25 (inaudible), but they were unsecured. So what that's -- the

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1 way it's drafted, and they wanted to get secured. In the  
2 process, I was having negotiations, which (inaudible) into  
3 2009. They were concerned that money was being siphoned out  
4 of Highland while we were in breach of our credit facility.  
5 Initially -- initially, they thought all the partners were  
6 taking money out, and after getting their -- after getting  
7 their forensic accountants in there from FTI, they discovered  
8 that the only people taking money out was Dondero and Okada,  
9 under a guise of quote/unquote repaying a loan to themselves.

10 So, in the heat of all that, there were two things that  
11 came from that. One, they shut down all the money going out  
12 of Highland and they closed (inaudible). We had to reduce our  
13 headcount by 20 percent. We also had to reduce our costs, you  
14 know, our outgoing costs, as you would expect when you're in  
15 this type of situation.

16 Well, the problem was there wasn't enough money to pay the  
17 cash element of bonuses that were coming due in February of  
18 2009 for the work that we (inaudible), you know, operate for  
19 the year 2008. The way it worked at Highland, and still does  
20 apparently, the employees work the full year, and then in  
21 February of the following year they get a compensation  
22 benefits letter that says, Here's what your bonus is. Here's  
23 what your tax bonus is going to be. It's going to be paid out  
24 in installments, call it February or August, February and  
25 August of the subsequent years. And then there would be some

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1 type of deferred compensation and then some type of listing of  
2 the value of the (inaudible). So we got lunch generally every  
3 day, we had healthcare costs paid for, we had life insurance.  
4 And so we (inaudible) out all these things (inaudible).

5 And I think what you're asking in your question is, Where  
6 did the tax refund come in this? Well, historically, we would  
7 -- we would have got a cash bonus in that particular, you  
8 know, document that I mentioned. But (inaudible) pay cash  
9 bonuses beyond a *de minimis* amount. Dondero and, I believe,  
10 Mark Patrick in the tax groups and Rick Swadley, and there's  
11 another one, Jennifer Blumer, I think, and Michael Collins,  
12 they called all of us into the conference room and they said,  
13 We're going to pay your cash bonuses, but we're going to have  
14 to do it by making this election with the IRS.

15 And, frankly, none of us really understood what it was.  
16 It was very convoluted. But when we got our February 2009  
17 award letter, and I think that's an exhibit in here somewhere,  
18 it says very clearly -- in my case, anyway -- (inaudible) tax  
19 refund, \$1.475 million. And then it says, You're going to get  
20 this -- and I'm paraphrasing -- but, You're going to get this  
21 amount, but to the extent that you don't get this amount, we  
22 will provide you, you know, Highland will provide you  
23 substitute compensation.

24 So it was very important that -- to take the place of what  
25 had (inaudible) cash bonus, but it was compensation through



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1 and through. And when you hear Mr. -- Mr. Morris, I'm sorry,  
2 go on about me getting \$4 million in the loss, well, I did get  
3 (inaudible) that had a \$4 million loss. As the IRS  
4 interpreted it, they only netted, I guess, accepted it, the --  
5 they had the number equivalent at roughly 1.1.

6 But the point in all this is that was the method that  
7 Dondero and the tax team had concocted to generate the funds  
8 for Highland, its separate obligation, this is a compensation  
9 of benefits letter that I got.

10 And we understood the situation that Highland was in and  
11 we were willing to live with that. Where I think things went  
12 bad -- and by the way, this has been dragged out forever, Your  
13 Honor. I've talked to Mr. Stewart about it. I informed the  
14 IRS, tried to settle it. And I know (inaudible) probably  
15 never (inaudible), I'm more than willing to work with the  
16 Debtor to get it settled. But what I want, and I don't know  
17 how this works in bankruptcy, Your Honor, I -- I've got a  
18 claim, so I filed the claim, because if you don't file the  
19 claim, you lose it. Right? And then what happens is I'm  
20 (inaudible) the Debtor. The Debtor (inaudible) as an  
21 adversary, said, We're going to equitably subordinate this  
22 because this is equity in nature. And at one time, the method  
23 of payment that was concocted by the Debtor (inaudible) was,  
24 the compensation agreement is separate and apart from that,  
25 and that stands. And neither I nor any of the other guys that

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1 got this are looking for a windfall. And I don't know how you  
2 vote it. I mean, if the Debtor had said, We're just going to  
3 assume this like a lease contract, I wouldn't be in here  
4 asking you to put a number on it. But what I got was an  
5 adversary saying, We're not going to pay this. We're going to  
6 go equitably subordinate this, even if you're trying to, you  
7 know, get it reimbursed through the partnership. So that  
8 forced me to bring it to you, Your Honor, and try to put a  
9 number on it.

10 Q Mr. Daugherty, during your time with Highland Capital, did  
11 you receive cash distributions from Highland in your capacity  
12 as a limited partner of Highland?

13 A That's a very important point. These K-1's that -- there  
14 were two kinds of partners at Highland. There were the real  
15 partners, Jim Dondero and Mark Okada, who referred to  
16 themselves as founding partners, and then there were the  
17 subclass of partners, really, we kind of -- we called  
18 ourselves profit centers partners because we had a place in  
19 the partnership but we weren't allowed to get any  
20 distributions.

21 So whenever you see a K-1, we didn't get any of that  
22 money. All right? That money stayed in the partnership or  
23 went to Mark and Jim. What we had was what's called a  
24 (inaudible) and a buy-sell agreement that were attached to the  
25 partnership which -- that basically we didn't get any

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1 (inaudible) distributions or income from this, but what we got  
2 was at the end of that time we could go and terminate it and  
3 say, Pay me out now, and at that point it would be valued.  
4 And so in my case, when I left, the value that they offered me  
5 was \$199,000. For all, for all those years of service. And  
6 so to answer your question, no, I didn't get any money from  
7 it.

8 Q Thank you. I want to ask you just a few questions about  
9 the HERA 80 or 81 Percent Claim that they were referring to.  
10 At a high level, what is HERA?

11 A Well, this goes back to the same situation I was talking  
12 about before as it related to this 2008 tax refund. As I  
13 mentioned, we were losing employees. People were leaving. I  
14 mean, we started the year in 2008 with 22 partners and we were  
15 down to I think 11 or 12 at the start of 2009. The banks were  
16 just, the banks were furious and they were talking about  
17 liquidating us and getting a trustee put in place because they  
18 were furious to find out that Dondero and Okada had taken out  
19 money. It was around \$20 or \$30 million.

20 Once we got through that hurdle, I said, Listen -- because  
21 I became, by the way, Your Honor, I became Highland's kind of  
22 advisor, restructuring person. I did that for Highland as  
23 (inaudible) usually us on the same side of the table as the  
24 banks on, you know, I was head of distressed and private  
25 equity at Highland, so I -- distressed debt and go and

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1 negotiate at the Debtors' beck and call.

2 In this position, I moved over to the other side of the  
3 table and I was negotiating on behalf of Highland with a lot  
4 of my colleagues who were in the distressed community, which I  
5 generally refer to as knuckle raps. But they knew me, and I  
6 knew them, and we sort of -- and we had trust between each  
7 other, especially given what had just happened. And they  
8 agreed to set aside HERA, which is an acronym for Highland  
9 Employee Retention Assets, and it was a fund where they set  
10 aside, I don't know, around \$20 to \$25 million of assets that  
11 would then be used to incent employees to stay. And it had a  
12 three-year cliff vesting. And what happened is they didn't  
13 have any money left. Well, the employees that remained got  
14 reallocated their shares. So, contrary again to what Mr.  
15 Morris said, there was an agreement that the ownership  
16 interest would go up as we stayed through and helped right-  
17 size the ship.

18 Q Mr. Daugherty, why is it that you contend now that you're  
19 the one hundred percent owner of HERA?

20 A Well, this goes back to bad faith. And I sympathize with  
21 the judge, I did give you a ton of information, but this has  
22 just been nine years of terrorizing, you know, that I've had  
23 to contend with. And if you look back to December of 2012,  
24 January of 2013, a gentleman named (inaudible) had sent  
25 Dondero an email saying, Here's how you can pay everybody

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1 except for one. And (inaudible) board member on HERA. And on  
2 HERA's board, there's affiliates of this guy. Ellington and  
3 John (inaudible). It's basically Jim's buddies, Jim Dondero's  
4 buddies, not (inaudible). So he sent me this email saying,  
5 Here's how you can pay everybody but one. So we get into  
6 January 2013, and Highland purports to make an offer to buy  
7 out everybody at HERA except me. Well, guess what. In the  
8 middle of January, all of the board resigns, without having  
9 anyone change the shareholder unit to the LLC and without  
10 taking board action that would allow Highland Capital to be an  
11 assignee of these units.

12 There is a reason for this. We go back to why HERA was  
13 created. The banks were furious about Mark and Jim taking  
14 money and the banks wanted to take a secured interest in all  
15 things Highland. So what we agreed is we would put it in a  
16 (inaudible), in an entity referred to as HERA, and Mark and  
17 Jim and Highland would not be able to participate in it. So  
18 they are not recipients of the preferred units, and the only  
19 way it can ever become (inaudible) preferred units is for  
20 there to be action taken, specific action take to amend the  
21 documents, or by the board, if they remain. And in my Texas  
22 trial, this issue did come up, and Thomas Surgent said that no  
23 such action was taken. Thomas Surgent is Highland's chief  
24 compliance officer. (inaudible). I'm getting a little --

25 Q I'm just going to ask two questions briefly before we turn

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1 this over to Mr. Morris. How did you calculate the value of  
2 \$21 million for this HERA 80 Percent Claim?

3 A I took what -- Highland took my own expert report and made  
4 it attorneys' eyes only in Delaware. So my lawyers could  
5 never sit down with me and explain it to me. So all I could  
6 go off of was what I saw at the trial. And it was only the  
7 last two or three days where Mr. Morris, he did file the  
8 entire expert opinion of my expert where I could see all the  
9 components.

10 So, at the time, I took what my expert was saying was the  
11 value of my expert assets, I think as of December 2016. And  
12 since I knew that that was based on 19.1 percent, I divided  
13 that number by 19.1 percent, came up with a total, and then  
14 re-multiplied by 80 -- 80.1 percent, to find out what that  
15 delta was.

16 Q Given that these claims were dismissed on procedural  
17 grounds in Delaware, and having heard Judge Jernigan's  
18 comments earlier about this claim and its value for voting  
19 purpose, what do you as the Claimant believe a fair allocation  
20 of this claim is for voting purposes?

21 MR. MORRIS: Objection to the form of the question.

22 THE WITNESS: Listen. I've --

23 THE COURT: Overruled.

24 THE WITNESS: -- been around Judge Jernigan --

25 THE COURT: Overruled. You can answer.

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1           THE WITNESS: I've been around Judge Jernigan long  
2 enough to know that she means what she says and she says what  
3 she means. And I understand her reservations on this, too.  
4 But I will say there are some mitigating factors here that  
5 Highland, in Texas and all the way through the Texas Court of  
6 Appeals, they were saying (inaudible), this is a double  
7 counting, this is a double counting. That (inaudible) up for  
8 reconsideration in a court -- Texas Court of Appeals  
9 (inaudible), and the Court refused to see it that way. Then  
10 when we went to Delaware, they(inaudible), they said, Oh, no,  
11 we have cures. There's *laches*, statute of limitation is  
12 operating against them.

13           And so my reaction to that was, How am I supposed to be in  
14 an action based on my share ownership when you're saying I  
15 don't even own my share ownership and it's not determined  
16 until December 2016?

17           It is true that Judge (inaudible) said you should have  
18 basically filed a placeholder. As I've learned a little bit  
19 about Delaware law, I don't think that is consistent with  
20 Delaware law, but it is what it is. And if Judge Jernigan  
21 (inaudible) position. So if she's right to say that I could  
22 bring these claims over (inaudible) you know, contains, you  
23 know, a different item. And so you're asking me whether  
24 (inaudible) advice to the judge? I would say that I'm more --  
25 I'm more than agreeable to whatever she decides. I just want

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1 to know -- her to know why I'm here and what this is about,  
2 that this is not frivolous, but if it doesn't end with plan  
3 voting as she sees it, then I can live with that.

4 Q Thank you, Mr. Daugherty.

5 THE COURT: All right. Thank you. Pass the witness.  
6 Mr. Morris?

7 MR. MORRIS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MORRIS:

10 Q Good afternoon, Mr. Daugherty.

11 A Hello.

12 Q My name is John Morris with Pachulski Stang and I'm here  
13 on behalf of the Debtor. We've never spoken before, have we?

14 A Yeah, we have.

15 Q Yeah? I don't --

16 A Yes.

17 Q I don't recall. But it's --

18 A You were in in-person court in Judge Jernigan's court in  
19 January and February and I think we spoke.

20 Q Okay. Well, forgive me for not recalling that particular  
21 detail. I just wanted -- just a few questions, sir. On the  
22 tax issue, according to your testimony you were promised  
23 \$1.475 million approximately in connection with your 2008  
24 compensation; do I have that right?

25 A That's correct.



1 Q And I understand your testimony that it was Highland's  
2 idea, but you agreed to the method of compensation in the form  
3 of an allocation of Highland's partnership losses, right?

4 A I would not say that. There was no -- it was dictation,  
5 not an offer and acceptance.

6 Q Well, you did accept -- you did accept the benefit of the  
7 allocation of the Highland losses on your 2008 tax returns,  
8 right?

9 A I -- I don't know if accept is the right answer. I sent  
10 my K-1 in with my tax return, and as I clearly admit, there's  
11 approximately \$4 million of losses that are allocated to me  
12 via the K-1 that they could use in the computation of my  
13 taxes.

14 Q Okay. So it's fair to say, then, that the manner in  
15 which, or I think the word that was used in your papers, the  
16 method by which you were compensated was through the  
17 allocation of a portion of Highland's losses; is that right?

18 A That is wrong. I was compensated that said you're going  
19 to get 1.475. If you don't get 1.475, we will provide  
20 substitute compensation. What you're confusing is the manner  
21 in which Highland decided to try and fund the obligation, and  
22 I just don't think it's right to conflate the two.

23 Q Well, Highland did fund the obligation through the  
24 allocation of losses to you; isn't that right?

25 A It is not. As I said, I got the \$4 million pass-through

1 that the IRS determined was approximately \$1.1 million, as I  
2 recall.

3 Again, I'm not here to try to capture that missing 3.75.  
4 All I want is Highland to basically stay in the shoes if -- or  
5 stand by the promise that they made, that they made, sorry,  
6 that they made to me, which is if the IRS changes their mind  
7 or if Highland (inaudible) and wanted to start to use this  
8 (inaudible) argument, that I get sufficient compensation to  
9 make me whole.

10 I mean, at this point, if that -- if we aren't successful,  
11 right, on this tax refund issue, then I'm going to get -- not  
12 just me. There's about seven or eight other employees who  
13 have all also filed claims in this case. We're going to get  
14 hammered with penalties and interest that far exceed that  
15 amount, and that's not fair.

16 Q Okay. As of today, Highland doesn't owe you -- that audit  
17 is not complete; is that right?

18 A Well, it's -- the audit took place for two years, and  
19 you're probably familiar more than me, I got a letter from  
20 Byron Collins in December of 2019, after the Debtor filed for  
21 bankruptcy, saying, We've exhausted effectively our  
22 negotiations with the IRS. We've now turned this over to some  
23 appeals unit in the IRS, and they determined that you don't  
24 get -- I'm paraphrasing -- that you don't get to keep this  
25 amount.

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1 Now, that basically put me on notice, right, that this is  
2 coming to somewhat of a conclusion. (inaudible), I listed it  
3 as a claim, I listed it as unliquidated, because I really  
4 don't know how to treat it. I guess, I mean, hopefully, the  
5 judge makes a decision, and the same kind of category, I don't  
6 know how you classify this thing. But when you guys filed an  
7 adversary against me and said, You know what, by the way,  
8 (inaudible) to me about any of my clients. So when you  
9 present to the Court that you engage me and (inaudible) with  
10 this guy, you guys didn't talk to me once from the time you  
11 filed until October about my claims. You did it just  
12 recently, after you filed an adversary. I would have been  
13 happy to work with you on this.

14 MR. MORRIS: Your Honor? Your Honor, I apologize for  
15 interrupting. Can I have the question read back? Because I  
16 really move to strike. I'll be here all day if we get these  
17 answers that really have nothing to do with my question.

18 THE COURT: Okay.

19 MR. MORRIS: It's not proper.

20 THE COURT: Well, I'm going to sustain and strike the  
21 narrative answer. I'm going to ask you to just repeat your  
22 question at this point.

23 MR. MORRIS: Okay.

24 BY MR. MORRIS:

25 Q The audit is not completed; isn't that correct?

1 A I don't know. I've been told by you that it's not.

2 Q Okay. And nobody has told you and you have no information  
3 to contradict my assertion that the audit is incomplete today?

4 A That's correct.

5 Q And as you sit here today, you don't know how much, if  
6 anything, you might owe on account of the tax issue. Is that  
7 right?

8 A That is right.

9 Q Okay. You first learned about the audit in 2010; isn't  
10 that correct?

11 A I don't know when I first learned about the audit.

12 Q You learned about the audit before you left Highland;  
13 isn't that correct?

14 A I know that when we filed this, you know, when we filed  
15 the returns, we had to file a cover letter that basically  
16 notified the IRS, hey, and I'm paraphrasing, we made these  
17 elections, you may not agree with these elections, but we're  
18 drawing your attention to it right now to put you on notice  
19 that we're making these elections. So that's what I know.

20 Q When is your first recollection of when you learned about  
21 the audit?

22 A I don't recall.

23 Q Okay. Let's talk about the HERA assets for a moment.  
24 When you left in 2011, you owned approximately 19.1 percent of  
25 the HERA preferred units; is that right?

1 A That is right.

2 Q Okay. And you learned in 2013 of the events that you  
3 described earlier with respect to the amendment of the HERA  
4 partnership agreement -- limited liability -- limited  
5 liability company agreement, the assignment agreement, the  
6 expense allocation? All of that occurred in 2013, and you  
7 knew it at that time, right?

8 A Well, if I could clarify that. I believe I was informed  
9 that the amendment -- you had a lot of questions in there, so  
10 I'll try and break it down. The amendment -- you're talking  
11 about 1241, right? I believe I was informed, informed of that  
12 either late February or early March 2014.

13 On the other stuff, we had -- we had sought discovery,  
14 and, you know, people have experiences that you don't always  
15 get discovery on an expedited basis all the time. We started  
16 to take discovery in dribs and drabs in -- early in July, and  
17 then a lot more in October and then a lot more in December of  
18 2013. So the (inaudible) that you asked me a question about,  
19 we got a lot of it in that time period, and then some of it  
20 rolled into 2014.

21 Q Okay. So, you knew about Highland's purchase of the other  
22 holders of the HERA preferred units in 2013, right?

23 A Yeah, I knew about the purported purchase probably in  
24 February 2013.

25 Q And the purchases were by people who hold -- who held

1 vested interests in their preferred units in HERA; isn't that  
2 right?

3 A You said it was by them. I think it was from them. But I  
4 think (inaudible).

5 Q If I did, I misspoke, but thank you for the correction.  
6 But you'll agree, right, that -- that you knew in 2013 that  
7 Highland purchased from the vested holders of the preferred  
8 units their interests in -- in the HERA --

9 A You know, I knew that ultimately that happened. I don't  
10 remember if I knew definitively it happened until probably  
11 October of 2013.

12 Q Okay. And you don't bring these claims relating to all of  
13 this -- all of these things that happened in 2013 until the  
14 summer of 2017 in Delaware; is that right?

15 A That -- that's generally about right.

16 Q Okay. And that's more than three years after you learned  
17 of them. Is that fair?

18 A I brought my claims after the Texas Court of Appeals said  
19 that I had that shares that your clients said I didn't.

20 Q Okay.

21 MR. MORRIS: I'd move to strike.

22 BY MR. MORRIS:

23 Q And I ask you to just listen carefully to --

24 THE COURT: Sustained.

25 BY MR. MORRIS:

1 Q -- my question. Okay. Listen carefully to my question.  
2 You brought the claims relating to the HERA events of 2013 for  
3 the very first time in Delaware in July 2017, right?

4 A Yes.

5 Q And it's more than three years after you learned of them;  
6 is that fair?

7 A I'm sorry. More than three years--?

8 Q More than three years after you learned of those events.  
9 You just said that you learned about them in 2013.

10 A I think that's right, yeah.

11 Q Okay. And you brought four different claims? I think  
12 claim -- Counts 2, 3, 4, and 5 in the original Delaware action  
13 were all based on the events of early 2013; is that right?

14 A I don't know. I don't -- I don't -- frankly, I don't  
15 recall my claims (inaudible) that you described.

16 Q Okay.

17 MR. MORRIS: Can we please call up Exhibit A to Mr.  
18 Daugherty's proof of claim, which I believe has been marked as  
19 Exhibit 40?

20 THE COURT: Okay. Are you going to share the screen  
21 or do you want the Court to pull it up?

22 MR. MORRIS: Yes.

23 THE COURT: Okay.

24 MR. MORRIS: I think we'll be able to share the  
25 screen. Thank you. And if we could just scroll to the end.

1 And I apologize, I don't have the page number, but it should  
2 be --

3 THE WITNESS: Could you go back up to the top, just  
4 so I know what I'm dealing with here?

5 BY MR. MORRIS:

6 Q Yeah. It's Paragraph 82.

7 A No, I'm looking at the date this was filed. Can you do it  
8 to the top? All right. So this is --

9 Q This is your amended pleading.

10 A Oh, this -- okay. You mentioned 2017, so I got a little  
11 bit thrown off. Okay.

12 Q So this is the -- this is the document that was attached  
13 to your proof of claim. That's why I'm using it. Okay?

14 A Okay. We've amended our proof of claim. You're talking  
15 about the first one?

16 Q This is the -- this is the one that was attached to your  
17 proof of claim, right?

18 A Well, as I said, we've amended the proof of claim. So are  
19 we talking about the one that's amended or the first one?

20 Q All right. Just take a look,

21 MR. MORRIS: If you can scroll down to Paragraph --  
22 keep -- no, keep going. Keep going. La Asia, can we scroll  
23 down, please? Okay. So go to Paragraph 84 and 85. Okay.

24 BY MR. MORRIS:

25 Q Can you read Paragraph 85 into the record, please?



1 A (inaudible) unit holder of Highland Employee Retention  
2 Assets. The purported purchases of units by Highland Capital  
3 on January 30th, 2013 using the funds of Highland Employee  
4 Retention Assets were -- were invalid transfers.

5 Q Okay. And that's exactly what you're asking the Court  
6 here to find; isn't that right? That you're the sole  
7 remaining holder and that the purported purchases by Highland  
8 in 2013 were invalid transfers, right?

9 A Correct.

10 Q Okay.

11 A Well, we're not asking her to find that, but we're asking  
12 her to find for voting purposes.

13 Q Okay.

14 MR. MORRIS: Can you go to Paragraph 89, please?

15 BY MR. MORRIS:

16 Q In 89, the relief that you requested is the return to HERA  
17 of the funds transferred it and distributed to you as the sole  
18 remaining shareholder, right?

19 A That's correct.

20 Q And that's specifically one of the claims that the Court  
21 dismissed; isn't that right?

22 A I thought it dismissed the claims for me making ownership  
23 of the, you know, the (inaudible) because of the *laches* issue  
24 that you described.

25 Q Sir, sir, this claim was dismissed by the Chancery Court,

1 right?

2 A It was dismissed by Judge (inaudible) who's the Chancery  
3 Court on *laches* grounds.

4 Q Okay. How do you know it was on *laches* grounds?

5 A Because he said so.

6 Q Okay. Can we just look quickly at Cause of Action No. 3?  
7 This was a claim arising out of the exact same conduct against  
8 HERA Management and Mr. Dondero; isn't that right?

9 A I'm not sure I understand your question.

10 Q Count III was against HERA Management and Mr. Dondero  
11 arising out of the same facts, only this claim was for breach  
12 of fiduciary duty, right?

13 A I guess it was breach of fiduciary duty. I don't see -- I  
14 guess Mr. Dondero down there in No. 2, but I can't read the  
15 whole paragraph.

16 MR. MORRIS: Can you scroll down a little bit,  
17 please?

18 BY MR. MORRIS:

19 Q Okay. Right there, Paragraph 93?

20 A Correct.

21 Q The adoption of the third amended and restated agreement  
22 you allege to be self-dealing and constituting a breach of  
23 fiduciary duty, right?

24 A Correct.

25 Q And in Paragraph 94, if we can scroll down, you allege

1 that the execution of the allocation, the expense allocation  
2 whereby your interest was reduced to zero was also self-  
3 dealing and a breach of duty, right?

4 A Can you go back there? I can't read it.

5 Q But you recall making that claim generally?

6 A (inaudible) You know, give -- ask me the question again  
7 about generally what I recall.

8 Q Do you recall generally making an allegation in the  
9 Delaware Chancery Court that there is a breach of fiduciary  
10 duty by executing the expense allocation agreement, right?

11 A Yeah. On behalf of Highland ERA Management.

12 Q Okay.

13 MR. MORRIS: Can we go to Paragraph 95, please?

14 BY MR. MORRIS:

15 Q You also challenge the assignment agreement, is that  
16 right, as an act of self-dealing and breach of fiduciary duty?

17 A Yeah. I obviously can't read the redacted parts.

18 Q But this claim was also dismissed, right?

19 A As I said, these claims were reduced on a *laches* basis,  
20 but obviously I plan to appeal. I just (inaudible).

21 Q Right. And *laches* you understood meant that it was time-  
22 barred, right? It was brought beyond the statute of  
23 limitations?

24 A Yeah, as I understood it, yes.

25 Q Okay.

1 MR. MORRIS: Can we go to the next cause of action?

2 This will be the last one, Your Honor.

3 BY MR. MORRIS:

4 Q This is against the Debtor, Highland Capital. Aiding and  
5 abetting breach of fiduciary duty. If you look at Paragraphs  
6 101 and 102 and 103, it's charging Highland with liability for  
7 the same conduct, for the execution of the third amended and  
8 restated agreement, the receipt of the HERA assets, right, as  
9 --

10 A Correct.

11 Q -- part of -- and this too was dismissed on statute of  
12 limitations grounds, right?

13 A I believe so.

14 Q Okay. Thank you.

15 A You know, I know that Highland is liable for the transfer  
16 of promissory stock and the unjust enrichment. I don't know  
17 if (inaudible).

18 Q Okay. Well, we'll leave that alone. Okay? I think that  
19 -- that's what we've actually offered to allow your claim for,  
20 for all of those claims. Let's --

21 THE COURT: Mr. Morris, I want to make sure --

22 MR. MORRIS: Yes, Your Honor.

23 THE COURT: -- the record is clear about what Mr.  
24 Daugherty was testifying about the last five minutes.

25 MR. MORRIS: Sure.

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1 THE COURT: This is, of course, an attachment to  
2 Daugherty's original proof of claim, but it is in the record  
3 at Docket Entry #1388, which was collectively all of  
4 Daugherty's exhibits for today, and it was at --

5 MR. MORRIS: Right.

6 THE COURT: -- Subpart 40, or Exhibit 40 therein,  
7 Subpart A of that.

8 All right. Did you want to offer that or does anyone want  
9 to offer that into evidence so that the record will make  
10 sense?

11 MR. MORRIS: Sure. I'll take it upon myself for this  
12 specific exhibit, Your Honor.

13 THE COURT: Okay.

14 MR. MORRIS: I offer -- I offer PHD Exhibit 40 unto  
15 evidence.

16 THE COURT: Okay. And I assume there's no objection  
17 since that was Daugherty's exhibit. It's admitted.

18 MR. UEHLER: No objection.

19 THE COURT: Okay.

20 (Patrick Daugherty's Exhibit 40 is received into  
21 evidence.)

22 BY MR. MORRIS:

23 Q Mr. Daugherty, let's just talk for a moment as to the  
24 timing of your departure from Strand. You were an officer of  
25 Strand at one point; isn't that right?

1 A Yes.

2 Q Do you have any letter of resignation or any other  
3 documentation that shows the date on which you were no longer  
4 an officer of Strand?

5 A I don't recall.

6 Q Okay.

7 MR. MORRIS: Can we please call up Exhibit X2? Your  
8 Honor, this is one of the two exhibits that I shared with  
9 counsel earlier today that are the corporate records that show  
10 the officers of Strand at various points in time.

11 THE COURT: All right. Are they on the docket?

12 MR. MORRIS: This goes to -- this goes to -- they're  
13 not. This goes to the indemnification claim.

14 THE COURT: Okay.

15 MR. MORRIS: All right. So if we can get X2 up,  
16 please.

17 (Pause.)

18 MS. CANTY: I'm sorry, John. One second. The  
19 computer's acting a little crazy.

20 MR. MORRIS: Okay.

21 (Pause.)

22 You know, Your Honor, instead of taking the Court's time  
23 with this, I don't need to cross-examine Mr. Daugherty with  
24 this. What I'd like to do is, because I've shared the  
25 documents with Mr. Daugherty's counsel -- oh, here it is.

1 Okay.

2 THE COURT: Okay.

3 MR. MORRIS: So let's just --

4 THE WITNESS: I see it.

5 MR. MORRIS: Thank you. Let's just get through this  
6 quickly.

7 BY MR. MORRIS:

8 Q Do you recall that, when you were an officer of Strand,  
9 that from time to time you signed a document that identified  
10 all of the officers of that entity?

11 A No.

12 Q Okay.

13 MR. MORRIS: Can you scroll down a little bit here?

14 BY MR. MORRIS:

15 Q Do you see that this is --

16 MR. MORRIS: I'm sorry, just a -- not quite so much.  
17 I want to see the first paragraph.

18 BY MR. MORRIS:

19 Q It says that "I am the president of Strand Advisors" and  
20 that Mr. Dondero was certifying that the people below were  
21 duly appointed and qualified to serve as officers of Strand.  
22 I'm paraphrasing a bit there. Do you see that?

23 A I can read it.

24 Q Okay. And do you see the third line down is you?

25 A Correct.

1 Q And that's your signature?

2 A It appears to be.

3 Q And did you serve in the capacity as Secretary of Strand?

4 A I mean, I served in various capacities. So I was agent, I  
5 was representative, I was an officer. I never was limited to  
6 just being Secretary.

7 Q Okay. But that's what you signed this document as, right?

8 A That's what my signature is next to.

9 Q Okay.

10 MR. MORRIS: And if you scroll down a little bit,  
11 let's just see the date.

12 BY MR. MORRIS:

13 Q And so that's August of 2006.

14 MR. MORRIS: Can we go to the next page, please?

15 BY MR. MORRIS:

16 Q You signed the next iteration of this as Secretary. Do  
17 you see that?

18 A I do.

19 MR. MORRIS: Can we scroll down a few lines to see  
20 the date?

21 BY MR. MORRIS:

22 Q That's February 27, 2007, okay? And all of these folks  
23 were officers at the time, do you recall?

24 A No.

25 Q No, you don't recall that?



1 A Huh-uh. I don't remember Nicky being an officer or Jim  
2 (inaudible) or Ron Williams.

3 Q Okay. It was 13 years ago.

4 MR. MORRIS: Let's scroll to the next page, please.

5 BY MR. MORRIS:

6 Q Do you see --

7 MR. MORRIS: Scroll down a little further.

8 BY MR. MORRIS:

9 Q You're now -- you've now been designated Assistant  
10 Secretary. Do you see that?

11 A Yes.

12 Q And that's your signature?

13 A It is.

14 Q And two lines above that, do you see there's Michael  
15 Colvin?

16 A Colvin, yes.

17 Q Yeah. And did you understand that he was Secretary of  
18 Strand at one point?

19 A I didn't focus on it one way or the other.

20 Q He submitted -- Mr. Colvin submitted a declaration last  
21 night on your behalf; isn't that right?

22 A He did.

23 Q And he said he couldn't recall when you stepped down from  
24 your position as an officer of Strand, right?

25 A Words to that effect, yes.

1 MR. MORRIS: Can we just show the date of this  
2 document? So, this is January 2008. Let's go to the next  
3 page. Here, again, if we can scroll down a little further, --

4 BY MR. MORRIS:

5 Q -- you have Mr. Colvin signing and you also signing as  
6 Assistant Secretary. Do you see that?

7 A I do.

8 Q And that's your signature?

9 A Yes.

10 MR. MORRIS: Okay. Can we just see the date of this  
11 document? This is May 2008. Let's go to the next page.

12 BY MR. MORRIS:

13 Q Okay. Again, Mr. Colvin as Secretary and you as  
14 Assistant Secretary; is that right?

15 A Yes.

16 Q And that's your signature?

17 A Yes.

18 Q And it's March 1st, 2009, right?

19 A That's what it says, yes.

20 MR. MORRIS: Okay. Let's go to the next page. Stop.

21 BY MR. MORRIS:

22 Q You see Mr. Colvin is still there, but you're not, right?

23 A Correct.

24 Q And this is dated May 29, 2009, right?

25 A Correct.

1 Q So Mr. Colvin, the person who submitted a declaration on  
2 your behalf, signed a document where you're no longer listed  
3 as an officer of Strand as of May 29, 2009, fair?

4 A That is correct.

5 Q Okay.

6 MR. MORRIS: Let's just keep going.

7 BY MR. MORRIS:

8 Q This one is dated January 2010. Again, Mr. Colvin was on  
9 and you're not, right?

10 A Correct.

11 MR. MORRIS: Next page.

12 BY MR. MORRIS:

13 Q Mr. Colvin was here as Secretary and you're not listed as  
14 an officer of Strand as of July 1st, 2010, right?

15 A That's correct.

16 Q Okay. Does -- does -- do these documents refresh your  
17 recollection that you stepped down as an officer of Strand  
18 sometime between March and May of 2009?

19 A No.

20 Q Okay.

21 MR. MORRIS: Can we call up the other exhibit,  
22 please?

23 BY MR. MORRIS:

24 Q This is a document entitled Secretary's Certificate. Do  
25 you see that?

1 A I do.

2 Q And do you see Mr. Colvin signed it as Secretary?

3 A I do.

4 Q And do you see that it was delivered on behalf of Strand  
5 Advisors?

6 A No.

7 Q Up at the top line.

8 A Oh, yes.

9 Q Okay. And Mr. Colvin signed this as of August 4, 2009,  
10 right?

11 A Well, it's --

12 Q Above his signature?

13 A Well, Highland had the practice of -- it sort of had the  
14 practice where they would put an effective date prior to the  
15 actual time that the document was created.

16 Q So Mr. Colvin, the person and the attorney who submitted a  
17 declaration on your behalf, signed this document as of August  
18 4, 2009, right?

19 A Well, well, it says, The undersigned has executed, so  
20 yeah, I'm just going to have to say yes. I'm just not sure --  
21 I don't know, I guess, is my obvious question of when he  
22 actually signed it.

23 Q Okay. Well, he was comfortable signing it as of August 4,  
24 2009, is that fair, based on his signature?

25 A I mean, you're showing me a document with his signature on

1 it. That's all I see in front of me. I don't know what he  
2 was comfortable with.

3 Q Okay. And in Paragraph 1, it says that, The resolutions  
4 attached as Exhibit A have been duly authorized by the  
5 company, by the company's sole director. Do you see that?

6 A I do.

7 MR. MORRIS: Let's look at Exhibit A, please, if we  
8 can scroll down.

9 BY MR. MORRIS:

10 Q And this is the consent of the sole director as of May 29,  
11 2009. Do you see that?

12 A Yeah. (inaudible) as Treasurer?

13 Q No, we'll scroll down, sir. No problem.

14 MR. MORRIS: Let's keep scrolling down. Okay. All  
15 right.

16 BY MR. MORRIS:

17 Q And there's your list of officers, and you don't appear  
18 there, right?

19 A I don't appear there, no.

20 Q And so would you agree that Mr. Colvin, the attorney who  
21 signed the declaration on your behalf last night, signed a  
22 Secretary's Certificate pursuant to which he attested to the  
23 accuracy of the resolution, that as of May 29, 2009 the  
24 officers were as listed here and it didn't include -- did not  
25 include you?

1 A Okay. I just want to clarify a couple things. One, he  
2 signed it on Friday. You know, just so you know, it didn't  
3 get created last night. And will you ask me the rest of that  
4 question?

5 Q Sure. I apologize. I just didn't see it until last  
6 night, and that's why I'm referring to last night, because I  
7 didn't see it until it was filed.

8 A I think we included it in the exhibit list on Friday.

9 Q Okay. I know it was on the list. In fact, that's where  
10 --

11 A I pulled it off the Internet from the court site, so they  
12 had it.

13 Q You're not on this list of officers?

14 A I'm not on this list, no.

15 Q Okay. And just a few more questions, sir.

16 THE COURT: I'm going to make sure the record is  
17 clear once again. Are you going to offer into evidence these  
18 pages you've described as Exhibit X2, so we --

19 MR. MORRIS: X2 and X1.

20 THE COURT: X2 and X1?

21 MR. MORRIS: Yes.

22 THE COURT: All right.

23 MR. MORRIS: And we will file -- we will file an  
24 amended list for the docket, Your Honor. But again, this just  
25 came up a couple of hours before the hearing, because

1 personally I didn't see the Colvin declaration until I woke up  
2 this morning. I asked the question and I got these documents.  
3 So these documents are being tendered in response to that very  
4 specific declaration.

5 THE COURT: All right. It was filed at 6:11 p.m.  
6 last night, in case -- Central Time.

7 MR. MORRIS: Right.

8 THE COURT: Any objection to X1 and X2?

9 MR. UEHLER: And Your Honor, this is Tom Uebler. For  
10 purposes of this summary proceeding, I'm inclined not to  
11 object to the document. We've both put a lot of paper before  
12 the Court. But we would reserve our right to explore these  
13 documents further in discovery on the merits and try to find  
14 out why we didn't see them for the last three years in  
15 Delaware.

16 THE COURT: All right. So X1 and X2 will be admitted  
17 for today's hearing. And Mr. Morris, you're going to file  
18 them later on the docket.

19 MR. MORRIS: Yes, Your Honor.

20 (Debtors' Exhibits X1 and X2 received into evidence.)

21 MR. MORRIS: Yes, Your Honor. Just a few more  
22 questions. I know we're almost out of time here.

23 BY MR. MORRIS:

24 Q Mr. Daugherty, just quickly, in the Texas action you were  
25 found liable for breaching your fiduciary duty to Highland;

1 isn't that correct?

2 A Correct.

3 Q And you were ordered to pay Highland's legal fees of  
4 approximately \$2.8 million; is that right?

5 A Correct.

6 Q The litigation that you -- excuse me. Withdrawn. The  
7 claims that you have been pursuing against all of the  
8 Highland-related people and entities, you would be the  
9 beneficiary of any judgment that you obtained, right?

10 A I don't know what you mean by that.

11 Q You are the sole plaintiff in all of these cases?

12 A On the actions that I brought?

13 Q Yes.

14 A I believe so, yeah.

15 Q Okay. And so any judgment that's rendered will be  
16 rendered in your own personal capacity; isn't that right?

17 A Yes.

18 Q You didn't bring --

19 A Well, I'm the plaintiff, I guess is what I'm saying.

20 Q Yeah. That's fair.

21 A So, I mean, yeah, the payments will go to me.

22 Q Okay. You mentioned something about a criminal case being  
23 overturned on appeal.

24 A I didn't. My lawyer did.

25 Q Okay. Can you just describe for the Court what the



1 original charge was?

2 A I don't believe that it's relevant, but there was an  
3 injunction put in place that said that -- that prohibited me  
4 from retaining Highland's account information. And over the  
5 course of, I don't know, from about 2014 to 2018, Highland  
6 brought eight different, you know, variations of show cause  
7 violations on that injunction against me. Eight times I had  
8 to defend. And one of those eight was based on Josh Terry had  
9 just been terminated from Highland and I saw him, I think, I  
10 saw him in London May of 2016. He got terminated in June. I  
11 sent him -- I walked up to his house and handwrote him a  
12 letter extending my condolences and --

13 MR. MORRIS: Your Honor, I'm going to --

14 THE WITNESS: You asked me a question and I'm trying  
15 to answer it.

16 BY MR. MORRIS:

17 Q I apologize. I apologize. Let me ask a different  
18 question because -- because that wasn't responsive to what I  
19 was asking. Were you found in contempt of court?

20 A No.

21 Q Okay. What crime were you charged with?

22 A I was charged with contempt of court violating the  
23 injunction. And a three-member panel at the Texas Court of  
24 Appeals found unanimously in my favor that there was no  
25 evidence that I violated the injunction.

Daugherty - Redirect

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1 Q But the trial court did in fact not only find that there  
2 was evidence, but the trial court is the one who imposed the  
3 judgment against you; is that fair?

4 A That is correct. And he was ordered to vacate that  
5 ruling.

6 Q Okay.

7 MR. MORRIS: Your Honor, I have no further questions.

8 THE COURT: All right. Redirect?

9 MR. UEBLER: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. UEBLER:

12 Q Mr. Daugherty, the fee award that Mr. Morris referred to  
13 in Highland's favor, did you pay that?

14 A I did. I wired approximately \$3.1 million to Highland, I  
15 want to say, December 13th or 14th, 2016.

16 Q 2016?

17 A Yeah.

18 Q What amount have you received form Highland or any of its  
19 affiliates as a result of the judgment you obtained?

20 A Zero.

21 Q With respect to Strand Advisors, when did you last serve  
22 as an agent of Strand?

23 A January-February 2012, when Highland enlisted me to meet  
24 with the Crusader investors, and I guess one called a Stratus  
25 (phonetic) investor, to the Stratus -- as I mentioned, there

Daugherty - Redirect

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1 was two categories. One, my view on value of various Top 40  
2 portfolio investments, and two, to discuss my reasons for  
3 leaving Highland.

4 Q When did you last serve as a representative of Strand?

5 A In that January-February 2012 time frame.

6 Q Were you authorized to sign documents on behalf of Strand  
7 Advisors?

8 A Yes.

9 Q When did that authority cease?

10 A When my employment at Highland terminated in October 2011.

11 MR. UEHLER: Your Honor, I have no further questions.

12 THE COURT: Any recross?

13 MR. MORRIS: Mr. Daugherty? Yes, Your Honor.

14 THE COURT: Go ahead.

15 RECROSS-EXAMINATION

16 BY MR. MORRIS:

17 Q Mr. Daugherty, did you submit any documentation in support  
18 of your contention that you served not as an officer but as an  
19 agent or a representative of Strand until the time of your  
20 departure in 2011?

21 A Yes.

22 Q All right.

23 MR. MORRIS: No further questions, Your Honor.

24 THE COURT: All right. Thank you.

25 Mr. Daugherty, we appreciate your testimony. You're

1 excused.

2 THE WITNESS: Thank you, Judge.

3 THE COURT: All right. Mr. Uebler, do you have any  
4 other evidence today?

5 MR. UEBLER: I don't have any other evidence, Your  
6 Honor, just some very brief closing remarks, if that's  
7 permitted. And I see we have four minutes left, so I'll defer  
8 to the Court.

9 THE COURT: Well, I won't cut you off cold in four  
10 minutes.

11 Mr. Morris, did the Debtor have any evidence today?

12 MR. MORRIS: Yes, Your Honor. Does Mr. Daugherty  
13 rest?

14 THE COURT: Yes, they rested. What I understood,  
15 they rest.

16 MR. UEBLER: I -- that's correct. I mean, subject to  
17 my comment earlier about submitting the exhibits and the  
18 papers as part of our case.

19 THE COURT: Well, let's make sure we get all of Mr.  
20 Daugherty's evidence in before I shift over to Mr. Morris. So  
21 what else did you want to offer?

22 MR. UEBLER: Only the -- the papers we've provided,  
23 including Mr. Daugherty's declaration and the exhibits  
24 attached to our motion and our reply.

25 THE COURT: All right. So those were filed as

1 separate exhibits at Docket Entry No. 1388. I think it's all  
2 there, correct?

3 MR. UEHLER: Correct.

4 THE COURT: All right. So it looks like it's  
5 Exhibits 1 through 42 that appear there.

6 Any objection, Mr. Morris?

7 MR. MORRIS: Yes, Your Honor. I object to the  
8 admission into evidence of Exhibits 7 through 10, No. 14, and  
9 No. 17 through 38, on grounds that they are irrelevant in  
10 light of the fact that the Debtor has conceded for purposes of  
11 voting the \$9.1 million in claims, and on the separate ground  
12 under Rule of Evidence 403 that any probative value of this  
13 material is greatly outweighed by the waste of time and the  
14 irrelevance of the subject matter.

15 I will point out just some examples, Your Honor. And this  
16 is why the Debtor really doesn't put this stuff in the record,  
17 because it is so irrelevant to these claims. But he's got  
18 things in there, the Court of Appeals decision on his criminal  
19 case. He's got a Crusader presentation. Actually, I -- we  
20 also object to that one, which is Exhibit 5. We've got, you  
21 know, appellate decisions, the escrow correspondence. We've  
22 got a Court of Appeals mandate. We've got correspondence  
23 relating to the escrow at Exhibit 30. We've got a transcript  
24 on an argument on a motion to compel. We've got motions for  
25 the argument.

1           If you look at these documents, Your Honor, they really  
2     have nothing to do with the claims that are being made here.  
3     Certainly, in light of the Defendant -- in light of the  
4     Debtor's concessions that we've made, we don't think that the  
5     record should include any of the documents that I've  
6     identified.

7           THE COURT: All right. Mr. Uebler, it's 2,619 pages  
8     in all. And what do you say to that objection?

9           MR. UEHLER: I agree they are prejudicial documents,  
10    Your Honor, but that doesn't make them inadmissible. They're  
11    prejudicial documents because they establish Mr. Daugherty's  
12    right to fee shifting under the bad-faith exception to the  
13    *American Rule*.

14          This is not, as Mr. Morris said earlier, a case where both  
15    sides' hands are dirty. This is a case where the Delaware  
16    court found the crime fraud exception applied. Based on my  
17    research, that was the second time that has happened in  
18    Delaware. That's a big deal.

19          And the transcripts that we put in, the motions for re-  
20    argument, the history we have presented in those 2,000 pages  
21    supports Mr. Daugherty's claim. It's directly relevant to an  
22    issue that I think Mr. Morris referred to as frivolous  
23    earlier, but I don't want to put words in his mouth. It's  
24    directly relevant, and that relevance by far outweighs any  
25    prejudice to Highland, or at least prejudice that wasn't of

1 its own making.

2 So it should all be submitted at a minimum for the purpose  
3 of considering Mr. Daugherty's request for fees.

4 THE COURT: Okay. I overrule the objection. I'll  
5 admit Exhibits 1 through 42.

6 (Patrick Daugherty's Exhibits 1 through 42 are received  
7 into evidence.)

8 THE COURT: All right. So you rest at this point?

9 MR. UEHLER: Yes. Thank you, Your Honor.

10 THE COURT: All right. Mr. Morris?

11 MR. MORRIS: Yeah, just one clarification there, Your  
12 Honor. Is Mr. Daugherty attempting to offer into evidence Mr.  
13 Colvin's declaration?

14 THE COURT: I did not hear him offer that.

15 MR. UEHLER: I believe that's No. 42, Your Honor, so  
16 the answer is yes. And Mr. Morris had ample opportunity to  
17 question Mr. Daugherty about the substance of the declaration.

18 MR. MORRIS: Your Honor, it's --

19 THE COURT: Oh, okay. I had misunderstood.

20 MR. MORRIS: Okay.

21 THE COURT: It is Exhibit 42, even though it was just  
22 filed separately on the docket last night. So did you have an  
23 objection, Mr. Morris?

24 MR. MORRIS: I do. It's hearsay, Your Honor. It's  
25 being offered for the truth of the matter asserted by a

1 witness who is not available to be cross-examined.

2 THE COURT: Okay. I sustain --

3 MR. UEBLER: Your Honor, --

4 THE COURT: I sustain that objection. 42 will not be  
5 admitted. All right.

6 (Admission of exhibits revised to exclude Patrick  
7 Daugherty's Exhibit 42.)

8 THE COURT: Mr. Morris, you have evidence?

9 MR. MORRIS: Yeah. So the Debtor offers into  
10 evidence Exhibits A through -- Exhibits A through V. And I  
11 guess Exhibits X1 and X2 have already been admitted.

12 THE COURT: All right. Let's be clear there. Those  
13 appear --

14 MR. KATHMAN: Your Honor? Your Honor, this is Jason  
15 Kathman. And I just wanted to -- on Exhibit 42, we talked  
16 with Mr. Morris, and maybe I had a misunderstanding, but my  
17 understanding is that we were going to present witnesses via  
18 declarations in that manner. And there had been some  
19 discussion about -- and giving him the opportunity to cross-  
20 examine Mr. Daugherty. So if I misunderstood the agreement,  
21 that's on me, but there was -- we had I believe it was in two  
22 phone calls, and I think he's had more (inaudible), about how  
23 testimony and witnesses would be presented for this hearing.  
24 And if Mr. Colvin is outside of that, again, maybe I'm  
25 misunderstanding, but I at least wanted to raise that issue.



1 MR. MORRIS: Your Honor, respectfully, I have great  
2 respect for Mr. Kathman, but he is misunderstanding. I would  
3 never, ever permit a declaration to come into evidence in a  
4 matter like this without the ability to cross-examine. I can  
5 describe for the Court what the offer was, but it was not  
6 that.

7 THE COURT: Okay. Well, I regret there was a  
8 misunderstanding, but just pulling this up, while it's only a  
9 one-and-a-half page declaration, it has 57 pages of  
10 attachments, or approximately 57 pages of just all kinds of  
11 things that I can presume the Debtor might want to cross-  
12 examine Mr. Colvin on. So I again sustain the objection. 42  
13 will not come in.

14 All right. Mr. Morris, your evidence. Where do Exhibits  
15 A through V appear on the docket? I need to refresh my  
16 memory.

17 MR. MORRIS: Your Honor, just to let you know what  
18 happened last night, because we were working with Mr.  
19 Daugherty's counsels on redaction, and I think Mr. Anabel,  
20 with your Court's permission, allowed us to email the  
21 documents to you, and we had emailed them to Mr. Daugherty  
22 because we weren't sure at the late moment as to where we were  
23 going to be with the redactions. We can certainly file  
24 everything now. But Your Honor has those documents.

25 THE COURT: Okay. I do have those. I knew that

1 there were several emails that they were attached to. I just  
2 didn't know if they were separately on the docket. So, again,  
3 let me pull those up. It's A through V?

4 MR. MORRIS: Yes.

5 THE COURT: Any objections by Daugherty's counsel?

6 MR. UEHLER: Your Honor, as I said, for this summary  
7 proceeding, we're not going to object to A through V. But  
8 with the exclusion of Daugherty 42, the Colvin declaration, it  
9 seems that X1 and X2 have no relevance anymore and should be  
10 excluded. Mr. Morris stated earlier that those two documents  
11 were submitted expressly in response to the Colvin  
12 declaration. With that out, Exhibits X1 and X2 should be out  
13 as well.

14 THE COURT: Okay. Your response, Mr. Morris?

15 MR. MORRIS: Yeah, very briefly. Number one, I used  
16 them to cross-examine his witness. I offered them into  
17 evidence. There was no objection. They've already been  
18 admitted into court. So I think this issue is moot.

19 But number two, when Mr. Daugherty said that he didn't --  
20 I don't remember exactly what his testimony was, but suffice  
21 it to say that he wouldn't agree that he had resigned sometime  
22 between March 3rd and -- between March and May of 2009, I  
23 certainly could have used them as impeachment documents under  
24 any circumstance.

25 THE COURT: All right. I overrule the objection. X1

1 and X2 are in.

2 (Debtors' Exhibits X1 and X2 are again received into  
3 evidence.

4 THE COURT: Again, I think not only were they  
5 admitted without objection earlier, but they do, I guess you  
6 would say, contradict some of the testimony of Mr. Daugherty.  
7 His position, as I hear it, is he was still an agent, or he  
8 was an agent at least of Strand beyond the May 2009 time  
9 period. And these are documents that arguably impeach that  
10 testimony.

11 All right. So A through V and X1 and X2 are admitted.

12 (Debtors' Exhibits A through V and X1 and X2 received into  
13 evidence.)

14 THE COURT: If I could just ask, Mr. Morris, that you  
15 all later submit on the docket these exhibits, all of them, so  
16 we don't have to go back and print out the email attachments  
17 and do it the old-fashioned way.

18 MR. MORRIS: Sure.

19 THE COURT: All right. Any other evidence?

20 MR. MORRIS: No, Your Honor. The Debtor rests.

21 THE COURT: All right. I'll hear brief closing  
22 arguments. Mr. Uebler, you first. (Pause.) Mr. Uebler,  
23 you're on mute, sir. Mr. Uebler?

24 CLOSING ARGUMENT ON BEHALF OF CREDITOR PATRICK DAUGHERTY

25 MR. UEBLER: Thank you. Let me try that again. I

1 want to start by responding to one of Mr. Morris's questions  
2 of Mr. Daugherty, which was, Did you submit any papers in this  
3 case that would establish that you were either an officer or  
4 an agent of Strand through resignation in 2011? That's  
5 Exhibit 2. It is, in fact, Highland's answer in the Delaware  
6 case at Paragraph 66, where Defendants admit that Daugherty  
7 served as an officer and agent of Strand from 2004 until he  
8 resigned from Highland in 2011. So I think that should answer  
9 Mr. Morris's question.

10 Let me just conclude by some comments that James Seery  
11 recently made in a deposition. He said, Equally, on the other  
12 side, you could say that the man's life was ripped out from  
13 him, that his position was taken away, that he got an  
14 arbitration award that arguably the Debtor and the Debtors'  
15 management at the time stripped away all the assets and pretty  
16 patently denuded it to try to leave him with no recovery.  
17 Then when he sought a recovery, they sought to sue him in  
18 every jurisdiction in the world and basically ruin the guy's  
19 life and put him in a position where, while to some it might  
20 seem a windfall, to him it might seem just.

21 Mr. Seery was talking about Josh Terry, not Mr. Daugherty.  
22 But Highland's blueprint for ruining a guy's life originated  
23 from its treatment of Mr. Daugherty.

24 We've given you reasons today to permit the full amount of  
25 the three remaining disputed issues for voting purposes for

1 Mr. Daugherty's claim. Allowing that full amount will protect  
2 Mr. Daugherty as a creditor, give him his appropriate say in  
3 any plan that's presented, and would hopefully bring these  
4 parties at least one step closer to resolution.

5 Thank you for your time today.

6 THE COURT: Thank you, Mr. Uebler. Mr. Morris?

7 CLOSING ARGUMENT ON BEHALF OF THE DEBTORS

8 MR. MORRIS: Yeah. Very briefly, I'll just borrow  
9 Mr. Uebler's phraseology and say that it would not be just to  
10 give to Mr. Daugherty anything on account of a \$21 million  
11 claim that has already been dismissed and that his testimony  
12 just established will be time-barred. We don't believe that  
13 it would be just to give him anything on account of a tax  
14 claim that is completely contingent, unliquidated, and where  
15 the Debtor admittedly owes absolutely nothing to Mr. Daugherty  
16 today.

17 I can't imagine what it's been like to go through this  
18 litigation, just like I couldn't imagine from Mr. Terry's  
19 perspective, from Mr. Dondero's perspective. These people  
20 have been at this for a decade. That's not what -- that's,  
21 you know, it's not anything I can get my arms around. What  
22 I'm here to do is to protect the Debtors' estate and its  
23 stakeholders, including its general unsecured creditors.

24 Mr. Daugherty is going to have a very meaningful claim if  
25 the Court allows his claim for voting purposes at \$9 million.

1 It's going to be the third biggest claim, at least at this  
2 point, of anybody. So that's just. It's just that he has a  
3 seat at the table. We're offering him a seat at the table.  
4 But he shouldn't get anything on account of the claims that  
5 really have little to no merit.

6 Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 Well, I thank you for your thoroughness, your professional  
9 courtesy that was very visible here today.

10 As I started out with today, Bankruptcy Rule 3018(a) is  
11 what guides us. That rule is a provision that states, quote,  
12 Notwithstanding an objection to a claim, the Court may  
13 temporarily allow a claim for voting purposes in such amount  
14 the Court deems proper, after notice and a hearing.

15 There are many cases that have attempted to kind of impose  
16 a legal framework for analysis on that rule because, as you've  
17 just heard, the rule doesn't give much detail. The cases all  
18 sort of sing the same tune, that the rule contemplates only a  
19 summary estimation proceeding, not a full trial on the merits.  
20 The Court has great discretion to employ whatever method is  
21 best-suited to the circumstances of the case in determining  
22 what amount should be allowed for voting purposes. The Court  
23 should consider things like whether there's a last-minute  
24 objection to strategically prevent a creditor from voting who  
25 might vote no and the objection might be frivolous, that sort

1 of thing. And all decisions are reviewed for abuse of  
2 discretion, should there be any appeal.

3 So that is the rule and the case law interpreting the  
4 rule. Based on that, I will note that we start out here with  
5 an amended proof of claim filed by Mr. Daugherty in the amount  
6 of \$40,710,819.42. And I studied hard before coming out here  
7 today the addendum to that proof of claim filed by Mr.  
8 Daugherty. It had a description of the claim that was done in  
9 the form of a chart. I'm holding it up here -- I don't know  
10 if it picks up on camera -- what I'm looking at. But it  
11 appears at Docket Entry 1280-2. It was part of the appendix  
12 to the motion to estimate claim.

13 So the amount is broken down into components. If you're  
14 looking at that chart -- again, which was most helpful -- I  
15 note that in the claim of Daugherty for HERA units, there are  
16 different line items that total approximately \$26 million and  
17 some change. So that's the issue we've talked about a lot  
18 today. Is it correct, is it reasonable to assume that  
19 Daugherty might be entitled to a hundred percent of the value  
20 or a hundred percent of the HERA units? So, I found that,  
21 based on the evidence and the argument, to be a problematic  
22 assumption. Again, one day we will have a trial on the  
23 adversary, a trial on the proof of claim. I will hear every  
24 bit of relevant evidence that the parties choose to put in on  
25 that issue. But for our purposes today, under Rule 3018, I

1 just found considerable doubt that that would be an  
2 appropriate damage calculation here.

3 So, again, using my discretion, I found that, at a  
4 minimum, you should reduce that \$26 million-plus component of  
5 the Daugherty proof of claim by the roughly 81 percent,  
6 because it was 19.1 percent, I think, that Daugherty would  
7 have been entitled to of the HERA units. So that's a roughly  
8 \$5 million amount, or a \$19 million reduction that -- excuse  
9 me. I did my math wrong. That's a \$21 million reduction that  
10 I think would be reasonable for estimation purposes under  
11 3018.

12 Further looking at the chart that breaks down Daugherty's  
13 claim -- we discussed this today in testimony -- there is an  
14 attorney fee component that aggregates to \$7,854,752.31, and  
15 that's the indemnification, it's the interest on  
16 indemnification award, it's the fee shifting fees on fee  
17 award. And once again, looking at this through the lens of  
18 3018(a), I do not think it's appropriate to assume I'm going  
19 to get there, if you will, on this attorneys' fee award.  
20 There have been *bona fide* issues, if you will, raised on  
21 whether the indemnification provision that was cited would  
22 entitle Mr. Daugherty to these fees. Section 4.1(h) of the  
23 partnership agreement would be that indemnification provision.  
24 Moreover, the deviation from the *American Rule*, if that  
25 indemnification provision does not apply, is a big hurdle to



1 achieve. It's very deeply rooted in our law that if you don't  
2 have a contract provision and you don't have a statute that  
3 entitles you to attorneys' fees, it's quite a high hurdle to  
4 get there, whether it be Rule 11, the vexatious litigation  
5 statute, or some common law argument of bad faith.

6 So, again, looking through the lens I'm looking through  
7 today, I just cannot get there under 3018.

8 So, doing my math, I'll go backwards. I've just said that  
9 I can't there on \$7,854,750.31 of Mr. Daugherty's \$40-plus  
10 million claim. I've said I can't get there on \$21 million of  
11 his \$40.7 million proof of claim because of the HERA, the 81  
12 percent interest in the HERA units. So what else in that  
13 chart gives me pause? The tax refund, the 2008 tax refund  
14 component. We have \$1,475,816 plus estimated interest on that  
15 of \$1.174537 [million]. It's very clear that at this point  
16 this is, at best, contingent. And again, down the road we may  
17 get to a point where it's not contingent, the IRS has finished  
18 doing what it's going to do, and we may get to a point where  
19 we think a result is appropriate. I don't know. There may  
20 be, even if we get there, a subordination argument. The point  
21 is, there are *bona fide* arguments today that do not allow me  
22 to get to the point I feel like I need to get at an estimation  
23 hearing to allow this claim, these components of the claim.

24 So when you subtract \$7.854 million and \$1.475 million and  
25 \$1.174 million and \$21 million, that's about \$32 million that

1 I would -- I was thinking about, before I even heard the  
2 evidence, deducting out of the claim that I would estimate for  
3 voting purposes.

4 That, I will tell you, is why I came out here at the very  
5 beginning today and said, Jeez, the Debtors' suggested voting  
6 claim of \$9,134,019, which the Debtor came at a different way  
7 as far as the math, that sounded darn reasonable to me.

8 So I am going to allow a voting claim for Mr. Daugherty at  
9 \$9,134,019.

10 Now, let me say a couple of more words why I fall back on  
11 that number. A, it's pretty close to the direction I was  
12 leaning, but B, I want Mr. Daugherty, if he's still on the  
13 line, to understand. I hope it doesn't seem like I'm giving  
14 Highland every benefit of the doubt here today and reducing  
15 your claim by every argument they made and just going at it  
16 that way. I do feel like I am obviously giving you some  
17 benefits of the doubt here. Primarily, the benefits of the  
18 doubt I'm giving you are, number one, the HERA judgment was  
19 obviously a HERA judgment. I mean, it was a judgment awarded  
20 to Mr. Daugherty against HERA, not Highland per se, right? I  
21 didn't misunderstand that. So I am assuming you have got darn  
22 good arguments, Mr. Daugherty, to hold Highland liable for  
23 that HERA award, plus the pre-judgment and post-judgment  
24 interest, up to the bankruptcy petition date of October 16th,  
25 2019.

1           So I'm giving you the benefit of the doubt there, and on  
2   -- well, I do want to make one more point on the attorneys'  
3   fees. Again, that was a huge component of your proof of  
4   claim. And I certainly well understand the bad faith  
5   arguments and your many ways you think you will have of  
6   getting attorneys' fees at the end of the day. But I'm  
7   sitting here today looking at the fact that the Texas state  
8   court actually awarded Highland attorneys' fees against you.  
9   Now, I understand, or I think I understand, that was somewhat  
10   of a discrete issue with regard to the breach of fiduciary  
11   duty arguments in sharing information or taking files or  
12   information. And you might argue, well, that was very  
13   discrete, and obviously you paid it. But all this to say  
14   there are lots of a *bona fide* disputes here, I think. And  
15   again, the rule doesn't use that term, *bona fide* disputes,  
16   but, again, I have lots of discretion here, and I think, at  
17   the end of the day, a roughly \$9 million voting claim is very  
18   reasonable.

19           I know the point I ended up making. I've also given you  
20   the benefit of the doubt, Mr. Daugherty, on the roughly \$5  
21   million claim I'm giving you for the 19 percent of the HERA  
22   assets. And I understand there were things about the Texas  
23   state court judgment that left that a little ambiguous,  
24   whether you could get that or whether that would be double-  
25   counting. But again, I just, I want you to know that I

1 haven't weighed every benefit of the doubt in favor of  
2 Highland here. I've weighed a couple of these doubts in your  
3 favor.

4 All right. So, \$9,134,019 is the voting claim of Mr.  
5 Daugherty. Again, this is without prejudice or waiver of any  
6 arguments at a later trial on the claim for distribution  
7 purposes.

8 Are there any questions?

9 MR. DAUGHERTY: Just, you asked if I was on. I just  
10 wanted to let you know I got back on. I took my (inaudible).  
11 But I heard every word and I appreciate your comments.

12 THE COURT: All right. Thank you, Mr. Daugherty.

13 Mr. Morris, would you be the scrivener on this order? And  
14 of course, run it by Mr. Uebler and Kathman.

15 MR. MORRIS: Of course, Your Honor.

16 MR. KATHMAN: Your Honor? Your Honor, this is Jason  
17 Kathman. We have just one housekeeping issue. We had filed,  
18 when we filed our motion to -- this 3018 motion at Docket No.  
19 1280, actually, we filed a motion for leave to amend our proof  
20 of claim, which is the -- actually, the chart that I think  
21 Your Honor was looking at was the chart that we attached to  
22 our amended proof of claim. We filed that with negative  
23 notice, and that negative notice actually ran yesterday. So  
24 we'll upload a certificate of no objection. But just, while  
25 we're here on the record, I wanted to ask for the Court to

1 approve that motion for leave to file an amended proof of  
2 claim.

3 THE COURT: Okay. So I neglected to note that  
4 detail. I was of the impression it wasn't contested, and in  
5 fact, the objection deadline has run. So I will accept your  
6 order on that. Okay?

7 MR. KATHMAN: Thank you, Your Honor.

8 THE COURT: All right. Thank you all. We stand  
9 adjourned.

10 MR. MORRIS: Thank you, Your Honor.

11 THE CLERK: All rise.

12 (Proceedings concluded at 3:59 p.m.)

13 --oOo--

14

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19

20

CERTIFICATE

21

22

I certify that the foregoing is a correct transcript to  
the best of my ability from the electronic sound recording of  
the proceedings in the above-entitled matter.

23

**/s/ Kathy Rehling**

**11/18/2020**

24

25

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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**PD-6**

**EXHIBIT 60**



**EXECUTION VERSION**

**TOLLING AGREEMENT EXTENDING CLAIM  
OBJECTION DEADLINE**

This Tolling Agreement (the “Agreement”) is made as of July 27, 2022 (the “Effective Date”), by and between Patrick Hagaman Daugherty (“Mr. Daugherty”), on the one hand, and Highland Capital Management, L.P. (“Highland” or the “Debtor,” as applicable) and the Highland Claimant Trust (the “Claimant Trust,” and together with Highland, the “Highland Parties”), on the other. Each of Mr. Daugherty, Highland, and the Claimant Trust are individually referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, Mr. Daugherty is a former employee and limited partner of Highland and served in other positions with affiliates and former affiliates of Highland from time to time;

WHEREAS, on October 16, 2019, Highland filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Case”), which is pending in the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”);

WHEREAS, on April 1, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against Highland in the amount of at “least \$37,483,876.59,” and such claim was denoted by Highland’s claims agent as Proof of Claim No. 67 (“Claim No. 67”);

WHEREAS, on April 6, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against Highland in the amount of at “least \$37,482,876.62” that superseded Claim No. 67 and that was denoted by Highland’s claims agent as Proof of Claim No. 77 (“Claim No. 77”);

WHEREAS, on August 31, 2020, Highland commenced an adversary proceeding, Adv. Proc. No. 20-03107-sgj (Bankr. N.D. Tex.) (the “Adversary Proceeding”), against Mr. Daugherty by filing a complaint [Adv. Dkt. No. 1]<sup>1</sup> (the “Complaint”) in which Highland (a) objected to Claim No. 77 on various grounds, and (b) asserted a cause of action for the subordination of part of Mr. Daugherty’s claim pursuant to 11 U.S.C. § 510(b);

WHEREAS, on September 29, 2020, Mr. Daugherty filed his answer to the Complaint [Adv. Dkt. No. 8] in the Adversary Proceeding;

WHEREAS, on October 23, 2020, Mr. Daugherty filed a motion seeking leave to amend Claim No. 77 [Bankr. Dkt. No. 1280]<sup>2</sup> (the “POC Amendment Motion”) and attached an amended proof of claim to the POC Amendment Motion increasing Mr. Daugherty’s general, unsecured, non-priority claim against Highland to the amount of at “least \$40,410,819.42” and sought to supersede Claim No. 67 and Claim No. 77;

---

<sup>1</sup> Adv. Dkt. No. refers to the docket maintained in the Adversary Proceeding.

<sup>2</sup> Bankr. Dkt. No. refers to the docket maintained in the Bankruptcy Case.

WHEREAS, on December 10, 2020, the Bankruptcy Court entered an order [Bankr. Dkt. No. 1533] granting the POC Amendment Motion, and Mr. Daugherty was permitted to file an amendment to his proof of claim;

WHEREAS, on December 23, 2020, Mr. Daugherty filed an amended proof of claim, designated by Highland's claims agent as Proof of Claim No. 205 ("Claim No. 205," and together with Claim No. 67 Claim No. 77, the "Daugherty Claim");

WHEREAS, Claim No. 205 superseded Claim No. 77 and increased the Daugherty Claim to \$40,710,819.42;

WHEREAS, on February 22, 2021, the Bankruptcy Court entered its *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Dkt. No. 1943] (the "Confirmation Order") confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Dkt. No. 1808] (as amended, supplemented, or modified, the "Plan");

WHEREAS, on August 11, 2021, the Effective Date (as defined in the Plan) occurred [Bankr. Dkt. No. 2700];

WHEREAS, on or about November 22, 2021, Highland and Mr. Daugherty executed that certain Settlement Agreement (the "Settlement Agreement") attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Bankr. Dkt. No. 3089] filed in support of the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Bankr. Dkt. No. 3088] (the "Settlement Motion");

WHEREAS, following an evidentiary hearing on the Settlement Motion held on March 1, 2022, the Bankruptcy Court entered its order [Bankr. Dkt. No. 3298] (the "Settlement Order") approving the Settlement Motion and the Parties' entry into the Settlement Agreement;

WHEREAS, pursuant to the Settlement Order, the Daugherty Claim, excluding the Reserved Claim,<sup>3</sup> was satisfied in its entirety;

WHEREAS, the Highland Parties dispute the validity and amount of the Reserved Claim and, pursuant to Section 9 of the Settlement Agreement, Mr. Daugherty and Highland reserved all rights with respect to the Reserved Claim; *provided, however*, that any litigation between Highland and Mr. Daugherty concerning the Reserved Claim was stayed until the IRS makes a final determination with respect to the dispute between the Debtor and the IRS (the "IRS Dispute") or the Highland Parties and Mr. Daugherty otherwise agree;

---

<sup>3</sup> "Reserved Claim" means the contingent and unliquidated claim as referenced in Proof of Claim No. 205 that related to an alleged claim for compensation and an audit/dispute between the Debtor and the Internal Revenue Service (the "IRS") in an amount estimated to be \$2,650,353.00 as of October 23, 2020.

WHEREAS, pursuant to the Confirmation Order, the deadline to object to claims was 180 days after the Effective Date, *i.e.*, February 7, 2022, unless extended by the Bankruptcy Court (the “Claim Objection Deadline”);

WHEREAS, the Claim Objection Deadline was extended by order of the Bankruptcy Court [Bankr. Dkt. No. 3198] to August 8, 2022;

WHEREAS, the Highland Parties were vested with the exclusive authority to compromise, settle, withdrew, or resolve all claims against the Debtor, including the Reserved Claim, without further order of the Bankruptcy Court pursuant to Article VII.B of the Plan;

WHEREAS, on July 6, 2022, the Highland Parties filed the *Reorganized Debtor and Claimant Trustee Joint Motion for Entry of an Order Further Extending the Claim Objection Deadline Pursuant to Confirmed Chapter 11 Plan by which Reorganized Debtor May Object to Certain Claims* [Bankr. Dkt. No. 3387] (the “Second Extension Motion”);

WHEREAS, Mr. Daugherty and the Highland Parties continue to consider potential resolutions of the Reserved Claim in the absence of a resolution of the IRS Dispute;

WHEREAS, it is unknown when the IRS Dispute may be resolved; and

WHEREAS, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, and without any Party admitting liability, fault, or wrongdoing, or releasing or waiving any rights or defenses with respect to the Reserved Claim, the Parties desire to enter into this Agreement to extend the Claim Objection Deadline, solely with respect to the Reserved Claim, to January 11, 2023, at 5:00 p.m. (Central Time) (the “Objection Deadline”).

NOW, THEREFORE, effective as of the Effective Date, each of the Parties agrees as follows:

1. Covenant to Reserve. In consideration of Mr. Daugherty’s agreement to extend the Claim Objection Deadline (as set forth in paragraph 2 of this Agreement), the Highland Parties agree not to commence any lawsuit, action or proceeding to further object to the Reserved Claim at any time until the Objection Deadline (notwithstanding Mr. Daugherty’s position that the Highland Parties would have no right to do so in any event under the Settlement Agreement until such time that the IRS resolves the IRS Dispute) and further agree to reserve \$2,650,353.00 on account of the Reserved Claim in the “Disputed Claim Reserve” as such term is defined in the Plan until the Parties resolve the Reserved Claim pursuant to a signed agreement, or, alternatively, an order of the Bankruptcy Court.

2. Extension of Claim Objection Deadline. In consideration of the Highland Parties’ “Covenant to Reserve” (as set forth in paragraph 1 of this Agreement), Mr. Daugherty agrees that the Claim Objection Deadline applicable to the Reserved Claim is hereby tolled as of, and extended from, the Effective Date to the Objection Deadline.

3. Acknowledgement and Waiver. Mr. Daugherty acknowledges and agrees that:

a. Regardless of whether the Second Extension Motion is approved by the Bankruptcy Court, Mr. Daugherty waives any right or ability to argue (x) that the terms of this Agreement and the extension of the Claim Objection Deadline required an order of the Bankruptcy Court; or (y) the application of the expiration of the Claims Objection Deadline to the Reserved Claim; and

b. Mr. Daugherty is estopped from arguing that this Agreement is ineffective to extend the time within which the Highland Parties must object to the Reserved Claim.

4. Acknowledgement and Waiver. The Highland Parties acknowledge and agree that regardless of whether the Second Extension Motion is approved by the Bankruptcy Court, the Highland Parties waive any right or ability to argue that the terms of this Agreement and the extension of the Claim Objection Deadline required an order of the Bankruptcy Court.

5. Representations and Warranties.

a. Mr. Daugherty represents and warrants that he has not sold, transferred, hypothecated, pledged, or assigned the Reserved Claim to any other person or entity, and that no person or entity other than Mr. Daugherty has been, is, or will be authorized to bring, pursue, or enforce the Reserved Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) Mr. Daugherty.

b. Each Party represents and warrants to the other Party that such Party is fully authorized to enter into and perform the terms of this Agreement and that, as of the Effective Date, this Agreement will be fully binding upon each Party in accordance with its terms.

6. Miscellaneous.

a. Binding Effect; Successors-in-Interest. Each of the Parties agrees that this Agreement will be binding upon the Parties, and, as applicable, upon their predecessors, successors, subsidiaries, divisions, alter egos, affiliated and related entities, and their past or present officers, directors, partners, employees, attorneys, assigns, agents, representatives, and any or all of them.

b. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the validity and amount of the Reserved Claim. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Highland Parties, Mr. Daugherty, or any other person and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Highland Parties, Mr. Daugherty, or any other person.

c. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**Mr. Daugherty**

Patrick Hagaman Daugherty  
3621 Cornell Avenue, Suite 830  
Dallas, TX 75205  
Email: pdaugherty@glacierlakecap.com

with a copy (which shall not constitute notice) to:

McCollom D'Emilio Smith Uebler LLC  
Attn: Thomas Uebler, Esquire  
2751 Centerville Road, Suite 401  
Wilmington, DE 19808  
E-mail: tuebler@mdsulaw.com

**Highland Parties**

Highland Capital Management, L.P.  
100 Crescent Court, Suite 1850  
Dallas, Texas 75201  
Attention: David Klos  
E-mail: dklos@HighlandCapital.com

Highland Claimant Trust  
100 Crescent Court, Suite 1850  
Dallas, Texas 75201  
Attention: David Klos  
E-mail: dklos@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Gregory Demo, Esq.  
780 Third Avenue, 34th Floor  
New York, NY 10017  
E-mail: gdemo@pszjlaw.com

d. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, in the negotiation of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without reservation; and (d) had the opportunity to have the terms and conditions of this Agreement explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

e. Counterparts. This Agreement may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

f. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Agreement may only be amended by an agreement in writing signed by the Parties.

g. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Agreement shall be, or deemed to be, a waiver of any rights, remedies or privileges of any of the Parties, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

h. No Waiver if Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

i. Governing Law. This Agreement will be exclusively governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Delaware, excluding Delaware's conflicts of law principles.

j. Jurisdiction. The Bankruptcy Court will retain exclusive jurisdiction over disputes relating to this Agreement.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

IT IS HEREBY AGREED.

PATRICK HAGAMAN DAUGHERTY



HIGHLAND CAPITAL MANAGEMENT, L.P.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

HIGHLAND CLAIMANT TRUST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**IT IS HEREBY AGREED.**


**PATRICK HAGAMAN DAUGHERTY**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_


  
JAMES P. SEERY, JR.  
CEO

**HIGHLAND CLAIMANT TRUST**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

  
JAMES P. SEERY, JR.  
Claimant Trustee



**PD-7**

**EXHIBIT 61**

**AMENDMENT NO. 1 TO TOLLING AGREEMENT  
EXTENDING CLAIM OBJECTION DEADLINE**

This Amendment No. 1 (the “Amendment”), dated as of December 21, 2022, to that certain Tolling Agreement Extending Claim Objection Deadline, dated as of July 27, 2022 (the “Agreement”), is made by and between Patrick Hagaman Daugherty, on the one hand, and Highland Capital Management, L.P. and the Highland Claimant Trust, on the other. Capitalized terms used but not defined herein have the meanings given to them in the Agreement.

**RECITALS**

WHEREAS, the Parties entered into the Agreement to extend the Claim Objection Deadline to object to the Reserved Claim to January 11, 2023, at 5:00 p.m. (Central Time) (*i.e.*, the Objection Deadline).

WHEREAS, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, the Parties desire to enter into this Amendment to further extend the Objection Deadline to object to the Reserved Claim.

NOW, THEREFORE, effective as of the date set forth above, each of the Parties agrees as follows:

1. Extension of Objection Deadline. The term Objection Deadline as used in the Agreement is hereby amended and modified to mean 5:00 p.m. (Central Time) on the earlier of (a) December 31, 2023, (b) the first business day after the date that James P. Seery, Jr., is no longer the sole trustee of the Claimant Trust, or (c) the first business day after the date that the Claimant Trust is no longer (i) Highland’s sole limited partner or (ii) the sole owner of, and with the right to direct, Highland’s general partner.

2. Representations and Warranties. Each Party represents and warrants that the representations and warranties set forth in Section 5 of the Agreement are true and accurate as of the date hereof.

3. Effectiveness of Agreement; No Other Changes. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is a conflict between this Amendment and the Agreement, the terms of this Amendment will prevail.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

IT IS HEREBY AGREED.

PATRICK HAGAMAN DAUGHERTY




HIGHLAND CAPITAL MANAGEMENT, L.P.

By:

Name:

Its:



James P. Seery, Jr.

CEO

HIGHLAND CLAIMANT TRUST

By:

Name:

Its:



James P. Seery, Jr.

Claimant Trustee

**PD-8**

**EXHIBIT 62**

**AMENDMENT NO. 2 TO TOLLING AGREEMENT  
EXTENDING CLAIM OBJECTION DEADLINE**

This Amendment No. 2 (the “Amendment”), dated as of November 6, 2023, to that certain Tolling Agreement Extending Claim Objection Deadline, dated as of July 27, 2022 (the “Tolling Agreement”), is made by and between Patrick Hagaman Daugherty, on the one hand, and Highland Capital Management, L.P. and the Highland Claimant Trust, on the other. Capitalized terms used but not defined herein have the meanings given to them in the Agreement.

**RECITALS**

WHEREAS, the Parties entered into the Tolling Agreement to extend the Claim Objection Deadline to object to the Reserved Claim to January 11, 2023, at 5:00 p.m. (Central Time) (*i.e.*, the Objection Deadline).

WHEREAS, the Parties entered into that certain *Amendment No. 1 to Tolling Agreement Extending Claim Objection Deadline* on December 21, 2022, further extending the deadline to object to the Reserved Claim to December 31, 2023 (or earlier if certain conditions were satisfied) (the “First Amendment,” and together with the Tolling Agreement, the “Agreement”).

WHEREAS, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, the Parties desire to enter into this Amendment to further extend the Objection Deadline to object to the Reserved Claim.

NOW, THEREFORE, effective as of the date set forth above, each of the Parties agrees as follows:

1. Extension of Objection Deadline. The term Objection Deadline as used in the Agreement is hereby amended and modified to mean 5:00 p.m. (Central Time) on the earlier of (a) December 31, 2024, (b) the first business day after the date that James P. Seery, Jr., is no longer the sole trustee of the Claimant Trust, or (c) the first business day after the date that the Claimant Trust is no longer (i) Highland’s sole limited partner or (ii) the sole owner of, and with the right to direct, Highland’s general partner.


2. Representations and Warranties. Each Party represents and warrants that the representations and warranties set forth in Section 5 of the Agreement are true and accurate as of the date hereof.

3. Effectiveness of Agreement; No Other Changes. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is a conflict between this Amendment and the Agreement, the terms of this Amendment will prevail.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

IT IS HEREBY AGREED.

PATRICK HAGAMAN DAUGHERTY



HIGHLAND CAPITAL MANAGEMENT, L.P.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

HIGHLAND CLAIMANT TRUST


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_




**IT IS HEREBY AGREED.**

**PATRICK HAGAMAN DAUGHERTY**

\_\_\_\_\_  
**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By:   
Name: James P. Seery, Jr.  
Its: CEO

**HIGHLAND CLAIMANT TRUST**

By:   
Name: James P. Seery, Jr.  
Its: Claimant Trustee

**PD-9**

**EXHIBIT 63**

**AMENDMENT NO. 3 TO TOLLING AGREEMENT  
EXTENDING CLAIM OBJECTION DEADLINE**

This Amendment No. 3 (the “Amendment”), dated as of November 20, 2024, to that certain *Tolling Agreement Extending Claim Objection Deadline*, dated as of July 27, 2022 (the “Tolling Agreement”), is made by and between Patrick Hagaman Daugherty, on the one hand, and Highland Capital Management, L.P. and the Highland Claimant Trust, on the other. Capitalized terms used but not defined herein have the meanings given to them in the Agreement.

**RECITALS**

WHEREAS, the Parties entered into the Tolling Agreement to extend the Claim Objection Deadline to object to the Reserved Claim to January 11, 2023, at 5:00 p.m. (Central Time) (*i.e.*, the Objection Deadline).

WHEREAS, the Parties entered into that certain *Amendment No. 1 to Tolling Agreement Extending Claim Objection Deadline* on December 21, 2022, further extending the deadline to object to the Reserved Claim to December 31, 2023 (or earlier if certain conditions were satisfied) (the “First Amendment”).

WHEREAS, the Parties entered into that certain *Amendment No. 2 to Tolling Agreement Extending Claim Objection Deadline* on November 6, 2023, further extending the deadline to object to the Reserved Claim to December 31, 2024 (or earlier if certain conditions were satisfied) (the “Second Amendment,” and together with the Tolling Agreement and the First Amendment, the “Agreement”).

WHEREAS, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, the Parties desire to enter into this Amendment to further extend the Objection Deadline to object to the Reserved Claim.

NOW, THEREFORE, effective as of the date set forth above, each of the Parties agrees as follows:

1. Extension of Objection Deadline. The term Objection Deadline as used in the Agreement is hereby amended and modified to mean 5:00 p.m. (Central Time) on the earlier of (a) June 30, 2025, (b) the first business day after the date that James P. Seery, Jr., is no longer the sole trustee of the Claimant Trust, or (c) the first business day after the date that the Claimant Trust is no longer (i) Highland’s sole limited partner or (ii) the sole owner of, and with the right to direct, Highland’s general partner.

2. Representations and Warranties. Each Party represents and warrants that the representations and warranties set forth in Section 5 of the Agreement are true and accurate as of the date hereof.

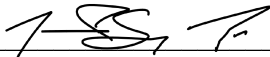
3. Effectiveness of Agreement; No Other Changes. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is a conflict between this Amendment and the Agreement, the terms of this Amendment will prevail.

[REMAINDER OF PAGE INTENTIONALLY BLANK]


**IT IS HEREBY AGREED.**

**PATRICK HAGAMAN DAUGHERTY**

\_\_\_\_\_  
**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By:   
Name: James P. Seery, Jr.  
Its: Chief Executive Officer

**HIGHLAND CLAIMANT TRUST**

By:   
Name: James P. Seery, Jr.  
Its: Claimant Trustee

**PD-10**

Jason S. Brookner (Texas Bar No. 24033684)  
Andrew K. York (Texas Bar No. 24051554)  
Joshua D. Smeltzer (Texas Bar No. 24113859)  
Drake M. Rayshell (Texas Bar No. 24118507)

**GRAY REED**

1601 Elm Street, Suite 4600  
Dallas, TX 75201  
Telephone: (214) 954-4135  
Facsimile: (214) 953-1332  
Email: jbrookner@grayreed.com  
dyork@grayreed.com  
jsmeltzer@grayreed.com  
drayshell@grayreed.com

*Counsel to Patrick Daugherty*

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

In re:	§	
	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054 (SGJ)
	§	
Reorganized Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	Adversary No. 25-03055
PATRICK HAGAMAN DAUGHERTY,	§	
	§	
Defendant.	§	
	§	

**PATRICK DAUGHERTY'S  
MOTION TO DISMISS**

<sup>1</sup> Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



Defendant Patrick Daugherty (“Daugherty”) moves to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6) (incorporated herein by Fed. R. Bankr. P. 7012(b)) for failure to state a claim upon which relief may be granted. Further, the Court should deny leave for further amendments of the Complaint, as no amendment can cure what is otherwise a fatal defect: that the IRS Audit Dispute remains pending and is not yet final.

## I. SUMMARY

1. Plaintiff filed its *Complaint for (1) Disallowance of Claim No. 205 in its Entirety, (2) Estimation of Claim no. 205 for Allowance Purposes, or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty* [Docket No. 1] (the “Complaint”) in the face of a Settlement Agreement approved by this Court on March 8, 2022,<sup>2</sup> that mandates a stay of any litigation by and between Plaintiff and Daugherty until the Internal Revenue Service (“IRS”) makes a final determination regarding an IRS Audit Dispute material to Daugherty’s Reserved Claim under the Settlement Agreement.<sup>3</sup> As Plaintiff concedes in its briefing, that IRS Audit Dispute remains unresolved.<sup>4</sup> Accordingly, Plaintiff’s claim is premature, subject to the

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<sup>2</sup> See Doc. No. 1 at ¶ 14 (citing Main Case Docket No. 3088, which itself incorporates and relies upon the “Settlement Agreement” at Main Case Docket No. 3089, Ex. 1). When reviewing a 12(b)(6) motion to dismiss, the Court “must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on 12(b)(6) motions to dismiss, in particular documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011)(quoting *Tellabs Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007)). In doing so, the Court may take judicial notice of its own records. *E.g.*, *Biliouris as next friend of Biliouris v. Patman*, 751 Fed. App’x 603, 604 (5th Cir. 2019)(“court may take judicial notice of the record in prior related proceedings”); *ITT Rayonier Inc. v. U.S.*, 651 F.2d 343, 345 n.2 (5th Cir. 1981)(“court may... take judicial notice of its own records...”). Plaintiff incorporated the Settlement Agreement by reference in its Complaint. Daugherty also respectfully requests the Court also take judicial notice of the Settlement Agreement at Main Case Docket No. 3089 as it considers this Motion to Dismiss.

<sup>3</sup> All capitalized terms used but not herein defined shall have the meanings ascribed to them in the Settlement Agreement at Main Case Docket No. 3089.

<sup>4</sup> Indeed, Plaintiff concedes as much stating “[o]n information and belief, the 2008 Audit has not been resolved and is heading to court with a resolution not expected until approximately 2029.” Docket No. 1 at ¶ 23, n. 6.



Settlement Agreement’s mandatory stay, and should be dismissed for failure to state a claim upon which relief may be granted.

## II. BACKGROUND

2. On March 8, 2022, Daugherty and Plaintiff entered a Settlement Agreement to resolve, in part, his claims against Highland Capital Management, L.P. (“Debtor” or “Plaintiff”). Main Case Docket No. 3088, 3089.

3. Under that Settlement Agreement, Daugherty retained a Reserved Claim relating to an audit/dispute between the Debtor and the IRS concerning the Debtor’s 2008 tax return.<sup>5</sup> Main Case Docket No. 3089 at Ex. 1, § 9. Critically, under the terms of the Settlement Agreement, “[a]ny litigation by and between the [Debtor] and Daugherty concerning the validity and amount of the Reserved Claim *shall be stayed* until the IRS makes a final determination with respect to the IRS Audit Dispute.” *Id.* (emphasis added).

4. Despite the Settlement Agreement’s mandatory stay language, Plaintiff filed its Complaint asserting three claims for relief: (1) disallowance under section 502(a) of the Bankruptcy Code; (2) estimation under section 502(c) of the Bankruptcy Code; and (3) subordination under section 510(b) of the Bankruptcy Code. *See* Docket No. 1 at ¶¶ 28-45. Each of those claims seek a determination from this Court on the “validity and amount” of Daugherty’s Reserved Claim relating to the IRS Audit Dispute. Yet, Plaintiff concedes that resolution of the

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<sup>5</sup> Although Daugherty acknowledges that for purposes of ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6) the Court must accept as true the allegations in the Complaint, Daugherty disputes Plaintiff’s characterization of the Reserved Claim. The Reserved Claim concerns a compensation and benefits contract, between Plaintiff and Daugherty relating to Daugherty’s cash bonus, that was presented pursuant to a tax refund scheme developed by Plaintiff during the financial crisis in 2008 and 2009. That tax refund scheme was later challenged by the IRS. Indeed, despite Plaintiff’s passing attempt to downplay the document’s language as vague, the “validity and amount” issues that are the gravamen of Daugherty’s Reserved Claim (which is subject to the mandatory stay) relate to whether Plaintiff’s refund “deviat[ed] materially from [Debtor’s] estimate” such that “other compensation [to Daugherty should have been] fairly adjusted” as promised. Docket No. 1-1. Moreover, Plaintiff’s Fifth Amended Plan of Reorganization, which was confirmed by the Court, provided for “Disputed Claims” and required the Claimant Trustee under the Plan to maintain a reserve account for such claims.

IRS Audit Dispute is still pending, alleging that “Highland’s 2008 tax return *is currently subject to an IRS audit.*” *Id.* at ¶ 3 (emphasis added). Plaintiff further concedes “the 2008 Audit has not been resolved” and “[i]t is unclear when, how, or if the 2008 Audit will be finally resolved.” *Id.* at ¶¶ 4, 23 n. 6; *see also id.* at ¶ 38. Finally, Plaintiff acknowledges Daugherty’s Reserved Claim is “contingent on the final outcome of the 2008 Audit.” *Id.* at ¶ 35.

5. As such, Plaintiff’s claims are premature, run afoul of the Settlement Agreement’s mandatory stay, and should be dismissed pursuant Fed. R. Civ. P. 12(b)(6).

### III. LEGAL STANDARD

6. To survive a motion to dismiss under Rule 12(b)(6), Plaintiff must assert a theory that could entitle it to relief. Fed. R. Civ. P. 12(b)(6). In support of that theory, a complaint must allege “sufficient factual matter” that, taken as true, “state[s] a claim for relief [that] is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff must establish more than a “sheer possibility that a defendant has acted unlawfully.” *Id.* This Court need not accept as true legal conclusions or conclusory factual allegations. *Id.* “[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court.” *U.S. ex rel. Bennett v. Medtronic, Inc.*, 747 F. Supp. 2d 745, 761 (S.D. Tex. 2010) (quoting *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)) (cleaned up).

### IV. ARGUMENT

7. The final determination of the IRS Audit Dispute is a dispositive condition precedent to Plaintiff’s right to commence and maintain any litigation concerning the amount or validity of Daugherty’s Reserved Claim. The Complaint does not allege that a final determination has occurred, nor can it. In fact, the Complaint alleges the exact opposite: that the IRS Audit Dispute is *ongoing*. For this reason alone, the Complaint should be dismissed.

8. To the extent Plaintiff makes any claim of finality—despite not alleging it in the Complaint—that claim is the result of a fundamental misunderstanding of the administrative procedure at the IRS for auditing, assessing, and collecting tax amounts that are allegedly due following a partnership audit. There is no practical or economic effect of the IRS’s *proposed* adjustment at the end of an audit beyond just that—*proposing* changes to partnership items subject to challenge by the partners, the courts, and subsequent limitations on assessment and collection.

9. Partnership audit procedures, in this case, are governed by the standards established in the Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”). *See* 26 U.S.C. §§ 6221-6234, adopted by TEFRA, Pub. L. No. 97-248, § 402(a). TEFRA governs partnership audits for partnership years beginning after September 3, 1982, and applies generally to partnership tax years from 1983 through 2017 and subsequent tax years are governed by different rules.<sup>6</sup> Determinations at the partnership level are binding upon all direct and indirect partners of the partnership and, in the absence of a partnership-level proceeding, the IRS is bound by the partnership items as reported on the partnership return. *Sente Inv. Club P’Ship of Utah v. Commissioner*, 95 T.C. 243, 247-250 (1990); *Roberts v. Commissioner*, 94 T.C. 853, 862 (1990). The tax matters partner (“TMP”),<sup>7</sup> plays an important role in the audit and in any resulting administrative proceedings,<sup>8</sup> conducts judicial proceedings,<sup>9</sup> and is obligated to keep the partners informed.<sup>10</sup> The IRS has a duty to issue

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<sup>6</sup> The Bipartisan Budget Act of 2015 repealed the TEFRA procedures entirely for partnership tax years beginning after December 31, 2017. Bipartisan Budget Act of 2015, Pub. L. No. 114-74 §§ 1101(g)(1), 1101(g)(4). All references to Internal Revenue Code (IRC) provisions are TEFRA versions of those IRC provisions enacted on September 3, 1982.

<sup>7</sup> 26 U.S.C. § 6231(a)(7); Treas. Reg. § 301.6231(a)(7)-1.

<sup>8</sup> 26 U.S.C. § 6224(c)(3); Treas. Reg. § 301.6224(c)-1.

<sup>9</sup> 26 U.S.C. § 6226.

<sup>10</sup> 26 U.S.C. § 6223(g); Treas. Reg. § 301.6223(g)-1.

certain notices,<sup>11</sup> and partners have a right to participate in the administrative proceedings unless they waive or fail to exercise their rights.<sup>12</sup>

10. The IRS commences an audit by giving notice to all partners and all partners may participate in the audit, but the primary representative is the Tax Matters Partner (“TMP”). 26 U.S.C. § 6223(a); 26 U.S.C. § 6231(a)(7); Treas. Reg. § 301.6231(a)(7)-1(b)(1). A partnership audit is concluded by the IRS issuing a no-change finding or a Final Partnership Administrative Adjustment (“FPAA”). 26 U.S.C. § 6223(a)(2); Internal Revenue Manual § 8.19.12.3. The IRS is required to mail an FPAA to the TMP, all notice partners, and representatives of notice groups. The mailing of the FPAA to the TMP starts the clock on various procedures that are contingent on issuance of an FPAA. *See e.g., Triangle Investors Ltd. Partners v. Comm’r*, 95 TC 610 (1990). The mailing to the remaining partners must occur within 60 days after the mailing to the TMP. *See Byrd Invs. v. CIR*, 89 TC 1 (1988), *aff’d*, 853 F.2d 928 (11th Cir. 1988) (procedures for mailing to partners other than TMP satisfy due process).

11. The IRS cannot assess tax resulting from adjustments to partnership items until the notice of an FPAA has been mailed, at least 150 days have elapsed after the mailing *and* the FPAA has not been contested. 26 U.S.C. § 6225(a)(1). If the IRS violates the assessment restriction, the assessment can be enjoined. 26 U.S.C. § 6225(b). If a Tax Court petition is filed within 150 days after the FPAA notice, no deficiency attributable to a partnership item may be assessed until the court’s decision on the matter becomes final. 26 U.S.C. § 6225(a)(1). Partners who receive an FPAA are allowed to file a petition contesting the FPAA in the Tax Court, a federal district court, or the Court of Federal Claims. 26 U.S.C. § 6226; Internal Revenue Manual § 8.19.12.11.1.

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<sup>11</sup> 26 U.S.C. § 6223(a)-(b); Treas. Reg. § 301.6223(b)-1, (e)-1, (e)-2.

<sup>12</sup> IRC § 6224(a), IRC § 6224(b); Treas. Reg. § 301.6224(a)-1, (b)-1.

12. Based on information and belief, Defendant expects that a challenge is most likely to occur in the U.S. Tax Court. In that instance, the Tax Court will employ the same reasoning applied in deficiency cases to a decision in a TEFRA proceeding. *See Cinema '84 v. Commissioner*, 122 T.C. 264 (2004). Any partner can appeal the decision, subject to the usual rules for appeals from the deciding court. 26 U.S.C. §§ 6226(g), 7485(b). Under TEFRA, there is only one appeal to one circuit court. *See* 26 U.S.C. § 7482(b)(1)(A); *Abatti v. Comm'r*, 86 T.C. 1319 (1986), *aff'd*, 859 F.2d 115 (9th Cir. 1988). If no notice of appeal is filed within the applicable period, the decision of the trial court becomes final and unappealable at the end of the appeal period. 26 U.S.C. § 7481(a)(1); *see also Benenson v. United States*, 385 F.2d 26 (2d Cir. 1967); *Richland Knox Mutual Ins. Co. v. Kallen*, 376 F.2d 360 (6th Cir. 1967).

13. If an appeal is filed, the decision becomes final after the appeal is resolved and the time to take any further appeal expires. Once the decision becomes final, the decision cannot be challenged without moving to vacate the court decision. *See* Tax Court Rule 162; *see also Tashjian v. Comm'r*, 320 Fed. App'x. 649 (9th Cir. 2009) (cannot contest partnership item decision in subsequent collection due process case for partner). The finality date is critical for determination of the statute of limitations and the IRS generally has at least one year after the date the decision becomes final to assess the partnership item adjustments. *See* 26 U.S.C. § 6229(d)(2).

14. Here, each and every one of Plaintiff's allegations is premised on speculating what the final outcome of the 2008 Audit will be. The FPAA, once one is issued, is subject to challenge and adjustment by the TMP and other partners and, if challenged, no assessment of any proposed adjustment can occur until a final decision is entered by the courts.. Even at the conclusion of all the court proceedings, which Plaintiff itself estimates will not occur until 2029,<sup>13</sup> the adjustments

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<sup>13</sup> *Supra*, note 4.

may still never occur if the IRS does not follow the requirements for assessment within the given statute of limitations. In short, the issuance of an FPAA at this stage—assuming one has actually been issued—is meaningless beyond providing a clear understanding of the IRS position on certain tax return items, and is subject to challenge and potential change by the partners or the courts.

15. Therefore, Plaintiff has failed to allege any facts which give rise to plausible claims for relief against Daugherty. As a result, all claims against Daugherty should be dismissed without prejudice.

#### **V. DISMISSAL SHOULD BE WITHOUT PREJUDICE, AND LEAVE TO AMEND SHOULD BE DENIED**

16. Leave to amend is not automatic, but “is within the sound discretion of the district court.” *United States ex rel. Doe v. Dow Chem. Co.*, 343 F.3d 325, 329 (5th Cir. 2003) (internal citations omitted). Courts typically afford leave to amend at least once, however, a plaintiff should be denied leave to amend if the court determines that the proposed change is frivolous or advances a claim or defense that is legally insufficient on its face. *U.S. ex rel. Bennett v. Medtronic, Inc.*, 747 F. Supp. 2d 745, 761 (S.D. Tex. 2010); *Ayers v. Johnson*, 247 Fed. Appx. 534, 535 (5th Cir. 2007).

17. As set forth above, Plaintiff’s claim is premature and as a result cannot be corrected by an amended pleading. Accordingly, should Plaintiff seek leave to amend, such request would be futile and should be categorically denied.

#### **VI. CONCLUSION**

18. For the foregoing reasons, the Court should dismiss all claims against Daugherty because the Complaint does not satisfy the Rule 12(b)(6) pleading requirements as it fails to state a claim upon which relief may be granted. Additionally, the Court should deny leave to amend because any attempt to amend the Complaint at this time would be futile as the IRS Audit Dispute

remains pending and unresolved. Alternatively, the Court should stay this adversary proceeding until the Debtor's IRS Audit Dispute is fully and finally resolved.

Respectfully submitted this 4<sup>th</sup> day of June 2025.

**GRAY REED**

By: /s/ Andrew K. York

Jason S. Brookner

Texas Bar No. 24033684

Andrew K. York

Texas Bar No. 24051554

Joshua D. Smeltzer

Texas Bar No. 24113859

Drake M. Rayshell

Texas Bar No. 24118507

1601 Elm Street, Suite 4600

Dallas, Texas 75201

Telephone: (469) 320-6050

Facsimile: (469) 320-6886

Email: jbrookner@grayreed.com

dyork@grayreed.com

jsmeltzer@grayreed.com

draysehll@grayreed.com

*Counsel to Patrick Daugherty*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing instrument was served on all Parties or counsel of record herein on this 4<sup>th</sup> day of June 2025, via the CM/ECF system and/or email.

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWORD PLLC**

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

*Counsel for Highland Capital Management, L.P.*

By: /s/ Andrew K. York

Andrew K. York



**DALLAS DIVISION**

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**PATRICK DAUGHERTY’S MOTION TO DISMISS**

<sup>1</sup> Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Upon the motion (the “**Motion**”) of Patrick Daugherty, for the entry of an order (the “**Order**”): dismissing this adversary proceeding for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6) (as incorporated herein by Fed. R. Bankr. P. 7012(b)); and this Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate, and no other notice need be provided; and this Court having reviewed the legal and factual bases set forth in the Motion; and this Court having determined that cause exists to **GRANT** the Motion. In light of the foregoing, it is hereby **ORDERED, ADJUDGED, AND DECREED THAT:**

1. This adversary proceeding is hereby dismissed without prejudice for failure to state a claim upon which relief may be granted pursuant Fed. R. Civ. P. 12(b)(6) (as incorporated herein by Fed. R. Bankr. P. 7012(b)).

2. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

3. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

**###END OF ORDER###**

Submitted by:

**GRAY REED**

By: /s/ Andrew K. York

Jason S. Brookner  
Texas Bar No. 24033684  
Andrew K. York  
Texas Bar No. 24051554  
Joshua D. Smeltzer  
Texas Bar No. 24113859  
Drake M. Rayshell  
Texas Bar No. 24118507

1601 Elm Street, Suite 4600

Dallas, Texas 75201

Telephone: (469) 320-6050

Facsimile: (469) 320-6886

Email: jbrookner@grayreed.com  
dyork@grayreed.com  
jsmeltzer@grayreed.com  
draysehll@grayreed.com

*Counsel to Patrick Daugherty*

**PD-11**

Jason S. Brookner (Texas Bar No. 24033684)  
Andrew K. York (Texas Bar No. 24051554)  
Joshua D. Smeltzer (Texas Bar No. 24113859)  
Drake M. Rayshell (Texas Bar No. 24118507)

*Counsel to Patrick Daugherty*

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054 (SGJ)
Reorganized Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
v.	§	
PATRICK HAGAMAN DAUGHERTY,	§	Adversary No. 25-03055
Defendant.	§	

<sup>1</sup> Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**PATRICK DAUGHERTY’S (A) REPLY IN SUPPORT OF HIS MOTION TO  
DISMISS AND (B) RESPONSE TO PLAINTIFF’S CROSS MOTION FOR RELIEF  
FROM A FINAL ORDER PURSUANT TO BANKRUPTCY RULE 9024**

Defendant Patrick Daugherty (“Daugherty”) files this Reply in support of his Motion to Dismiss Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) (incorporated herein by Fed. R. Bankr. P. 7012(b)) for failure to state a claim upon which relief may be granted, and this Response to Plaintiff’s Cross Motion for Relief from a Final Order Pursuant to Bankruptcy Rule 9024.

**I. SUMMARY**

1. Plaintiff’s Objection is a tortured, and ultimately unsuccessful, attempt to avoid the terms of the Settlement Agreement it voluntarily negotiated. It also fails to credibly contest the unambiguous admissions in Plaintiff’s Complaint: that the IRS Audit Dispute<sup>2</sup> remains unresolved. In fact, the Objection does not even argue the Complaint’s factual allegations plead a cognizable claim for relief.

2. Tellingly, the Objection fails to keep Plaintiff’s story straight. At one point Plaintiff admits Daugherty’s Reserved Claim is still “unresolved at this time[.]” *See Highland Capital Management, L.P.’s (A) Objection to Partick Daugherty’s Motion to Dismiss and (B) Cross Motion for Relief From a Final Order Pursuant to Bankruptcy Rule 9024* [Docket No. 10] (the “Objection”) at ¶ 5. In other parts of the Objection, Plaintiff claims the IRS *may* have made a final determination. *Id.* at ¶ 2 (stating Plaintiff “believes” the IRS made a final determination); *id.* at ¶ 15 (asserting Plaintiff recently found “information suggesting” the IRS made a final

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<sup>2</sup> All capitalized terms used but not herein defined shall have the meanings ascribed to them in the Settlement Agreement at Main Case Docket No. 3089, Daugherty’s Motion to Dismiss or Plaintiff’s Objection.

determination). In support, Plaintiff relies on its own records to contend the final determination occurred *three years before* Plaintiff and Daugherty entered into the Settlement Agreement.

3. Plaintiff's fumbling attempt to characterize the IRS's final determination (or not) of the IRS Audit Dispute is a tacit concession that the Stay Provision of the Settlement Agreement controls. A fact bolstered by Plaintiff's complete failure to answer a simple, logical question: if the IRS had issued a final determination in 2018, then what was the need to reserve the claim in the Settlement Agreement?

4. Realizing its argument lacks a supportable premise, Plaintiff pivots to a Hail Mary: a cross-motion asking the Court to relieve Plaintiff from the Stay Provision in its bargained-for Settlement Agreement.<sup>3</sup> The Court should reject this request for several reasons. The parties clearly contemplated at the time they entered into the Settlement Agreement that final resolution of the IRS Audit Dispute was indeterminate. Plaintiff's failure to negotiate an end-date in the Settlement Agreement is its own fault. Plaintiff also claims the current circumstances were "unforeseen."<sup>4</sup> Mutual mistake, however, is not an "extraordinary circumstance" that justifies Court intervention under Rule 60(b)(6). Most importantly, Plaintiff obtained the benefits of the Stay Provision via multiple tolling agreements that extended Plaintiff's deadline to object to Daugherty's Reserved Claim. Plaintiff is therefore estopped from now trying to eliminate the same

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<sup>3</sup> Indeed, supporting the bargained-for nature of the settlement, in seeking court-approval of the Settlement Agreement, Plaintiff stated: "[T]he Settlement agreement was unquestionably negotiated at arm's length. The Terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and represent neither party's 'best case scenario.'" [Main Case Docket No. 3088 at ¶ 48].

<sup>4</sup> Plaintiff's claim is problematic given the Court's comments during the parties' November 17, 2020 hearing on Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes [Main Case Docket No. 1281 in Case 19-34054-sgj], where the Court commented with respect to Daugherty's Reserved Claim: "down the road we may get to a point where it's not contingent, the IRS has finished doing what it's going to do, and we may get to a point where we think the result is appropriate." [Main Case Docket No. 1426 in Case 19-34054-sgj at 85:16-19]. While that point in time has yet to come, it is hardly something "unforeseen." [See also generally *id.* at 46:16-48:22].

provision in the Settlement Agreement. Accordingly, Plaintiff's cross-motion should be denied, and the Complaint dismissed.

## II. LEGAL STANDARD

5. To survive a motion to dismiss under Rule 12(b)(6), Plaintiff must assert a theory that could entitle it to relief. Fed. R. Civ. P. 12(b)(6). In support of that theory, a complaint must allege "sufficient factual matter" that, taken as true, "state[s] a claim for relief [that] is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff must establish more than a "sheer possibility that a defendant has acted unlawfully." *Id.* This Court need not accept as true legal conclusions or conclusory factual allegations. *Id.* "[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court." *U.S. ex rel. Bennett v. Medtronic, Inc.*, 747 F. Supp. 2d 745, 761 (S.D. Tex. 2010) (quoting *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)) (cleaned up).

## III. ARGUMENT

### A. The Complaint still fails to allege a plausible claim.

6. Plaintiff first contends that it "recently also found information suggesting that the 'IRS [made] a final determination with respect to the IRS audit dispute.'" Objection at ¶ 15. It points to three documents from Plaintiff's own records that were purportedly sent to Daugherty on or about February 3, 2018. *Id.* at ¶ 16 and Morris Exhibits 2-4. This argument fails for multiple reasons.<sup>5</sup>

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<sup>5</sup> The Court also should decline to consider Morris Exhibits 2-4 because they are used in a manner inconsistent with the Complaint's factual allegations. While a plaintiff "has much more flexibility in opposing a Rule 12(b)(6) motion," any elaborations or extrinsic evidence must be consistent with the pleadings. *Kinnie Ma Indiv. Retirement Acct. v. Ascendant Capital, LLC*, Cause No. 1:19-CV-1050-LY, 2021 WL 11962856, at \*1 (W.D. Tex. Aug. 25, 2021) (quoting *Geinosky v. City of Chicago*, 675 F.3d 743, 745 n. 1 (7th Cir. 2012)). The Complaint alleges the IRS Audit is not final. Plaintiff attempts to use the Morris Exhibits 2-4 to argue that the exact opposite. Notwithstanding the



7. First, Plaintiff’s letter to Daugherty makes clear that the “IRS field examiners” did not reach a “final determination”. Rather, they simply “proposed an adjustment” to Plaintiff’s 2008 tax return. Morris Exhibit 2. The letter also makes clear that Plaintiff and Daugherty could accept or reject the proposed adjustment — and Plaintiff recommended Daugherty not agree to the proposed adjustments. *Id.* Moreover, the letter states that Plaintiff would “handle the closing conference . . . and appeal the proposed adjustment to the IRS Appeals Office after the conference.” *Id.* Nothing in the letter or IRS forms establishes that the IRS had made a “final determination” with respect to the IRS audit dispute.

8. Second, Plaintiff argues the **February 2018** letter and attached IRS forms **suggest** the IRS reached a final determination. But that argument is belied by the **November 2021** Settlement Agreement. The parties expressly provided that Daugherty’s Reserved Claim “shall be stayed *until the IRS makes a final determination with respect to the IRS Audit Dispute.*” Settlement Agreement at ¶ 9. If the IRS had already made a final determination in February 2018, then there would be no need for Plaintiff and Daugherty to include the Stay Provision in the Settlement Agreement.

9. The parties’ effectuation of the Settlement Agreement also acknowledged the IRS audit was not final. On July 27, 2022, the parties entered a Tolling Agreement Extending Claim Objection Deadline. [Main Case Docket No. 4255-60 in Case 19-34054-sgj].<sup>6</sup> The parties

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contradiction, the Court also has discretion not to consider matters outside the pleadings that are submitted in opposition to a 12(b)(6) motion. *Tremont LLC v. Halliburton Energy Servs., Inc.*, 696 F.Supp.2d 741, 751 (S.D. Tex. 2010).

<sup>6</sup> As Daugherty pointed out in his Motion to Dismiss, the Court may take judicial notice of its own records. *E.g.*, *Biliouris as next friend of Biliouris v. Patman*, 751 Fed. App’x 603, 604 (5th Cir. 2019)(“court may take judicial notice of the record in prior related proceedings”); *ITT Rayonier Inc. v. U.S.*, 651 F.2d 343, 345 n.2 (5th Cir. 1981)(“court may... take judicial notice of its own records...”). Daugherty respectfully requests the Court take judicial notice of the Tolling Agreement filed by Plaintiff in the Main Case at Docket No. 4255-60 as it considers this Motion to Dismiss.

included recitals in the Tolling Agreement that there was an “absence of a resolution of the IRS Dispute” and “it is unknown when the IRS Dispute may be resolved”. *Id.* at 4. Over the next three years the parties entered into three amendments to the Tolling Agreement. None of those amendments changed the characterization of the IRS Audit Dispute as unresolved. [Main Case Docket Nos. 4255-61 through 4255-63 in Case 19-34054-sgj].

10. Finally, the Objection fails to “wade into the thicket of arcane tax regulations” that eviscerate Plaintiff’s argument. Objection at ¶ 3. Daugherty’s Motion to Dismiss clearly explained how the IRS’ proposed adjustment was not a final determination. Motion to Dismiss at ¶¶ 8-13. Plaintiff’s intentional decision not to address those arguments is a tacit admission that the detailed explanation of the audit process in Daugherty’s response established there was no final determination. The motion to dismiss did not, as Plaintiff claims, present meaningless arcane rules, or a thicket for the Court to wade through, but a clear legal standard that a dispute cannot be final until the allowed judicial review is concluded. These are established standards that both parties were aware of at the time of settlement. Any alleged inconvenience was known and accounted for by the parties during settlement negotiations and the resulting agreement.

11. In sum, the extrinsic evidence attached to Plaintiff’s Objection fails to illustrate that the Complaint alleges any facts which give rise to plausible claims for relief against Daugherty. The Complaint and the Objection show Plaintiff filed this adversary proceeding before a final determination in the IRS Audit Dispute. As a result, all claims against Daugherty should be dismissed without prejudice pursuant to the Settlement Agreement.

**B. Plaintiff's meritless Rule 60(b)(6) cross-motion should be denied.**

**i. Plaintiff improperly asks the Court to rewrite the parties' negotiated Settlement Agreement.**

12. Rule 60(b)(6) is a “grand reservoir of equitable power” only when its use is necessary “to accomplish justice.” *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. 1981). Moreover, a motion for relief from a judgment is generally not favored and should only be granted upon a showing of exceptional circumstances. *United States v. Int'l Bhd. of Teamsters*, 247 F.3d 370, 391 (2nd Cir. 2001). Consistent with these principles, motions to reform or nullify settlements are disfavored precisely because settlements represent the parties' negotiated allocation of risk. *See Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 580 (10th Cir. 1996) (denying 60(b)(6) motion when “[d]efendants made a free, counseled, deliberate choice whose consequences in hindsight are unfortunate.”) (citing *Pelican Prod. Corp. v. Marino*, 893 F.2d 1143, 1147 (10th Cir.1990)). Whatever inconvenience Plaintiff now faces is a direct consequence of a contractual risk it willingly accepted. Rule 60(b)(6) does not permit the Court to rescue a sophisticated party from the predictable results of its own bargain. *Yesh Music v. Lakewood Church*, 727 F.3d 356, 363 (5th Cir. 2013) (“Rule 60(b)(6) relief will not be used to relieve a party from the free, calculated, and deliberate choices he has made.”); *S.E.C. v. Conradt*, 309 F.R.D. 186, 187-88 (S.D.N.Y. 2015) (refusing to utilize Rule 60(b)(6) to vacate defendants' settlement agreements that resulted in consent judgments after defendants' guilty pleas in a parallel proceeding were vacated).

13. Here, the Stay Provision was an integral term of a comprehensive, court-approved Settlement Agreement that resolved years-old disputes and provided Daughterty with certainty that he would not be forced to litigate until *after* the IRS Audit Dispute reached a final determination. Settlement Agreement, ¶ 9. Indeed, Plaintiff previously lauded the Settlement

Agreement as fair and reasonable when it sought approval of the same. [See e.g., Main Case Docket No. 3088 at ¶¶ 41-48]. This Court also “found the Settlement Agreement fair and equitable”. [Main Case Docket No. 3298 at 2]. Now Plaintiff asks the Court to ignore that finding and write out an essential term of the parties’ agreement to avoid the consequence of its bargain.

14. However, the Settlement Agreement’s terms and the parties’ subsequent tolling agreements establish the parties clearly anticipated the possibility—if not, the likelihood—that the IRS Audit Dispute could drag on for years. Plaintiff could have negotiated a temporal backstop, but it did not. Instead, Plaintiff reserved all defenses while agreeing that “any litigation...shall be stayed” until the IRS reaches a final determination. Settlement Agreement, ¶ 9.

**ii. Rule 60(b)(6) should only be utilized in the face of manifest injustice and extraordinary circumstances—not to relieve Plaintiff of its obligations under a court-approved Settlement Agreement.**

15. Relief under Rule 60(b)(6) “requires a showing of manifest injustice and extraordinary circumstances.” *Yesh Music*, F.3d at 363; see also *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988) (Rule 60(b)(6) should only be applied in “extraordinary circumstances”). “[E]xtraordinary circumstances rarely exist when a party seeks relief from a judgment that resulted from the party’s deliberate choices.” *Budget Blinds, Inc. v. White*, 536 F.3d 244, 255 (3rd Cir. 2008). It is clear that a party who is simply trying to escape the effects of a bargain it regretted in hindsight has not demonstrated exceptional circumstances sufficient to warrant relief under Rule 60(b)(6). *Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 273 (3rd Cir. 2002).

16. Plaintiff claims “no one foresaw” the IRS may require more than five years to make a final determination when the Settlement Agreement was negotiated.<sup>7</sup> Objection at ¶ 5. And now, Plaintiff complains that dissolving the estate may take longer than it anticipated at the time Plaintiff entered into the Settlement Agreement. However, Plaintiff’s failure does not amount to an extraordinary circumstance. To the contrary, Plaintiff’s arguments show that it is trying to escape the effects of a bargain it now regrets in hindsight.<sup>8</sup> Daugherty should not bear the consequences of Plaintiff’s regret,<sup>9</sup> nor should the Court cosign Plaintiff’s attempt to circumvent the parties’ Settlement Agreement.

**iii. Equitable considerations defeat Plaintiff’s bid to rewrite a deal from which it has already benefited.**

17. Equity runs in Daugherty’s favor. After the Court entered the Settlement Order, Plaintiff repeatedly invoked the Settlement Agreement to secure four separate tolling agreements, thereby extending its claim-objection deadline from August 11, 2023, to June 30, 2025. (Main Case Docket Nos. 4255-60 through 4255–63). Plaintiff cannot accept those substantial benefits and now disavow the agreement that enabled them. The doctrine of judicial estoppel prevents a party from “playing fast and loose with the courts” by taking inconsistent positions in successive

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<sup>7</sup> To the extent Plaintiff now characterizes the Stay Provision as a “mutual mistake” (or even a “unilateral mistake”) that contention is legally irrelevant. Fifth Circuit precedent makes clear that “mistake or inadvertence” is covered by subsections (1)–(3) of Rule 60(b), and must be raised within one year. Fed. R. Civ. P. 60(c)(1); *Seven Elves*, 635 F.2d at 401–02; *see also Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 393 (1993) (Rule 60(b)(1) covers mistake, inadvertence, surprise, or excusable neglect, and is subject to a one-year limitation). Plaintiff’s motion—filed more than three years after the Settlement Order—comes far too late under those provisions and cannot be bootstrapped into subsection (6).

<sup>8</sup> This is particularly concerning, because Plaintiff previously stated, “the Settlement Agreement should be approved as a rational exercise of the Reorganized Debtor’s business judgment made *after due deliberation of the facts and circumstances concerning Daugherty’s Claim*.” [See e.g., Main Case Docket No. 3088 at ¶ 48 (emphasis added)].

<sup>9</sup> Notably, at any time, Plaintiff could have negotiated an agreeable amendment to the Settlement Agreement with Daugherty to address its concerns. Instead, it chose to leave Daugherty in the dark and file this improper and meritless Adversary Proceeding in violation of the same.

proceedings. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (judicial estoppel prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase). Having treated the Stay Provision as valid and enforceable for years, Plaintiff is estopped from contending otherwise now—especially since Plaintiff has reaped other substantive benefits under the Settlement Agreement.

18. Moreover, Daugherty relied on the Stay Provision when entering those tolling agreements, to set it aside now would be manifestly prejudicial. In equity, the Court should consider that the current position of the parties is a direct result of their bargaining and refuse to tilt the scale in Plaintiff's favor.

**iv. Plaintiff's cross-motion lacks authority and should be denied.**

19. Every authority that Plaintiff relies on in its Objection involves either (i) default judgments or (ii) impossibility caused by events wholly outside the parties' contractual framework—not an attempt to rewrite a settlement term chosen by the parties.

20. For example, in *Seven Elves*, relief was granted where defendants never received notice of trial and a \$250,000 default judgment was entered. 635 F.2d at 399. Unlike here, there was no negotiated settlement, and the movants had no opportunity to present their case. In *Celtic Marine Corp. v. James C. Justice Companies, Inc.*, 593 F. App'x 300 (5th Cir. 2014), the court merely reduced the post-judgment interest rate because the contract lacked "clear, unambiguous" language. 593 F. App'x 300, 306. To the extent a settlement agreement was involved in the court's 60(b)(6) analysis, the ruling enforced, rather than voided, the settlement agreement. *Id.* at 302. In *Lindy Investments III v. Shakertown 1992, Inc.*, 360 F. App'x 510 (5th Cir. 2010), the district court vacated a decade-old money judgment where the plaintiffs' own post-judgment conduct—continuing to use allegedly defective shingles—made enforcement inequitable. 360 F. App'x 510.

Again, no settlement existed, and relief merely restored the pre-judgment status quo. In *In re Strudel Holdings LLC*, 656 B.R. 404 (Bankr. S.D. Tex. 2024), the court extended a real-estate closing deadline because an unforeseen cyberattack on the escrow agent made compliance impossible. 656 B.R. 404. Here, by contrast, the Stay Provision already contemplates a drawn-out IRS process; Plaintiff’s “difficulty” is neither unforeseen nor unavoidable.

21. Plaintiff cites these cases to support the general proposition that Rule 60(b)(6) “should be liberally construed” and that courts have broad discretion to grant relief under that provision to accomplish justice. *Celtic Marine Corp*, 593 F. App’x at 303. But none of these cases authorize a court to excise a bargained-for stay clause simply because one party regrets the timing implication years later. On the contrary, they reinforce that Rule 60(b)(6) is available only when an unanticipated event renders continued enforcement of a judgement manifestly unjust—an entirely different scenario from the one presented here. *See Seven Elves*, 635 F.2d at 402 (Rule 60(b) should be liberally construed to do substantial justice, but not to disturb the finality of judgments absent compelling circumstances).

22. In sum, the Stay Provision was a material term of a negotiated settlement, its continued enforcement is neither manifestly unjust nor extraordinary. For the foregoing reasons, the Court should hold Plaintiff to its bargain and dismiss the adversary proceeding, or, at a minimum, stay it until the IRS Audit Dispute is fully and finally resolved, exactly as the Settlement Agreement requires.

#### **IV. DISMISSAL SHOULD BE WITHOUT PREJUDICE**

23. Plaintiff’s tertiary requested relief is for dismissal without prejudice, subject to (a) a further extension of the claim objection deadline through February 1, 2026, and (b) Plaintiff’s right to re-file the Complaint between January 1 and 31, 2026 together with a renewed Rule

60(b)(6) motion. Objection at ¶ 25. Daugherty agrees the dismissal should be without prejudice. Daugherty also does not oppose an extension of the claim objection deadline to February 1, 2026. However, Daugherty opposes Plaintiff's request for the right to re-file in January 2026 to the extent that Plaintiff is seeking a ruling that it may file before the IRS makes a final determination. The more appropriate procedure would be for Plaintiff to seek a further extension of the claim objection deadline by February 1, 2026, if necessary.

## V. CONCLUSION

24. For the foregoing reasons, the Court should dismiss all claims against Daugherty because the Complaint does not satisfy the Rule 12(b)(6) pleading requirements as it fails to state a claim upon which relief may be granted. Alternatively, the Court should stay this adversary proceeding until the Debtor's IRS Audit Dispute is fully and finally resolved.

Respectfully submitted this 8<sup>th</sup> day of August 2025.

GRAY REED

By: /s/ Andrew K. York

Jason S. Brookner  
Texas Bar No. 24033684  
Andrew K. York  
Texas Bar No. 24051554  
Joshua D. Smeltzer  
Texas Bar No. 24113859  
Drake M. Rayshell  
Texas Bar No. 24118507

1601 Elm Street, Suite 4600  
Dallas, Texas 75201

Telephone: (469) 320-6050

Facsimile: (469) 320-6886

Email: jbrookner@grayreed.com  
dyork@grayreed.com  
jsmeltzer@grayreed.com  
draysehll@grayreed.com

*Counsel to Patrick Daugherty*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing instrument was served on all Parties or counsel of record herein on this 8<sup>th</sup> day of August 2025, via the CM/ECF system and/or email.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz  
jpomerantz@pszjlaw.com  
John A. Morris  
jmorris@pszjlaw.com  
Gregory V. Demo  
gdemo@pszjlaw.com  
Hayley R. Winograd  
hwinograd@pszjlaw.com  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067

**HAYWORD PLLC**

Melissa S. Hayward  
MHayward@HaywardFirm.com  
Zachery Z. Annable  
ZAnnable@HaywardFirm.com  
10501 N. Central Expy, Suite 106  
Dallas, Texas 75231

*Counsel for Highland Capital Management, L.P.*

/s/ Andrew K. York  
ANDREW K. YORK