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

In re:
HIGHLAND CAPITAL MANAGEMENT, L.P.
Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

THE DUGABOY INVESTMENT TRUST and
PATRICK DAUGHERTY,

Appellants,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.
et al.,

Appellees.

Case No. 3:25-cv-01876-K

REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL AS MOOT

Appellees Highland Capital Management, L.P. and the Highland Claimant Trust (together, “**Appellees**”) submit this reply in further support of their motion to dismiss this appeal as statutorily moot [Doc 21, the “**Motion**”] and in response to the Appellants’ objections to the Motion. [Doc 31, the “**Daugherty Objection**” and Doc 33, the “**Dugaboy Objection**”] (together, the “**Appellant Objections**”).

* The Highland Litigation Sub-Trust was an appellee but, after the Kirschner Claims were sold to HMIT, the Bankruptcy Court authorized HMIT’s substitution as plaintiff and the Sub-Trust was dissolved.



INTRODUCTION

Appellants’ contention that this appeal isn’t statutorily moot because the transaction under the Settlement Agreement (the “**Transaction**”) doesn’t constitute a sale under § 363 is wrong for several reasons.

First, the sale was not an “afterthought” but an integral part of the Settlement Motion. Highland’s motion was brought explicitly under § 363, included legal argument on why the transactions were in the best interest of the estate under § 363, and sought a ruling that, among other things, § 363(m) applied. At trial, Appellees requested the Court approve the Transaction under § 363 and presented extensive evidence on value and good faith. After receiving that evidence, the Bankruptcy Court made the necessary findings and conclusions in its Order.¹ Section 363(m) applies to protect the finality of the Order.

Second, Appellants never objected to § 363’s applicability and never challenged the parts of the Order approving the Transaction under § 363, ruling that it qualified for § 363(m)’s protections, or finding that HMIT acted in good faith. Appellants cannot raise new objections and seek new factual findings in opposition to the Motion. Those objections are waived. That alone disposes of Appellants’ Objections.

¹ ROA 10 *et seq.* (the “**Order**”).

Third, Appellants attempt to avoid dismissal under § 363(m) by arguing that the Settlement Agreement didn't include a sale. Wrong again. The Settlement Agreement conveyed title to the Assets in exchange for substantial consideration. That's a sale. Appellants' incorrect arguments that the sale wasn't subject to competing bids, wasn't supported by an appraisal, and didn't provide value to the estate have no bearing on whether this appeal is statutorily moot.

Fourth, even if Appellants hadn't waived objections to good faith, the Bankruptcy Court's finding that the Settlement Agreement was the product of good faith negotiations is supported by a mountain of uncontested evidence. Appellants' challenge to unrelated foreign transactions has nothing to do with the Settlement Agreement having been entered into in good faith.

The Transaction was authorized under *both* § 363 and Rule 9019. Appellants didn't seek a stay of the Order under Bankruptcy Rule 8001. The Transaction closed. This appeal is statutorily moot.

ARGUMENT

A. Highland Explicitly Sought Approval Under Section 363

Daugherty's suggestion that § 363 was an "afterthought" is belied by the facts. The title of Highland's motion referred to § 363. The motion referred to § 363 at least seven times and discussed § 363's applicability to the Transaction and how the

Transaction was in the estate’s best interests, thus satisfying the requirements for sale approval under § 363.

Highland’s proposed order explicitly provided that the “Settlement Agreement ... is approved in all respects pursuant to ... section 363(b)” and that the HMIT Entities “as good faith purchasers ... are entitled to the protections contained in section 363(m)”² At the trial’s conclusion, Highland’s counsel specifically requested approval under § 363. That request was made and granted without either Appellant saying a word.³

The Order explicitly approved the Transaction under § 363 and included findings (the “**Findings**”) that:

- (a) the Transaction was in the best interests of Highland’s stakeholders;⁴
- (b) the Transaction was negotiated “without collusion or fraud, in good faith, and was the product of arm’s length negotiations”;⁵
- (c) the HMIT Entities were not “insiders”;⁶

² ROA 10 *et seq.*

³ Transcript of June 25, 2025 hearing (attached as Exhibit A to this reply, “**Tr.**”), 262:3–19.

⁴ A “best interests” finding is required under § 363. *See, e.g., Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 262 n.18 (5th Cir. 2010) (“In approving [lawsuit] sales, bankruptcy court must ensure that fundamental bankruptcy policies of asset value maximization and equitable distribution are satisfied”); *In re Asarco, LLC*, 650 F.3d 593, 601 (5th Cir. 2011) (“bankruptcy judge should ... act to further the diverse interests of the debtor, creditors and equity holders”) (cleaned up).

⁵ This finding is central to satisfying Bankruptcy Code § 363(n).

⁶ A buyer’s insider status implicates a good faith finding. *In re Sonoran Energy, Inc.*, 2009 Bankr. LEXIS 5430 *5 (Bankr. N.D. Tex. Sep. 14, 2009).

(d) the HMIT Entities were “acquiring the [Assets] in good faith, and have proceeded with all aspects of the Settlement Agreement in good faith”; and

(e) Highland’s “sale of those assets free and clear ... is a proper exercise of ... business judgment.”⁷ Based on the Findings, made on a robust evidentiary record, the Bankruptcy Court concluded that the “HMIT Entities, as good faith purchasers of Estate assets in the Settlement, are entitled to the protections contained in section 363(m) ...”⁸ Hardly an “afterthought,” § 363 was central from the outset, during the trial, and in the Order.

Daugherty also ignores the explicit sale terms in the Settlement Agreement, including that Highland transferred the Kirschner Claims without representations or warranties and the Dugaboy Note *was* the subject of an independent valuation.⁹ HMIT indisputably bought these Assets.

B. Appellants Waived Objection to Applying Section 363

Despite Highland’s transparent request for approval of the Transaction under § 363, Appellants never objected to § 363’s application, to the extensive testimony regarding good faith negotiations of the Settlement Agreement, or to the Findings.

⁷ “Free and clear” appears in § 363(f) and nowhere else in the Bankruptcy Code. “Business judgment” is the hallmark for approving sales under § 363. *ASARCO*, 650 F.3d at 601 (“a sale of assets under § 363 must be supported by an articulated business justification, good business judgment, or sound business reasons”) (cleaned up).

⁸ Order, ¶ 13.

⁹ Settlement Agreement ¶¶ 5(b), 8(b). The Dugaboy Note was marketed pre-sale. Tr. 102:8–104:1; Trial Exhibits 105-112.

Appellants didn't include the Findings or § 363's application to the Transaction in their appellate issues.¹⁰ Appellants questioned § 363's applicability for the first time in their Objections, a desperate attempt to avoid dismissal of this appeal. Because Appellants never appealed this issue, this Court lacks jurisdiction to consider it.¹¹

C. Section 363(m) Applies to the Transaction

Even had Appellants preserved their § 363 argument, the Court would be correct in rejecting it. The sale of the Assets lay at the center of the Transaction.

Under the Settlement Agreement, HMIT acquired two major assets of the Highland estate: the Dugaboy Note and the Kirschner Claims. The Bankruptcy Court found that these Assets were valuable property for which HMIT provided real value to purchase. The Transaction closed by Highland transferring those Assets to HMIT. Yet Appellants still argue that the Transaction was not a sale.

First, Appellants argue that the Appellees didn't receive material value for the Assets. The Bankruptcy Court found that the Assets were indisputably valuable

¹⁰ Daugherty claims he preserved the issue of HMIT's good faith via his designated issue of whether "the settlement is [] fair, reasonable, or in the best interests of the estate as the Debtor ..." Daugherty Objection at 3. But that is not a challenge to *HMIT's* good faith in purchasing the Assets. The single sentence Dugaboy quotes from *BNP Petroleum* doesn't help: "the absence of a stay will not moot the appeal of a sale authorization to the extent that the appeal challenges the 'good faith' of the purchaser." 642 F. App'x at 434. This appeal *doesn't* challenge the purchaser's good faith in entering into the Transaction. Plying rank falsehoods about what happened in the Cayman Islands to entities other than HMIT is not a legitimate challenge to HMIT's good faith.

¹¹ *In re Dorsey*, 870 F.3d 359, 363–64 (5th Cir. 2017).

property the HMIT Entities had no rights to and no interest in absent the Settlement Agreement.¹² Dugaboy puzzlingly argues that the Transaction isn't a sale because the Transaction contains "value-for-value exchanges." But that's what a sale is: "the transfer of property ... for a price."¹³ Neither *Camacho* nor any case Appellants cite requires that the "price" take the form of cash. Here, "price" is synonymous with "consideration": "As defined in the dictionary, a 'sale' is '[t]he action or an act of selling or making over to another for a price' or 'the exchange of a commodity for money or other valuable consideration.'"¹⁴

Here, the consideration provided to Highland in exchange for the Assets included: (a) allowance of HMIT's Class 10 interest under Highland's plan in a fixed but reduced amount;¹⁵ (b) HMIT's waiver of valuable rights under the CTA;¹⁶ (c) HMIT's dismissal of three pending lawsuits and the granting of extensive protections against future litigation, and (d) a dollar-for-dollar reduction of HMIT's Class 10 Interest in exchange for a transfer of the Dugaboy Note to HMIT.¹⁷ All this

¹² Daugherty's contention that the Kirschner Claims have no value because they were transferred without "representations or warranties" is meritless. Disclaiming representations and warranties is common in bankruptcy transactions and actually *supports* characterizing the Transaction as a sale.

¹³ *Camacho v. Ford Motor Co.*, 993 F.3d 308, 312 (5th Cir. 2021).

¹⁴ *Id.*, citing OXFORD ENGLISH DICTIONARY (2d ed. 1989).

¹⁵ ROA 807 *et seq.* The amount included a dollar-for-dollar reduction of HMIT's interest by the amount HMIT owed Highland under a disputed promissory note. HMIT transferred \$57 million of value to Appellees via this reduction.

¹⁶ These waived rights include HMIT's right to be treated as a Claimant Trust beneficiary and all the rights and privileges associated with that status. ROA 816–17.

¹⁷ Settlement Agreement ¶¶ 9, 11–12. As the Settlement Agreement required, the Dugaboy Note was valued by an independent third party.

constitutes material consideration given in exchange for the transfer of title to property. That is a sale.¹⁸

During trial, two witnesses provided un rebutted testimony that the Transaction included Highland’s transfer of valuable Assets to the HMIT Entities in exchange for valuable consideration.¹⁹ The witnesses testified that the Transaction included a sale. Just because the Transaction also included releases and was subject to approval also as a compromise doesn’t undermine the Bankruptcy Court’s conclusion that the Transaction included a sale.²⁰

Second, Appellants argue that the Transaction is merely a settlement subject solely to Rule 9019, ignoring that the Bankruptcy Court found that the sale of Assets was part of the integrated Transaction that included a sale and a settlement. The Bankruptcy Court specifically found that the “[Kirschner] Claims and Dugaboy Note are property of the estate, and the Highland Entities’ sale of those assets free and clear ... **but otherwise subject to the Settlement Agreement** is a proper exercise of their business judgment.”²¹ With this provision, the Bankruptcy Court expressly

¹⁸ Daugherty’s suggestion that an asset sale can’t be approved unless the seller first markets or appraises the assets has no basis in law and ignores the indisputable evidence that the Dugaboy Note *was* marketed and valued. *See* n.9 above. And *Fuchs* involved not a sale but the rejection of a misplaced argument by a pro se appellant that a mutual settlement of a lawsuit should be recharacterized as a sale.

¹⁹ Tr. 92:9–22, 192:17–193:17.

²⁰ *See In re Sneed Shipbuilding, Inc.*, 914 F.3d 1000, 1004 (5th Cir. 2019) (“there is no way to sever the settlement from the sale; they are mutually dependent. Congress has ordered us not to review such decisions by the bankruptcy court when they are not stayed. This case is moot”).

²¹ Order at 12 (emphasis added).

determined that the sale of the Assets was *subject to the Settlement Agreement* and, therefore, inextricably a part of the Transaction.²²

Third, Appellants argue that § 363(m) doesn't apply because the sale was a transaction among “insiders.”²³ Section 363(m) applies to sales to insiders.²⁴ Also, the Bankruptcy Court explicitly ruled that the HMIT Entities were *not* insiders. Appellants didn't appeal that ruling. Similarly, Appellants argue that § 363(m) only applies to buyers who are strangers to the bankruptcy process, citing *TMT Procurement*. But neither that case nor the case quoted in it —*In re Sax*²⁵ — stand for the proposition that statutory mootness under § 363(m) applies only to sales involving a “stranger” to the bankruptcy process.²⁶

²² Neither Appellant ever challenged the centrality of the Assets' sale to the Transaction or included it in their statements of issues on appeal. Respectfully, this Court must consider the unified Transaction as a sale.

²³ No evidence exists to support Appellants' argument. Although HMIT owned limited partnership interests in Highland before the bankruptcy case, those interests were extinguished under Highland's plan. No relationship existed—other than adversarial—between the HMIT Entities and Highland when the Transaction was negotiated and executed.

²⁴ See, e.g., *In re Old Cold LLC*, 879 F.3d 376, 384 (court rejected argument that buyer's insider status precluded it from being a “good faith purchaser” for purposes of § 363(m)) (1st Cir. 2018), cited with approval by *In re Palm Springs II, L.L.C.*, 65 F.4th 752, 765 (5th Cir. 2023).

²⁵ 796 F.2d 994, 998 (7th Cir. 1986) (“Finality is important because it minimizes the chance that purchasers will be dragged into endless rounds of litigation to determine who has what rights”).

²⁶ *Energystec* is similarly unavailing for Dugaboy. That case involved an appeal of an order determining that an encumbrance ran with real property sold under a § 363 order entered a year earlier. The Fifth Circuit reasoned that the appellant was not challenging the sale but, rather, “relying on it” and that, therefore, the appeal did not implicate § 363(m). 739 F.3d 215, 219.

D. Extensive Evidence Demonstrated that the Transaction was Negotiated in Good Faith

The uncontroverted evidence adduced at trial amply and affirmatively proved HMIT's good faith in purchasing the Assets.

Dugaboy wrongly asserts that the Bankruptcy Court erred by finding HMIT's good faith "presuming from a purported lack of countervailing evidence that Patrick had authority to act for the HMIT entities and therefore must have acted in good faith." The Bankruptcy Court did no such thing. During the trial, Highland's Claimant Trustee, James Seery, provided extensive, un rebutted testimony regarding the three-month long, good faith, arm's-length nature of the negotiations that led to the Transaction, testimony corroborated by dozens of exhibits admitted into evidence.²⁷

Mr. Seery also described the work he did to confirm Patrick's authority to act on behalf of the HMIT Entities,²⁸ including his analysis of the HMIT Entities' organizational documents.²⁹ Based on this substantial, uncontroverted evidence, the Bankruptcy Court found that the Transaction was negotiated in good faith and that HMIT was a good faith purchaser under § 363(m).

In doing so, the Bankruptcy Court found unpersuasive Dondero's unsubstantiated testimony challenging Patrick's authority. Dugaboy's accusations

²⁷ Tr. 87:11-91:17; Trial Exhibits 2 through 57.

²⁸ Tr. 97:12-100:13.

²⁹ See Tr. 98:9-10.

about Patrick—including the irresponsible and baseless allegation that Highland knew Patrick was committing fraud but contracted with him anyway—are irrelevant to whether this appeal is statutorily moot under § 363(m).³⁰ That HMIT is a good faith purchaser is a fact beyond dispute. That’s what matters for § 363(m).

That’s why this appeal is statutorily moot.

September 22, 2025

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³⁰ Dugaboy’s allegation that the Cayman Islands court “stripped” Patrick of authority to act for HMIT is knowingly false. Dugaboy Objection at 3. **None of the HMIT Entities is subject to the Cayman Islands proceeding and none was ever mentioned in any order or even in the 74-page Statement of Claim annexed to Dugaboy’s Objection** (although claimants do admit that Patrick has remained in control of the entities subject to the Cayman Islands proceeding at all times since March 2021). Dugaboy Objection, Ex. 1 at ¶ 74.8.

CERTIFICATE OF COMPLIANCE

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/s/ Zachery Z. Annable
Zachery Z. Annable

CERTIFICATE OF SERVICE

I certify that, on September 22, 2025, a copy of this document was served electronically via the Court's CM/ECF system to all parties registered to receive electronic notices in this case.

/s/ Zachery Z. Annable
Zachery Z. Annable

EXHIBIT A

Transcript of Bankruptcy Court Hearing
June 25, 2025

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.,) June 25, 2025
) 9:30 a.m. Docket
Reorganized Debtor.)
) - MOTION TO EXTEND DURATION OF
) TRUSTS (4213)
) - MOTION TO APPROVE SETTLEMENT
) (4216)
)

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

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1 DALLAS, TEXAS - JUNE 25, 2025 - 9:38 A.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 morning. Please be seated.

6 MR. LANG: Good morning, Judge.

7 THE COURT: All right. We have Highland settings
8 this morning, Case No. 19-34054. We have two motions: a
9 motion to extend the duration of the Plan Trust, and then a
10 motion under Rule 9019 to approve a settlement between the
11 estate entities and Hunter Mountain entities.

12 All right. So, lots to get to. Let's quickly get
13 appearances from the participating parties in interest this
14 morning.

15 MR. MORRIS: Good morning, Your Honor. John Morris;
16 Pachulski Stang Ziehl & Jones. I'm joined by my colleagues
17 Jeffery Pomerantz, Gregory Demo, and Hayley Winograd. And we
18 represent the Highland Capital Management Claimant Trust and
19 Highland Capital Management, LP.

20 THE COURT: Okay. Good morning. Other appearances?

21 MR. LOIGMAN: Good morning, Your Honor. Robert
22 Loigman from Quinn Emanuel. We represent the Highland
23 Litigation Trustee, Marc Kirschner.

24 THE COURT: Good morning.

25 MS. DEITSCH-PEREZ: Good morning, Your Honor. This

1 is Deborah Deitsch-Perez from Stinson representing the Dugaboy
2 Trust on the motion to extend the duration of the Trust.

3 THE COURT: Good morning.

4 MS. DEITSCH-PEREZ: Good morning.

5 MR. LANG: Michael Lang for Dugaboy Investment Trust
6 on the 9019 motion.

7 THE COURT: Good morning.

8 MR. LANG: Good morning.

9 MR. PHILLIPS: Good morning, Your Honor. Louis M.
10 Phillips and Amelia L. Hurt; Kelly Hart Hallman -- Kelly Hart
11 Pitre, Louisiana trade name, I don't know why -- appearing on
12 behalf of Hunter Mountain Investment Trust and the Hunter
13 Mountain entities in connection with the 9019 motion.

14 THE COURT: Good morning.

15 MR. YORK: Good morning, Your Honor. Drew York along
16 with Joshua Smeltzer and Drake Rayshell from Gray Reed on
17 behalf of Patrick Daugherty with regard to the 9019 motion.

18 THE COURT: Good morning. Ms. Schmidt?

19 MS. SCHMIDT: Erin Schmidt on behalf of the U.S.
20 Trustee.

21 THE COURT: Good morning.

22 MR. CURRY: Good morning, Your Honor. David Curry
23 from Okin Adams on behalf of The Dallas Foundation and Crown
24 Global Life Insurance, Ltd.

25 THE COURT: Good morning.

1 All right. Well, let me ask. I'll start with Mr. Morris,
2 given these are your motions. Do you have any agreements
3 about how you're going to proceed? I'm wondering, first off,
4 are we going to have joint presentations, joint evidence on
5 both motions, or are we going to take one at the time?

6 MR. MORRIS: Good morning, Your Honor. Thank you
7 very much for hearing us yesterday. It's kind of a big day in
8 the case. We have a milestone that we hope will greatly
9 advance the prosecution of this case, and, frankly, what
10 remains to be done to complete the wind-up of Highland.

11 There are two motions before the Court. The first is the
12 motion to extend the Trusts. That was filed at Docket No.
13 4213. We're going to address that one first, Your Honor,
14 because we have a resolution and a stipulation. There's only
15 one objecting party. That was the Dugaboy Investment Trust.
16 And early this morning we reached an agreement whereby Dugaboy
17 is going to withdraw its objection, with prejudice, subject to
18 a stipulation that we will file with the Court but that
19 contains the following terms.

20 THE COURT: Okay.

21 MR. MORRIS: Number one, Dugaboy agrees to withdraw
22 its objection to the motion, with prejudice.

23 Number two, the Trusts expect to dissolve by August 11th,
24 2026, so that no further extension of the duration of the
25 Trusts will be necessary.

1 THE COURT: Okay.

2 MR. MORRIS: And number three, Dugaboy hereby
3 preserves and does not waive its right, if any, to object to
4 any further attempts to extend the date by which the Trusts
5 must be dissolved or to extend the duration of the Trusts.

6 THE COURT: Wait. I don't understand that third one.
7 Could you repeat it?

8 MR. MORRIS: It's a reservation of rights.

9 THE COURT: Okay.

10 MR. MORRIS: And so Dugaboy preserves and does not
11 waive its right, if any, to object --

12 THE COURT: Well, okay. I'm sorry. Maybe I zoned
13 out or heard something different.

14 MR. MORRIS: Uh-huh.

15 THE COURT: I thought number two of the agreement was
16 August 11th, 2026 would be it; there would be no further
17 extensions.

18 MR. MORRIS: It's a statement of expectation. It's
19 not a representation. It's not a warranty. We do not believe
20 today, based on the facts and circumstances that we know of,
21 that a further extension will be necessary, but we're not
22 waiving the right to seek it if circumstances change or
23 something unforeseen happens. And all Dugaboy is saying is
24 that, okay, we reserve the right, if any, to object.

25 THE COURT: Okay.

1 MR. MORRIS: It's that simple.

2 THE COURT: Okay. It's sort of confusing, right?

3 MR. MORRIS: Yeah.

4 THE COURT: Okay.

5 MR. MORRIS: Perhaps. If you have any questions, let
6 me try and clarify.

7 THE COURT: Well, I guess I'll just start with Ms.
8 Deitsch-Perez. Would you come to the podium? We've got I
9 don't know who on the camera, but we want to make sure
10 everyone hears.

11 MS. DEITSCH-PEREZ: Okay. I'll take a stab at --

12 THE COURT: Do you confirm what you heard and do you
13 have any clarification of Points 2 and 3?

14 MS. DEITSCH-PEREZ: Maybe I can make it clear. I
15 confirm that is the stipulation that we agreed upon, and I
16 think all that was intended is the Trusts and the Debtor are
17 saying they expect to be done by August 11, 2026, so that they
18 will not need to make this motion again, but they could not
19 and would not promise that they will be done by then. So
20 Dugaboy is withdrawing the objection to this particular
21 extension but is not waiving the right to object to a further
22 request for an extension. And that's the sum of it. Does
23 that make sense to Your Honor?

24 THE COURT: It does.

25 MS. DEITSCH-PEREZ: Okay.

1 THE COURT: I'm hoping it'll be over by August 11th,
2 2026, and we'll see where we are at that time.

3 Well, one of my reasons for a slight bit of confusion is,
4 in reading the 9019 settlement that is before the Court, I saw
5 that there were some future installments payments, if you
6 will, to HMIT, I think up through 2029, maybe.

7 MR. MORRIS: Sure.

8 THE COURT: So I was --

9 MR. MORRIS: So let me clarify.

10 THE COURT: Okay.

11 MR. MORRIS: The only thing that we said that we
12 expect to happen as of, you know, by August 11th, 2026 is that
13 the Trusts will be dissolved. But that is not the end of
14 their life. It is a process. Once you file for dissolution,
15 then you have to complete the wind-down. And completing the
16 wind-down will require the completion of all litigation. It
17 will -- right?

18 All we're talking about is dissolving the Highland
19 Claimant Trust and the Highland Litigation Subtrust so that
20 what remains after that is the Indemnity Trust. And the
21 Indemnity Trust will be fully funded and will be prepared to
22 go forward. And if we ever get to a point when there's no
23 further litigation, the corpus of that will be distributed to
24 whatever stakeholders are entitled to it at that time.

25 But when we talk about being done by next year, it doesn't

1 mean the case will be over. It simply means that the Claimant
2 Trust and the Highland Litigation Subtrust will be dissolved.
3 But they still have to complete the wind-up.

4 THE COURT: Okay. Gotcha.

5 MS. DEITSCH-PEREZ: And Dugaboy is reserving its
6 rights to object to -- if something is happening that seems
7 improper or untoward or they're seeking additional relief,
8 obviously, we're not waiving the unknown now.

9 THE COURT: Okay. Gotcha. All right. Well, I
10 appreciate the resolution of these issues. I assume no other
11 party in interest is going to weigh in since we only had a
12 Dugaboy objection.

13 MR. MORRIS: That was the only objection we had. I'm
14 prepared to, if Your Honor thinks it's necessary or
15 appropriate, or both, to make a very short proffer. A
16 proffer.

17 THE COURT: Okay. I'll accept that proffer at this
18 time.

19 MR. MORRIS: Okay. So, Your Honor, we filed on the
20 docket at No. 4253 Exhibits 1 through 65, and we supplemented
21 our exhibit list at Docket No. 4271 with two additional
22 documents, which are Exhibits 66 and 67. We don't believe
23 there's any objection to any of those documents, and we would
24 respectfully move for their admission into evidence.

25 THE COURT: All right. Could you repeat the numbers

Seery - Proffer

11

1 once again?

2 MR. MORRIS: Yes, Your Honor. So, for the motion for
3 an order further extending the duration of the Trusts, we have
4 two docket entries that contain Highland's exhibits. The
5 first is Docket No. 4253, and that has Exhibits 1 through 65.

6 THE COURT: Okay.

7 MR. MORRIS: And then we supplemented at 4271 with
8 Docket -- with Exhibit Numbers 66 and 67.

9 THE COURT: All right. I presume there's no
10 objection to these exhibits.

11 All right. They are admitted.

12 (Claimant Trust's Exhibits 1 through 67 are admitted into
13 evidence.)

14 JAMES P. SEERY, JR., PROFFER OF TESTIMONY

15 MR. MORRIS: Okay. So, Your Honor, if called to
16 testify, James P. Seery, Jr., the Claimant Trustee of the
17 Highland Claimant Trust, would testify as follows.

18 At Exhibits 63 and 64, Highland filed excerpts of the
19 Litigation Trust and the Litigation Subtrust -- the Claimant
20 Trust and the Litigation Subtrust, and each of those excerpts
21 contain Section 9.1, respectively. That's the section of the
22 Trusts that deal with the extensions that may be necessary
23 from to the original three-year term. And Mr. Seery would
24 testify that he's familiar with those provisions and that he
25 understands the requirements of those provisions include,

1 among other things, the requirement that all objections to
2 claims and equity interests have been resolved and that all
3 assets that the Trustee believes might yield sufficient value
4 to the estate have been sold.

5 Mr. Seery would also testify that the Highland estate has
6 a number of assets in its possession today, certain of which
7 will be conveyed to Hunter Mountain if the 9019 motion is
8 approved.

9 Among those assets, Mr. Seery would testify that, in
10 accordance with the proposed settlement agreement, which is at
11 Exhibit 17, in Paragraph 5(b), the Court will see reference to
12 what's known as the Dugaboy Note. The Dugaboy Note is an
13 asset of the estate that will go to Hunter Mountain if the
14 9019 motion is approved. If it's not approved, then Mr. Seery
15 would testify that he's got to find another way to dispose of
16 it. But it is an asset with a face amount today of about \$17
17 million, so it has substantial value.

18 There is a note from Hunter Mountain. That also will be
19 disposed of as set forth in Paragraph 4(a) of the proposed
20 settlement agreement. That note is going to be used to reduce
21 the allowed amount of Hunter Mountain's Class 10 claim if the
22 settlement is approved. But that note is also an asset of the
23 estate. It's worth over \$60 million. I believe it actually
24 might be in the fifties. But somewhere in the \$50 to \$60
25 million range. And that's an asset that needs to be disposed

1 of.

2 The estate has a contingent right to receive certain funds
3 under its settlement with Mr. Okada, and it has the Kirschner
4 Litigation. All of these assets will be disposed of. They're
5 very illiquid assets, I'd call them, and it would be very
6 helpful to the estate in moving this case forward if the 9019
7 motion is approved.

8 There are other assets that the estate has that will not
9 be monetized by August 11th and which therefore require the
10 extension of the Trusts. Mr. Seery would testify, if called
11 to the stand, that the pursuit of the sale of these assets
12 will yield proceeds that justified the continued pursuit of
13 their monetization. They include interests in Highland CLO
14 Funding, Ltd. Documents pertaining to that can be found at
15 Exhibits 21 and 25.

16 The Claimant Trust also owns shares in Highland Capital
17 Management Korea, Ltd. Documents relating to that asset can
18 be found at Exhibits 18 through 20. That's an asset that, if
19 Mr. Seery were to testify, he would say that he has been
20 actively engaged in trying to liquidate that asset, but it's
21 not going to be completed by August 11th.

22 There's also a note that is due from Highland Capital
23 Management Korea, Ltd. That can be found at Exhibit 67.
24 That's another asset that Mr. Seery has concluded and would
25 testify to that he thinks is valuable for the estate but will

1 not be monetized by the end of this extension period.

2 And then there's the bad faith award that the estate
3 obtained against HCRE, which remains on appeal. The appeal of
4 that order can be found at Exhibit 15. And there's no further
5 cost, really, to waiting for the Court's decision, but that is
6 an asset of the estate that remains to be monetized.

7 So there's two buckets of assets, one of which, hopefully,
8 if the 9019 motion is approved, will go to HMIT and that will
9 be helpful. But there's another bucket of assets that are not
10 implicated by the HMIT settlement that will not be monetized
11 before August 11th that Mr. Seery would testify we need a
12 little bit more time and that's why we're going to extend the
13 Trusts.

14 Mr. Seery would also testify, finally, that there are
15 claims and equity interests that remain unresolved. They
16 include Mr. Daugherty's Class 8 claim. As Your Honor is
17 probably aware at this point, Highland has objected to that
18 claim. It seeks to disallow, subordinate, that particular
19 claim. Otherwise, have it monetized for purposes of winding
20 up the estate.

21 Mr. Daugherty has moved to dismiss that complaint. That's
22 his right. But our scheduling order already takes us past
23 August 11th.

24 And then, finally, we've got Dugaboy's Class 11 interest,
25 which has not yet been allowed. If the 9019 motion is

Seery - Proffer

15

1 approved today, we do expect to move quickly to get to that
2 point so that we can finish that up. But we don't foresee
3 that being completed before August 11th, either.

4 So, in sum, Mr. Seery would testify that, from his
5 perspective, the estate still has assets that are valuable to
6 the estate that will not be monetized by August 11th, and
7 there are still one claim and one equity interest that need to
8 be resolved in order to satisfy the test, you know, to get to
9 the dissolution.

10 So that would be the sum total of his testimony. That's
11 the completion of the proffer. And unless Your Honor has any
12 objections, we're prepared to move to the next motion.

13 THE COURT: I have a couple of questions.

14 MR. MORRIS: Sure.

15 THE COURT: But first I'm going to go ahead and swear
16 in Mr. Seery --

17 MR. MORRIS: Great.

18 THE COURT: -- to affirm this, as well as swear him
19 in for what I'm sure will be future testimony today.

20 MR. MORRIS: Sure.

21 MR. SEERY: Would you like me to come --

22 THE COURT: Well, you can just stand in place. Just
23 make sure we hear you.

24 (The witness is sworn as to both his proffer and future
25 testimony.)

1 THE COURT: Okay. Thank you.

2 All right. My question is probably for you.

3 THE WITNESS: Uh-huh.

4 THE COURT: Just confirm my understanding. We have
5 one claim and one --

6 MR. MORRIS: Equity interest.

7 THE COURT: -- equity interest to resolve? Mr.
8 Daugherty's Class 8 claim and the Dugaboy what would be Class
9 11 interest?

10 MR. MORRIS: That is correct.

11 THE COURT: Did I hear that correctly, Mr. Seery?

12 THE WITNESS: That's correct, Your Honor.

13 THE COURT: Okay. Thank you.

14 And then my other question is, once again, a
15 clarification. I pulled out of your attachments to your
16 motion to extend the Exhibit B, Unresolved Pending Litigation.

17 MR. MORRIS: Uh-huh.

18 THE COURT: And at the time this was filed, May 8th,
19 2025, it showed nine pending matters at all court levels. And
20 I think two of them now are finished. I'm sorry. This is a
21 long question. But maybe I'm wrong. The first two matters,
22 the recusal matter that was at the Fifth Circuit, as well as
23 the gatekeeper appeal, which I know a motion to stay the
24 mandate was at the Supreme Court, both of those are finished
25 now? Done?

1 MR. MORRIS: Yes, Your Honor.

2 THE COURT: Okay. So the nine pending matters is now
3 down to seven. And if the Court were to approve the 9019
4 today, I understand that, well, it looks like, at a minimum,
5 two more would go away?

6 MR. MORRIS: Precisely.

7 THE COURT: We have an appeal at the District Court,
8 what we call the Claims Trading Appeal, where Highland had
9 sued -- I'm sorry, Hunter Mountain had sued Highland and
10 others regarding the claims trading issue, I'll call it. So
11 that would go away?

12 MR. MORRIS: Yes, Your Honor.

13 THE COURT: And then let me see what else. I've
14 marked all over my chart.

15 MR. MORRIS: And then I believe Hunter Mountain's
16 motion for leave to file a complaint in the Delaware Chancery
17 Court --

18 THE COURT: Ah.

19 MR. MORRIS: -- to remove Mr. Seery will also be
20 dismissed with prejudice --

21 THE COURT: Okay.

22 MR. MORRIS: -- if the 9019 motion is approved.

23 THE COURT: Okay. So, that, yes, Hunter Mountain v.
24 Seery, the Court issued a stay on that being able to go
25 forward in Delaware.

1 MR. MORRIS: Precisely.

2 THE COURT: So that would go away.

3 So, of the nine matters listed, we're down to five. But
4 I'll hear, I guess, about this later with Mr. Seery, the big
5 what I would call Kirschner adversary against lots of
6 defendants which has been abated for a long, long time now.
7 Hunter Mountain would basically receive that lawsuit with
8 those claims? The claims against it go away? And I don't
9 know what we'll hear, I don't know what Hunter Mountain will
10 do with that big adversary, but maybe it doesn't know yet. I
11 don't know.

12 MR. MORRIS: Yeah.

13 THE COURT: So, --

14 MR. MORRIS: Not a question we've concerned ourselves
15 with, Your Honor.

16 THE COURT: Okay. So that, again, I'm kind of
17 recapping everything.

18 (Counsel confer.)

19 MR. MORRIS: Go ahead, Your Honor.

20 THE COURT: So, again, I'm looking at the chart. If
21 anyone wants to know what I'm looking at, it's at Docket No.
22 4213-2, filed May 8th. We're down to the HCRE --

23 MR. MORRIS: Appeal.

24 THE COURT: -- appeal.

25 MR. MORRIS: Uh-huh. Which is fully briefed and

1 we're just waiting for a decision.

2 THE COURT: Okay. So that bad faith decision may or
3 may not stick, but it's hanging there on appeal.

4 MR. MORRIS: Uh-huh.

5 THE COURT: We're down to a Dugaboy -- what we called
6 the Imaging Motion. Or no?

7 MR. MORRIS: Correct. I guess that's been stayed,
8 but that's out there.

9 THE COURT: We have the valuation motion of Dugaboy,
10 but I don't know, is it going to be moot after today? I don't
11 know what I'm going to hear today as far as the evidence.

12 MR. MORRIS: So, that has -- great question -- two
13 plaintiffs in that lawsuit, HMIT and Dugaboy.

14 THE COURT: Oh, that's right. So --

15 MR. MORRIS: HMIT is going to dismiss it with
16 prejudice. Dugaboy will still have an active complaint.

17 THE COURT: Appeal.

18 MR. MORRIS: My hope is that --

19 THE COURT: It's an appeal of --

20 MR. MORRIS: Yes.

21 THE COURT: Okay.

22 MR. MORRIS: My hope is that, because we produced so
23 much valuation information to HMIT, which we then had to make
24 available to Dugaboy because that's the way discovery works,
25 that they'll withdraw that complaint.

1 THE COURT: Okay.

2 MR. MORRIS: I'm going to make that plea right on the
3 record here, because they've now gotten everything they've
4 asked for. But that's their decision to make, and it's out
5 there. But HMIT is withdrawing itself as a party to that
6 lawsuit, but it does remain in Dugaboy's lap.

7 THE COURT: Okay. So those potentially three things?

8 MR. MORRIS: Yeah.

9 THE COURT: Plus the Daugherty matter?

10 MR. MORRIS: Yeah.

11 THE COURT: Okay. Mr. Seery, did I miss something?

12 THE WITNESS: One clarification, Your Honor. My
13 apologies. One clarification. In the Class 11 subordinated
14 interests, there's a Dugaboy capital account of \$740,000.
15 There's also the Strand capital account -- both of these are
16 controlled by Mr. Dondero -- of \$994,000. And then Mr. Okada
17 and his affiliates have a combined capital account of
18 \$248,000. So we'll -- I said just Dugaboy, but it's actually
19 Dugaboy, Strand, and then Okada and two family trusts of his.

20 THE COURT: Okay.

21 MR. MORRIS: And if the 9019 motion is granted, --

22 THE WITNESS: It's in the footnote. It's in the
23 footnote in the motion.

24 THE COURT: Yes. I actually had that in my notes.

25 MR. MORRIS: Yeah.

1 THE COURT: So I glossed over Class 11 just being
2 Dugaboy. There are Strand and Okada.

3 All right. So I appreciate that clarification. We're
4 down hopefully to very little litigation. But we have no
5 control over higher courts, when they have time to look at it.

6 MR. MORRIS: Or future litigation, now that the
7 gatekeeper has been curtailed.

8 THE COURT: Okay. All right.

9 Anyone wish to say anything about this motion to extend?

10 All right. Well, based on the pleadings, the argument,
11 the evidence, I do think it is necessary and appropriate and
12 reasonable to extend the duration of the Highland Trusts
13 through August 11th, 2026. The relief is something that is
14 contemplated as a possibility under the trust documents.
15 Moreover, I think the Court has some authority under
16 Bankruptcy Rule 9006(b) and Bankruptcy Code Section 105 to
17 grant this relief.

18 The evidence shows there are unliquidated assets and some
19 unfinished litigation that must be resolved before the Trust
20 is in a position to wind down. So, again, I think it's
21 necessary, prudent, and in the best interest. The motion is
22 granted, and the Court duly acknowledges the comments with
23 regard to the stipulation of Dugaboy and the estate. All
24 right.

25 MR. MORRIS: Thank you very much. So, may I move to

1 the 9019 motion?

2 THE COURT: You may.

3 MR. MORRIS: Okay. With respect to the 9019 motion,
4 there were originally three Objecting Parties: the Dugaboy
5 Investment Trust, Patrick Daugherty, and The Dallas Foundation
6 and an entity called Crown Global.

7 I'm pleased to report, and I think Your Honor may already
8 be aware, that a settlement has been reached to dispose of The
9 Dallas Foundation and the Crown Global objection. There is a
10 written agreement to that effect that effectuates that. And
11 I'd like to just turn the podium over to Mr. Phillips. Louis
12 Phillips represents the HMIT Entities. I know Mr. Curry is
13 here on behalf of the objecting parties, The Dallas
14 Foundation, but I think -- I think I'll let Mr. Phillips
15 address, you know, the specific terms of the resolution of
16 that objection.

17 THE COURT: All right. Thank you. And I will say
18 that my staff reached out yesterday to -- I don't know if it
19 was Mr. Curry or someone in your office -- wanting to know
20 have you delivered exhibit notebooks. And it was at that
21 point my staff heard, well, we've resolved.

22 MR. CURRY: We had just finished.

23 THE COURT: Okay. All right. So I'm happy to hear
24 what the resolution is.

25 MR. PHILLIPS: Good morning, Your Honor. Louis M.

1 Phillips on behalf of the Hunter Mountain Investment Trust and
2 the named parties therein.

3 We had a written stipulation that has been signed by my
4 firm, by Mr. Curry's firm, by the Pachulski firm, and by the
5 Quinn Emanuel firm that is to be submitted to the -- is to be
6 filed on the record. It also contains a reference to a
7 settlement agreement that will be attached. But we will read
8 the stipulation into the record, if Your Honor would allow me
9 to.

10 THE COURT: All right. You may.

11 MR. PHILLIPS: And Mr. Curry is here, and he can tell
12 me whether or not I have read correctly, but I think I have
13 it.

14 THE COURT: Okay. All right.

15 MR. PHILLIPS: (reading) Now, wherefore, it is
16 jointly -- hereby jointly stipulated and agreed as follows.
17 The Foundation Parties -- Mr. Curry's clients -- withdraw The
18 Foundation Objection, which is a defined term in the
19 stipulation, with prejudice, in accordance with the terms of
20 the term sheet annexed hereto as Attachment 1. And Attachment
21 1 will be attached to the stipulation.

22 Paragraph 2. The Foundation Parties, the HMIT Entities --
23 that's Hunter Mountain Entities and the Movants; that is, Mr.
24 Morris' client and Quinn Emanuel on behalf of the Litigation
25 Subtrust -- agree that the following language shall be

1 contained in the proposed order on the 9019 motion. And
2 that's clearly the proposed order. This is not dependent upon
3 the motion being granted. Notwithstanding anything in the
4 settlement agreement or the 9019 order to the contrary, none
5 of The Dallas Foundation, EDF, Okada Family, or Crown (The
6 Foundation Parties) are or will be included in the definition
7 of HMIT Releasors or Highland Releasors. For the avoidance of
8 doubt, however, any attempt by The Foundation Parties to
9 assert a claim against an HMIT released party by, through, or
10 under, including derivatively a Highland entity, or against a
11 Highland released party by, through, or under, including
12 derivatively an HMIT entity, is barred by this order and the
13 settlement agreement.

14 That is the sum and substance of the stipulation. The
15 settlement agreement we don't think needs to be read to the
16 Court because it's a signed settlement agreement that will be
17 attached as Attachment 1 to the stipulation. And I believe I
18 read it correctly.

19 THE COURT: Mr. Curry, did he read it correctly?

20 MR. CURRY: Mr. Phillips did read it correctly, Your
21 Honor. And thank you.

22 And we want to thank Trustee's counsel and Mr. Phillips
23 for working with us to address some very real concerns. And
24 through the stipulation, we still have some work to do, but we
25 have the time to do it, and maybe move it to where we can

1 actually get it resolved.

2 THE COURT: Okay. Well, there are some things I am
3 concerned -- well, I should say, all I really feel the need to
4 go into is you're releasing your objection, your clients are,
5 and all of the parties here, parties to the proposed
6 settlement and the estates, the Debtors, Hunter Mountain, are
7 agreeing that your clients are not releasors under the 9019
8 settlement if the Court approves it.

9 MR. CURRY: Correct, Your Honor. Unless and except
10 our clients were to attempt to assert a released claim against
11 a released party, and that's what the "provided, however" was
12 to clarify.

13 MR. PHILLIPS: And this doesn't affect the estate at
14 all. It basically affects the HMI -- the Hunter Mountain
15 entities. But the language that we have read in the
16 stipulation has been agreed to and is contained within the
17 order that will be proposed.

18 THE COURT: Okay. You said it better than I said it.
19 The estate is releasing claims --

20 MR. PHILLIPS: I can't believe that, Your Honor, but
21 thank you.

22 THE COURT: Well, the estate is releasing claims that
23 it has --

24 MR. PHILLIPS: Correct.

25 THE COURT: -- or in Trusts have -- I shouldn't have

1 said the estate. It's the Trust entities and what's left of
2 the Reorganized Debtors are releasing any claims they have
3 against Hunter Mountain in the proposed settlement --

4 MR. PHILIPS: Yes.

5 THE COURT: -- if it's approved. But any direct
6 claims of your clients are not --

7 MR. CURRY: Well, direct claims that our client has
8 or derivative claims, for example, against Hunter Mountain
9 that are derivative through Hunter Mountain.

10 THE COURT: Okay. All right.

11 MR. PHILLIPS: Yeah.

12 MR. CURRY: Yeah. That was the -- what we were
13 trying to make sure.

14 THE COURT: Yes. All right. Well, and when I said
15 this is all I care about, what I mean is I don't even know who
16 the heck Crown Insurance is.

17 MR. PHILLIPS: Correct.

18 THE COURT: There was a very interesting party in
19 interest objection asserted by the Debtor. And I've learned a
20 lot about a lot of entities during all these years, but that
21 was a new one on me. I understood that it's somewhere in the
22 framework of the --

23 MR. PHILLIPS: Yes, Your Honor.

24 THE COURT: -- Charitable DAF.

25 MR. PHILLIPS: Let's say it's somewhere in the

1 universe, Your Honor.

2 THE COURT: The universe? Okay.

3 MR. PHILLIPS: The universe. Not necessarily the
4 Charitable DAF or Hunter Mountain.

5 THE COURT: Okay.

6 MR. PHILLIPS: But in the universe.

7 THE COURT: Well, but the point is, we've announced
8 anything relevant to --

9 MR. PHILLIPS: Correct.

10 THE COURT: -- the Reorganized Debtor, --

11 MR. PHILLIPS: Correct.

12 THE COURT: -- Claimant Trust, Subtrust.

13 MR. PHILLIPS: And the motion -- and the objections
14 of all these entities are withdrawn with prejudice.

15 THE COURT: All right.

16 MR. CURRY: And Your Honor, the one thing that I will
17 note, part of our agreement, and it's in the signed term sheet
18 that you'll see, is that we've agreed that if there's a
19 dispute over the settlement to withdraw our objection, this
20 Court will have at least concurrent jurisdiction to resolve
21 that dispute, because it is a settlement to resolve an
22 objection to a core proceeding.

23 THE COURT: Okay. Thank you.

24 MR. PHILLIPS: And we have agreed and we do agree
25 that the Court has jurisdiction. It has jurisdiction.

1 THE COURT: Okay. For what that is worth.

2 MR. PHILLIPS: Well, that's what we can agree to.

3 THE COURT: All right. I appreciate that.

4 Anyone wish to say anything about what's been announced?

5 All right. Well, I accept this resolution and withdrawal
6 of --

7 MR. PHILLIPS: Okay. We will be filing --

8 THE COURT: -- the objection.

9 MR. PHILLIPS: We will be filing, at the close of
10 this hearing, this stipulation, and we will be clicking
11 whatever ECF box request that the Court so ordered on the
12 stipulation.

13 THE COURT: Okay. We will be on the lookout for
14 that.

15 All right. Well, Mr. Lang, you stood up on behalf of
16 Dugaboy.

17 MR. LANG: I just want to make the Court aware of a
18 letter that was sent last night that involves this from the
19 Caymans, from Grant Thornton.

20 MR. PHILLIPS: We object.

21 MR. LANG: I just want to make the Court -- they were
22 asking for a 45-day that the Joint Liquidators --

23 MR. PHILLIPS: We object to this, Your Honor. That's
24 not a part of the record. This is a person from outer space.
25 Not outer space, but the Cayman Islands. And it's a letter

1 that we --

2 THE COURT: Coming from someone --

3 MR. PHILLIPS: It looks like a letter --

4 THE COURT: -- who is called Yosemite Sam, I
5 understand, outside of court.

6 MR. PHILLIPS: Yeah. Yeah. I didn't want to bring
7 that up, but Mr. Morris --

8 THE COURT: Okay. Well, it's stuck in my brain
9 forever now.

10 MR. PHILLIPS: -- says it's his favorite cartoon
11 character, so it must be okay.

12 THE COURT: Okay. Well, okay, I don't want to make
13 light. I think this goes back to what I was saying about
14 there are certain things I care about and certain things I
15 don't care about. And I read from the pleadings, I haven't
16 heard evidence but I've read from the pleadings that there is
17 a lot going on in the Cayman Islands with regard to what I
18 call the Charitable DAF structure or Hunter Mountain.

19 MR. LANG: Yes.

20 THE COURT: Parties in that universe. And I don't
21 plan to exercise any control or jurisdiction over that, so I'm
22 hesitant to hear what it is you want to present. I don't
23 know, maybe on cross-examination of Mark Patrick today it may
24 or may not be relevant. But what is it --

25 MR. LANG: All they ask for is a 45-day basically

1 abeyance or continuance of the decision on the 9019, to allow
2 them to investigate and weigh in on it.

3 MR. PHILLIPS: Your Honor?

4 MR. LANG: They're Joint Liquidators. That's -- I'm
5 just making the Court aware of the request.

6 THE COURT: Okay. Well, they're not here to
7 articulate that. So I respect your wanting to be transparent
8 and whatnot, but I'm not going to let it stop me from going
9 forward today. Okay.

10 MR. LANG: Thank you.

11 THE COURT: Thank you.

12 MR. PHILLIPS: Your Honor, if I may be excused,
13 that's our position with respect to the withdrawal. We
14 appreciate Your Honor's attention. Thank you.

15 THE COURT: Okay. Thank you.

16 MR. CURRY: Thank you, Your Honor.

17 THE COURT: Anyone else wish to weigh in?

18 All right. Well, I do, as I was saying, accept the
19 withdrawal of The Dallas Foundation and related entities'
20 objection to the 9019 settlement.

21 So does that leave only the Daugherty objection to the
22 settlement? Well, and the Dugaboy.

23 MR. MORRIS: And the Dugaboy, yes.

24 THE COURT: And Dugaboy, of course.

25 MR. MORRIS: That's right.

1 THE COURT: Okay.

2 MR. MORRIS: So, --

3 THE COURT: So how did you want to proceed?

4 MR. MORRIS: So, the way I propose to proceed, Your
5 Honor, I have an opening statement to make --

6 THE COURT: Okay.

7 MR. MORRIS: -- with a PowerPoint presentation to
8 present. I would propose that, as the Movant, I go first.
9 Then we can hear from Dugaboy, we can hear from Mr. Daugherty,
10 and then we can put Mr. Seery on the stand.

11 Assuming that there is no challenge to Mark Patrick's
12 authority to enter into the settlement agreement on behalf of
13 all of the HMIT entities, I would not plan on calling either
14 Mr. Dondero or Ms. Deitsch-Perez, who are under subpoena here,
15 because the challenge to authority was really coming from The
16 Dallas Foundation. Their objection has now been withdrawn.
17 So as long as Mr. Daugherty -- well, really, as long as
18 Dugaboy doesn't challenge Mr. Patrick's authority to enter
19 into the settlement agreement on behalf of the HMIT entities,
20 I think we'll just put on the one witness and be done.

21 THE COURT: All right. Just so we know what lies
22 ahead, --

23 MR. MORRIS: Uh-huh.

24 THE COURT: -- I don't think that Dugaboy objected to
25 Mr. Patrick's authority. I do recall it was just The

1 Foundation.

2 MR. LANG: There was no objection on the -- there was
3 no objection.

4 THE COURT: Okay. And same with Mr. Daugherty? No
5 objection about the authority of Mark Patrick to enter into
6 the settlement?

7 MR. YORK: There was no objection.

8 THE COURT: All right.

9 MR. MORRIS: All right. May I proceed?

10 THE COURT: You may proceed.

11 MR. MORRIS: Okay. So, may I approach, Your Honor?
12 I've got a --

13 THE COURT: You may. Is this a PowerPoint? And
14 everyone else has it, correct?

15 (Pause.)

16 THE COURT: You may proceed.

17 MR. MORRIS: Thank you, Your Honor. John Morris;
18 Pachulski Stang Ziehl & Jones; for Highland Capital
19 Management, LP and the Highland Claimant Trust.

20 Before I begin, Your Honor, I'd like to move my exhibits
21 into evidence because I will be referring to them in my
22 opening.

23 THE COURT: All right. So I think I said on Monday
24 the first thing I was going to ask, and I've already blown
25 that, was did you all have good faith discussions regarding

1 admission of each other's exhibits? And I did see Mr. Lang
2 filed a day or two ago his list of objections. It looked like
3 you were like you were down to about nine or eleven exhibits
4 you were objecting to.

5 (Counsel confer.)

6 THE COURT: Out of 123 designations, which I think
7 probably grew overnight to --

8 MR. MORRIS: Oh, okay. Well, --

9 MR. LANG: I just have to make clear for the record.

10 MR. MORRIS: You go ahead and do that.

11 MR. LANG: Your Honor, I've been told that Dugaboy
12 does challenge the authority. It is not in our objection.

13 MR. PHILLIPS: It's not in his --

14 THE COURT: Well, can I ask why it was not in your
15 objection?

16 MR. LANG: I do not know. I was not counsel of
17 record when the objection was filed. I do not know what was
18 known or not known at that time.

19 THE COURT: So, --

20 MR. LANG: So I guess we just seek leave to --

21 THE COURT: -- if you did not have him on -- was Mark
22 Patrick on your exhibit list? I don't think he was, right?

23 MR. LANG: He was not.

24 THE COURT: Okay. So how would you address that?

25 Again, we've had, I know, some back and forth over who was

1 going to represent Dugaboy on this matter.

2 MR. LANG: Yes.

3 THE COURT: I remember the substitutions and whatnot.

4 But --

5 MR. LANG: We found out late last night that The
6 Foundation was resolving their issue, and that kind of left us
7 in a position.

8 THE COURT: So what are you saying? You all were
9 relying on --

10 MR. LANG: Well, the issue had --

11 THE COURT: -- The Foundation to carry the flag on
12 this one?

13 MR. LANG: They had raised the issue. They were
14 pursuing the issue. We went through discovery and they were
15 pursuing it. It was already in front of the Court.

16 THE COURT: All right. What would you like to say,
17 Mr. Morris?

18 MR. MORRIS: Your Honor, this is more than
19 disappointing. The fact of the matter is Mr. Dondero is
20 funding both the Cayman Islands litigation as well as The
21 Dallas Foundation's prosecution of the objection. The fact
22 that The Dallas Foundation settled doesn't open the door to
23 Mr. Dondero to assert objections that he's never asserted
24 before.

25 I will tell you what will happen. If Your Honor allows

1 this, I will have to call Mr. Dondero and Ms. Deitsch-Perez to
2 the stand to offer evidence under subpoena that they
3 personally acknowledge and understand, because Mr. Dondero's
4 signature is on documents that were signed in the year 2025,
5 that Mr. Patrick is authorized to represent HMIT. I really
6 didn't want to do that. But if they want to pursue it, I'll
7 have to do my job.

8 THE COURT: All right.

9 MR. LANG: And I want to clarify one thing.

10 THE COURT: Uh-huh.

11 MR. LANG: And it goes back to something we already
12 discussed, which is the authority issue is derived from the
13 Cayman Island Joint Liquidators' appointment on May 6th, 2020.
14 And so how that changes the authority, it's -- I think the
15 issue is does he have authority, like Mr. Morris --

16 THE COURT: All right. Well, before I comment, Mr.
17 Phillips, it's your client representative that we're talking
18 about here. What do you say?

19 MR. PHILLIPS: Very disappointing, but -- and further
20 revealing the limits of my imagination. There is no objection
21 to authority. There's no evidence of record of objection to
22 authority. There's no evidence even in The Dallas
23 Foundation's papers about authority. Dugaboy did not raise
24 objections to authority. Daugherty did not raise objections
25 to authority. And Mr. Morris was willing to release Ms.

1 Deitsch-Perez and Mr. Dondero from subpoena in connection with
2 an order that this Court entered that Hunter Mountain objected
3 to. And outside the Court, the evidence will establish, the
4 evidence submitted by Mr. Morris will establish that Hunter
5 Mountain, through authority of Mr. Patrick, objected to Ms.
6 Deitsch-Perez signing on behalf of Hunter Mountain because she
7 did not seek approval and did not have authorization to sign a
8 stipulation before this Court.

9 Subsequently, after signing the stipulation and entry of
10 the order, we suggested that we would not deal with Ms.
11 Deitsch-Perez, we would only deal with unconflicted counsel,
12 and we dealt with unconflicted counsel to make an agreement
13 with HCLOM and another of Mr. Dondero's entities to avoid
14 filing a motion for reconsideration before this Court based on
15 the fact that, as we have suggested in the motion that we
16 didn't file, Hunter Mountain's approval was not real.

17 So Mr. Morris has these people under subpoena because we
18 signed an agreement that Mr. Dondero signed to avoid the
19 filing of a motion for reconsideration before this Court,
20 recognizing that Mr. Patrick had authority for Hunter Mountain
21 to sign the agreement. And so that's the purpose of his
22 subpoena.

23 But our position is there's no suggestion in pleadings by
24 Dugaboy or Daugherty that challenge the authority of Mr.
25 Patrick to execute on behalf of any of the Hunter Mountain

1 entities. And the one party who, without suggesting an
2 evidentiary basis, but that's fine, they say maybe they did
3 have an evidentiary -- we -- and they withdrew their
4 objection.

5 THE COURT: Okay. Let me --

6 MR. MORRIS: Okay. I'm sorry. Just really --

7 THE COURT: Thirty second.

8 MR. MORRIS: Really quickly.

9 THE COURT: Uh-huh.

10 MR. MORRIS: The letter that Mr. Lang just referred
11 to from the Joint Official Liquidators, addressed to us,
12 asking for an extension of time, doesn't even challenge Mr.
13 Patrick's authority to act today on behalf of the HMIT
14 entities to enter into the settlement agreement. The Joint
15 Official Liquidators wrote to us last night, and they don't
16 say what Mr. Lang is now saying.

17 MR. PHILLIPS: And the only thing I would say is we
18 got a letter by email from somebody who says, I am who I am.
19 It came through email PDF. We don't challenge the authority.
20 But we would respectfully request -- we're not there. We've
21 made no appearance. We don't challenge the authority. But
22 please wait -- ask the Court to wait the 45 minutes -- 45 days
23 for us. We got a letter. PDF. We don't know who sent it.

24 THE COURT: Okay.

25 MR. PHILLIPS: It wouldn't be admissible even if

1 someone tried to introduce it as evidence.

2 THE COURT: Okay. Let me just say a few things here.
3 This has felt like a very strange sideshow, I'm going to say.
4 When I read The Foundation's objection, I was, again,
5 scratching my head, who in the heck is Crown Insurance? I
6 know who Dallas Foundation is because there have been charts
7 submitted to me in the past, and I know it's part of the I'm
8 going to say Mr. Phillips' client set over the months, the
9 Charitable Foundation structure. But I'm like, how in the
10 heck do these people have standing? Okay? I have to always
11 consider standing. That's every trial judge's first
12 obligation, does this party have standing? Not a creditor.
13 Not an equity holder. But somehow I guess they're going to
14 explain through evidence how they're a person aggrieved by the
15 proposed settlement.

16 So that's why I kind of -- hopefully, it doesn't sound
17 flippant -- thought this sounded like a sideshow, because this
18 is a stranger, really, to weigh in.

19 Okay. So now I'm hearing that a party in interest, which
20 Dugaboy is -- I guess some might argue that, but I think
21 they're affected by the settlement, so that makes them a party
22 in interest -- you're making the same argument. And it's
23 because of a rotation of counsel you didn't make it sooner.

24 Okay. So I'm just trying to be transparent here, tell you
25 what the Court is thinking. I guess what the Court is

1 thinking is Mark Patrick is the client representative, so I'm
2 told by the Movants on the 9019, and you, Mr. Phillips, he's
3 the party representative for Hunter Mountain.

4 MR. PHILLIPS: Yes, Your Honor.

5 THE COURT: I don't, I guess, know what harm there
6 is, except a longer hearing, in, okay, put him on the stand to
7 testify about the bona fides of the settlement. It's more
8 evidence. But if you all want to call Mr. Dondero, I'm going
9 to require that.

10 MR. MORRIS: Your Honor?

11 THE COURT: I mean, as a counterbalance, since it's
12 appearing from the pleadings to be --

13 MR. MORRIS: Your Honor, respectfully, Mr. Patrick is
14 not on their witness list. He's not on our witness list.

15 THE COURT: Wasn't he on somebody's witness list?

16 MR. MORRIS: He was on The Dallas Foundation's
17 witness list.

18 THE COURT: Oh.

19 MR. MORRIS: He's not on their witness list. He's
20 not on our witness list. He should not testify today because
21 they're raising an issue that they didn't raise ever before.
22 This is improper. They should just be shut down here.

23 THE COURT: I think probably you should be shut down.
24 But I kind of go back and forth, what's the harm in having the
25 representative, the person I'm told is the representative of

1 Highland?

2 MR. PHILLIPS: Your Honor?

3 THE COURT: I could limit it to one hour. And the
4 flip side is that Dondero himself, as I guess the
5 representative of Dugaboy, would have to also take the stand,
6 limited to one hour.

7 MR. PHILLIPS: I'd like to make one note, Your Honor,
8 about the documents that Mr. Morris has introduced. That
9 document list -- and I don't have the numbers in front of me
10 -- but part of the presentation and the reason Mr. Patrick is
11 not on the Movants' motion -- witness and exhibit list, the
12 documents that have been introduced are all of -- include all
13 of the documents evidencing Mr. Patrick's authority as the
14 control person of the entire Hunter Mountain group.

15 THE COURT: Which they've stipulated.

16 MR. PHILLIPS: Which they've stipulated to.

17 THE COURT: Uh-huh.

18 MR. MORRIS: And to be clear, Your Honor, they can be
19 found at Exhibits 70 through 104. We've got 34 documents in
20 evidence that establish that Mr. Patrick is authorized to act
21 on behalf of each of the HMIT entities. All that's going to
22 happen is we're now going to spend time dealing with an issue
23 that you already described as a sideshow, and we're going to
24 do it for a party who didn't put Mr. Patrick on a witness
25 list, who hasn't objected on this basis, and we've got a

1 mountain of evidence that shows that he's completely
2 authorized to do this. I just --

3 MR. PHILLIPS: To which there's no objection.

4 MR. MORRIS: And you can also look, Your Honor, at
5 Exhibit 69. That's the agreement that Mr. Dondero signed with
6 Mr. Patrick after he got outed for authorizing Ms. Deitsch-
7 Perez to sign a document on behalf of HMIT without Mark
8 Patrick's knowledge or approval. He signed that. Six months
9 ago. And we're going to have a trial here over whether Mark
10 Patrick is authorized to act on behalf of HMIT?

11 A VOICE: That was long ago.

12 MR. MORRIS: This is not -- this is not --

13 THE COURT: We're not going to have a trial. And I
14 fully acknowledge that I am possibly abusing discretion by
15 allowing this. We have our rules, and our rules were not
16 complied with, and it does feel a little bit like ambush.
17 Okay?

18 But on the flip side of it, it doesn't seem entirely
19 unreasonable to have the representative, the purported
20 representative of Hunter Mountain, who is the counterparty, if
21 you will, to this very major settlement, take the stand. And
22 I'll limit it. And, again, I condition it on Mr. Dondero, the
23 ultimate beneficiary of the Dugaboy Trust, as it's been
24 represented to me in prior filings, --

25 MR. MORRIS: Correct.

1 THE COURT: -- he'll have to stay an equal amount of
2 time on the stand. Okay?

3 MR. MORRIS: Okay.

4 THE COURT: Okay. Hang on. I've got my smarter
5 staff member handing me a note. Okay.

6 (Pause.)

7 THE COURT: Okay. Well, so that's how we're going to
8 stand.

9 Now, I am going to address Mr. Daugherty here. We're not
10 going to let Mr. Daugherty cross-examine Patrick. Clearly,
11 his objection has been around, and he never said anything
12 about --

13 MR. YORK: Certainly not as to authority. However,
14 we should be able to examine him as it relates to the portion
15 of the objection that goes to whether the settlement is in the
16 best interest, given the claims that are being -- the
17 Kirschner claims that are being transferred by Highland to the
18 HMIT entities.

19 THE COURT: All right. Well, you all are going to
20 have to share your 30 minutes.

21 MR. YORK: That's fine.

22 THE COURT: Okay? We're giving 30 minutes to Debtor
23 entities, Highland entities, and Hunter Mountain entities
24 collectively, and 30 minutes to Dugaboy and Daugherty
25 collectively. Okay? So, I'm going to have my law clerk

1 timing you like you're on the clock.

2 MR. MORRIS: Okay.

3 THE COURT: Okay?

4 MR. MORRIS: May I proceed?

5 THE COURT: You may proceed.

6 MR. MORRIS: Thank you, Your Honor. So, appearing at
7 Docket 4255 is the Movants' exhibit list, with Exhibits 1
8 through 123. At Docket 4277 are Exhibits 124 and 125. And at
9 Docket 4280, we've got Exhibit 126.

10 The Movants respectfully move into evidence all of those
11 documents, with the exception of Exhibits 124 and 125 on
12 Docket No. 4277. Those are the transcripts of The Dallas
13 Foundation representatives, and since we have reached an
14 agreement and The Dallas Foundation has withdrawn their
15 objection, we are not going to offer those two transcripts
16 into evidence as part of the record in this matter.

17 But Exhibits 1 through 123, and Exhibit 126, we move into
18 evidence.

19 THE COURT: All right. And as I thought we were
20 going to start talking about a moment ago, Mr. Lang objected
21 to 11 of these 123 designations. Do those still remain? If
22 they do, we're just going to see if they want to be I think
23 offered --

24 MR. LANG: No, I think we've --

25 THE COURT: -- the old-fashioned way, but I think

1 that might be more efficient. I have, in your objection,
2 which is at Docket 4273, you objected to Numbers 10, 12, 13,
3 57 and 59, and then 64 through 69. Eleven items.

4 MR. LANG: Mr. Morris clarified that 12 and 13 are
5 one document. But I still, I think that, again, for purposes
6 of the authority issue, Exhibit 13 we don't think is relevant.

7 MR. MORRIS: Exhibit 13, Your Honor. We'll just take
8 them one at a time.

9 THE COURT: Yes, go ahead and address it.

10 MR. MORRIS: Is relevant because it's simply a
11 document that was provided to Highland by Hunter Mountain as
12 part of the negotiations. And we've been asked to produce all
13 of the documents related to the negotiations. This is one of
14 the documents that we received.

15 THE COURT: Okay. And do I understand 12 and 13 are
16 actually the same thing, or --

17 MR. MORRIS: Yeah. Well, 12 is the email, 13 is the
18 attachment.

19 THE COURT: Okay. I overrule the relevance
20 objection. Those will be admitted.

21 (Claimant Trust's Exhibits 12 and 13 are admitted into
22 evidence.)

23 MR. LANG: 57.

24 MR. MORRIS: 57 is also a part of the settlement
25 documents. It's, I think, an email exchange between Mr. Seery

1 and UBS, which was one of the Class 9 claimants, and we had to
2 obtain their consent and that's part of the process of getting
3 to the settlement agreement.

4 MR. LANG: I think the objection is it doesn't
5 include the attachment.

6 MR. MORRIS: It's got all -- it's got numerous
7 attachments on it.

8 MR. LANG: To 57?

9 MR. MORRIS: Yeah.

10 MR. LANG: Mine did not.

11 MR. MORRIS: Your Honor, we'll withdraw the exhibit.

12 THE COURT: Okay.

13 MR. MORRIS: Okay.

14 THE COURT: 59. Well, you didn't address #10.

15 MR. LANG: Oh, sorry.

16 THE COURT: That was the first one.

17 MR. LANG: Yeah.

18 MR. MORRIS: We'll withdraw #10.

19 THE COURT: All right.

20 MR. MORRIS: Okay.

21 THE COURT: So, 59?

22 MR. MORRIS: 59? Your Honor, I'm not surprised they
23 object, because it's at the core of the Court's ability to
24 authorize this settlement.

25 MR. LANG: We withdrew that.

1 MR. MORRIS: Oh, you withdrew that?

2 MR. LANG: Withdrew.

3 MR. MORRIS: Oh, okay. They withdrew that.

4 THE COURT: Okay. So, 59 will be admitted.

5 (Claimant Trust's Exhibit 59 is admitted into evidence.)

6 MR. MORRIS: And then I think the last is 64 to 69.

7 THE COURT: Uh-huh.

8 MR. MORRIS: We were actually prepared to withdraw
9 those exhibits because we didn't think there was a challenge
10 to authority. Now that there's a challenge to authority,
11 we're going to offer all of those in because they're highly
12 relevant to the acknowledge of Mr. Patrick's authority.

13 THE COURT: All right. And your objection was solely
14 to relevance?

15 MR. LANG: The objection was relevance because they
16 predate the May 6th issue in the Caymans, which is what caused
17 the entire structure to -- the authority from the top down to
18 be questioned.

19 THE COURT: All right. Well, you can cross-examine
20 if you want on those items.

21 MR. LANG: Okay.

22 THE COURT: But I find they're relevant so they will
23 be admitted, 64 through 69.

24 (Claimant Trust's Exhibits 64 through 69 are admitted into
25 evidence.)

1 *[Court Edit: Claimant Trust's Exhibits 1 through 9, 11*
2 *through 56, 58 through 123, and 126 are admitted into*
3 *evidence.]*

4 THE COURT: All right. And as far as the exhibits of
5 Dugaboy, I think it was just the plan and settlement agreement
6 were all that had been designated. Correct?

7 MR. LANG: Yes.

8 MR. MORRIS: No objection.

9 THE COURT: So, no objection. Those will be
10 admitted.

11 (Dugaboy Investment Trust's exhibits are admitted into
12 evidence.)

13 THE COURT: And Daugherty's exhibits?

14 MR. YORK: Yes, Your Honor. So, Mr. Morris and I
15 conferred yesterday about both sides' exhibits. And my
16 understanding is we've reached an agreement that both sides'
17 exhibits are not objected to. And so therefore we'd move to
18 admit Daugherty's as well.

19 THE COURT: All right.

20 MR. YORK: 1 through 42, I believe, it is.

21 THE COURT: All right. So you confirm?

22 MR. MORRIS: Yes, Your Honor.

23 THE COURT: All right. The Court will admit all of
24 Daugherty's 1 through 42, and they appear at Docket Entry
25 4266.

1 (Patrick Daugherty's Exhibits 1 through 42 are admitted
2 into evidence.)

3 THE COURT: All right. Opening statements.

4 OPENING STATEMENT ON BEHALF OF THE CLAIMANT TRUST

5 MR. MORRIS: All right. Good morning, Your Honor.

6 John Morris; Pachulski Stang Ziehl & Jones; for Highland
7 Capital Management, LP and the Highland Claimant Trust.

8 If we can go to the first slide, Your Honor. This is a
9 9019 motion. It's not a terribly high bar. What the Movant
10 has to show here is that the settlement agreement was the
11 product of arm's-length, good-faith negotiations, and
12 effectively that it's in the best interests of its
13 stakeholders.

14 THE COURT: Did you want this put on the screen, or
15 does everyone have a hard copy?

16 MR. MORRIS: Counsel have a hard copy.

17 THE COURT: Oh, okay.

18 MR. MORRIS: Yeah. The evidence is going to show,
19 and there really is no dispute, that the settlement agreement
20 is the product of arm's-length, good-faith negotiations. Mr.
21 Seery is going to testify that the negotiations began in late
22 March and they concluded on May 19th. Exhibits 2 through 57,
23 with the exception of the one or two I just withdrew, reflect
24 the parties' negotiations. Mr. Seery is going to testify that
25 the negotiations were conducted by Zoom, by phone call, there

1 was one in-person meeting, there was many, many email
2 exchanges that are reflected in the exhibits.

3 Mr. Seery is going to testify about the substance of the
4 negotiations at a high level. Originally, we had sought to
5 have one agreement with Hunter Mountain and the DAF entities.
6 Mr. Patrick was not comfortable with that. He wanted to run
7 them separately. And there was a DAF agreement that was
8 ultimately entered into but that nobody believed required
9 court approval.

10 So, once that got completed and one of the Fifth Circuit
11 appeals got dismissed as a result, we moved to the Hunter
12 Mountain discussions. Those discussions were robust. There
13 were issues about the timing of the effectiveness of certain
14 of the benefits under the proposed agreement. Highland wanted
15 the releases, for example, to be effective upon signing. Mr.
16 Patrick was unwilling to agree to anything without this
17 Court's approval.

18 So there were changes that were made over time in terms of
19 the timing of the transfer of the consideration. There were
20 discussions and negotiations and bids and asks about the
21 amounts that would be paid, when they would be paid, the
22 circumstances under -- that they would be paid. There was an
23 enormous amount of information that was exchanged pursuant to
24 a confidentiality agreement that now became public because
25 it's relevant to the Debtors' burden or the Claimant Trust's

1 burden to carry the day here.

2 That information included claims information, the trust
3 agreement itself, budgets, asset/liability valuation
4 information, forecasted expenses, because HMIT rightly
5 wondered, you know, what's going to happen to the money? Is
6 it going to be gone before it got its agreed-upon share? So,
7 you know, there will be, I think, indisputable evidence at the
8 end of the day that the settlement is the product of arm's-
9 length, good-faith negotiations.

10 If we move to the next slide, the evidence will also show
11 that the proposed settlement is indisputably in the best
12 interest of the Highland entities and their stakeholders.
13 Upon court approval, all of the pending litigation that Your
14 Honor identified earlier will be dismissed with prejudice,
15 thereby greatly reducing litigation risk and attendant costs.

16 The stakeholders will also benefit from the allowance of
17 the HMIT claim at a fixed amount of \$337 million. And we will
18 explain -- Mr. Seery will explain to the Court how that number
19 was arrived at.

20 The estates and their stakeholders will also benefit
21 because, under the proposed settlement, as I indicated
22 earlier, Highland will be able to monetize or otherwise
23 dispose of a number of illiquid assets, including the Dugaboy
24 Note and the estate claims in the Kirschner Litigation. And
25 perhaps most importantly to the estate, we are getting very,

1 very broad what we refer to as litigation protections from all
2 of the Hunter Mountain entities. It includes not only a
3 release but a covenant not to sue as well as, you know, we
4 could go through it, but -- but we believe that even if Mr.
5 Dondero or somebody else obtains control of Hunter Mountain,
6 unless somebody sets aside this agreement, those protections
7 are going to inure to the benefit of the Trusts, the Indemnity
8 Trust and all of its stakeholders until the end of time, and
9 nobody is ever going to be able to set this agreement aside
10 because it was negotiated in good faith, it was the product of
11 arm's-length negotiations, and it's fair and reasonable to
12 both sides.

13 So those litigation protections are paramount and they
14 provide another indicator of the benefits that the Claimant
15 Trust is going to receive.

16 The next slide, Your Honor, is a demonstrative exhibit,
17 although, as always, we have citations to the very specific
18 documents that are now in the record. Mr. Seery will describe
19 for you at a high level how the allowed claim of HMIT was
20 calculated, and it's really just based on the limited
21 partners' capital accounts as of the petition date. And I'll
22 just leave it at that for the moment. There's no magic to it.
23 It's objectively reasonable. It's mathematics. There's
24 really no subjectivity that I'm aware of that goes into this.
25 It's just, hey, let's look at the tax returns, let's look at

1 the financial statements, and let's look at the partnership
2 agreement, and let's see how the capital account was
3 structured as of the petition date. And that's how you get
4 to, really, \$396 million less the amount of the Dugaboy Note.
5 I mean, the HMIT note.

6 The next slide. With the settlement, the transfer of the
7 Kirschner Litigation is in the best interests of the Movants.
8 I think Mr. Daugherty somehow suggests that really the best
9 thing to do would be to prosecute that litigation. We
10 respectfully disagree. In the Debtors' business -- in the
11 Claimant Trust's business judgment, that would be exactly the
12 wrong thing to do when you are settling with HMIT.

13 And why is that? When we commenced the Kirschner
14 Litigation a number of years ago, the Kirschner Litigation
15 represented a potential source of funding for indemnification
16 expenses, and at that time, for the payment in full to
17 creditors.

18 By 2023, 2024, with the success of the Highland team's
19 monetization of assets, the need to pursue and monetize the
20 Kirschner claims became less clear, so we put it on ice. And
21 we voluntarily stayed the litigation to conserve resources.

22 The settlement with HMIT changes everything. The claims
23 are as valid today as they were yesterday, as they were before
24 we signed the agreement, as they were when we commenced the
25 action. But they have very different value to Highland when

1 you're settling with HMIT. And that's why we're prepared to
2 transfer the claims today.

3 Why? Because at this point, unlike when we commenced the
4 action, Class 8 has been paid in full except for Mr.
5 Daugherty's fully-reserved claim, right, in an amount that he
6 agreed to for years and that he ratified and reaffirmed three
7 different times in three different stipulations. That's the
8 only thing that remains in Class 8.

9 THE COURT: And remind me of the dollar amounts on
10 reserve.

11 MR. MORRIS: It's approximately \$2.5 million. I can
12 --

13 THE COURT: Okay.

14 MR. MORRIS: It's -- the dollar amount is
15 specifically set forth --

16 (Pause.)

17 MR. MORRIS: It would be, I believe, in Exhibit 60,
18 --

19 THE COURT: Okay.

20 MR. MORRIS: -- is the original tolling agreement.
21 And in Paragraph 1 it has the very specific dollar amount.
22 And then in Exhibits 62, 63 -- 61, 62, and 63, those are
23 amendments to the tolling agreement that fully incorporated
24 the original tolling agreement, including the reserve amount.
25 So that amount has been there for years. Nobody has ever said

1 anything about it. Nobody has ever tried to adjust it.
2 Nobody has ever identified a change in circumstances that
3 would suggest a change was appropriate. But here we are.

4 So, why is it different and why does the Kirschner
5 Litigation not have so much value to us when we're settling
6 with Class 11? Because Class 8 has been paid in full. Class
7 9 has been paid 80 percent. If the HMIT settlement is
8 approved, it will receive another 10 percent. So that all
9 that remains is 10 percent of the Class 9s.

10 And most importantly, Your Honor, with the settlement with
11 HMIT and the Claimant Trust's receipt of the litigation
12 protections, the need for indemnification expenses is going to
13 be greatly reduced. We can give the money where it belongs
14 because all we'll have left is Mr. Dondero and Dugaboy. It
15 really will literally be the only thing. And we need a lot to
16 deal with that, but not as much as we needed when we had to
17 deal with them and HMIT.

18 And at the end of the day, once you're settling with HMIT,
19 prosecution of the claims would only benefit HMIT, so why
20 should we undertake the expense of doing that?

21 Is that clear to Your Honor?

22 THE COURT: It is.

23 MR. MORRIS: It is? So, it's -- this has nothing to
24 do -- and you're going to hear questions of Mr. Seery, did you
25 value the Kirschner claims? Are you giving them away for

1 free? No, we didn't value them, because once you're settling
2 with HMIT it doesn't really matter. Once you have the
3 litigation protections, once you know that HMIT is never going
4 to be an adversary of yours, the monetization of the Kirschner
5 claims would insure to their benefit because they will have an
6 allowed claim of \$330 million. So even if we sued and even if
7 we got a hundred million dollars, that's going to go to them.
8 Why would we pick up the tab today? A very different scenario
9 than when we prosecuted the case, when the case was commenced.

10 So, really, really, in the estate's best interest to get
11 value for those claims. The value is reflected in the
12 totality of the agreement. The Court really should look at
13 the body of the consideration that's being received, including
14 the litigation protections.

15 If we can go to the next slide, Your Honor. As long as
16 we're on the topic of Mr. Patrick's authority, Mr. Seery is
17 going to testify to the work that he did to satisfy himself
18 that Mr. Patrick was duly authorized to act on behalf of each
19 of the HMIT entities in this case.

20 The next slide here shows an excerpt from the Hunter
21 Mountain Trust Agreement. It's Paragraph 7. And it says,
22 among other things, the Administrator -- who is Mark Patrick
23 -- shall be duly authorized, from time to time, in his sole
24 discretion, to manage the business and affairs of the Trust.

25 It continues by saying that the Administrator, Mr.

1 Patrick, shall also have the power to settle, compromise,
2 submit to arbitration, or to submit to any court having
3 jurisdiction in any matter, any matters that are in dispute.

4 So, you know, this is just one document. It's the Hunter
5 Mountain document. We focus on the Hunter Mountain document
6 because that's the only one of the HMIT entities that has a
7 stake in the Claimant Trust. But, again, Your Honor, if you
8 just -- Mr. Seery will, at a high level, confirm that Exhibits
9 70 through 104 are documents that definitively establish that
10 Mr. Patrick has the authority to enter into each of these
11 agreements on behalf of the HMIT entities.

12 Not only that, but he will describe, if asked by you or
13 anybody cross-examining him, why nobody has the ability to
14 interfere with the effectuation of his authority. He doesn't
15 have to get anybody's consent. He doesn't have to -- right?
16 This is all just crystal clear. And whatever entity far up
17 the chain may exist, Your Honor should just think of as a
18 shareholder. And if Coca-Cola came in here and they wanted to
19 do a 9019 motion, a shareholder can't come in and stop Coca-
20 Cola from doing that. If they don't like what Coca-Cola is
21 doing, go file a derivative suit. Go sue Coca-Cola in another
22 court at another time. Not that I'm inviting litigation
23 against Mr. Patrick, but by analogy, this is what we're
24 talking about.

25 There is no restriction on Mr. Patrick's authority. The

1 settlement is fair and reasonable. He has authority under the
2 governing documents to do what he has done here, and that is
3 act in the best interests of the HMIT entities. And so this
4 is just one page. Mr. Seery will explain, you know, just the
5 work that he's done to satisfy himself.

6 The next slide, Your Honor, there's objections about how
7 somehow the settlement agreement violates the plan or the
8 absolute priority rule, all of that. It's not accurate. I'll
9 just leave it at that in terms of how I characterize it.

10 The next slide is excerpts of -- I think it's the plan of
11 reorganization, Your Honor. And I think we admitted the plan
12 last night. That's Exhibit 126. And they're -- these
13 excerpts are really important because what they show is that
14 Classes 9 and 10 have the indisputable right to accept less
15 favorable treatment. And that's what they've done. Okay?
16 And I think it's Article III, Section H, Subparts 9 and 10.
17 Holders of Class 9 and 10 interests have the right to accept
18 less favorable treatment.

19 And if we can go to the next slide, I'll just briefly
20 describe the less favorable treatment that these stakeholders
21 have in fact accepted. As permitted by the plan, holders of
22 Class 9 claims consented to the payment in full of Mr.
23 Daugherty's Class 9 claim and the Class 10 distributions, in
24 accordance with the settlement agreement, before their Class 9
25 claim is paid in full.

1 And that's Exhibit 59. It may be among the most important
2 documents that have been admitted this morning. Exhibit 59 is
3 the consent of the Class 9 holders other than Mr. Daugherty to
4 accept lesser treatment.

5 So there's no violation of the plan at all. HMIT is also
6 accepting less favorable treatment than it might otherwise be
7 entitled to if it ever successfully prosecuted its claim. It
8 has less favorable treatment because it's agreeing that it's
9 not a Claimant Trust beneficiary, that its rights are limited
10 to the rights that are given to it under the settlement
11 agreement and nowhere else. It's accepting less favorable
12 treatment because it's agreeing that the Highland entities owe
13 no duty of any kind to any HMIT entity except as provided for
14 in the settlement agreement. It's accepting restrictions on
15 its ability to transfer its Class 10 interests -- more less-
16 favorable treatment -- as a condition to the first and second
17 distributions. They have agreed that they are subject to Mr.
18 Seery's determination that the Highland entities are not at
19 that time under any Threat. "Threat" is a defined term, and
20 it has to do with litigation.

21 And so if Mr. Seery, in his sole discretion, believes that
22 he needs to conserve resources because he remains years in the
23 future under threat of litigation, he's not going to make the
24 payments to HMIT, and HMIT is okay with that because they
25 understand.

1 And, of course, in the end, they're accepting less
2 favorable treatment because they're granting to the Claimant
3 Trust the litigation protections.

4 All stakeholders have been paid in full except for the 10
5 percent of Class 9 and Mr. Daugherty's Class 8 claim. That
6 claim is the subject of an objection, and as I just walked
7 Your Honor through, it has been fully reserved in an agreed-
8 upon amount for years.

9 There was some questioning during Mr. Seery's -- one of
10 Mr. Seery's I think three depositions in the last week --
11 about why he didn't offer Mr. Daugherty the same treatment
12 that he offered to the other Class 9 holders because Mr.
13 Daugherty had about an \$800,000 Class 9 claim. Your Honor
14 will see in Exhibit 58 that that claim was paid in full, and
15 Mr. Seery will explain that he found negotiating with Mr.
16 Patrick to be difficult, number one. And number two, it was
17 an amount of money that the estate could afford. And so the
18 other Class 9 claims are substantially bigger, so rather than
19 going through the process of attempting to negotiate with Mr.
20 Daugherty, he just paid it in full. The Claimant Trust had
21 every right to do that. And Mr. Daugherty should not be heard
22 to complain that he actually got everything that he could have
23 ever been entitled to.

24 THE COURT: And --

25 MR. MORRIS: Uh-huh?

1 THE COURT: I don't mean to get you off-track.

2 MR. MORRIS: That's all right.

3 THE COURT: But Class 9 claimants, I'm trying to
4 remember who else was in that class. Was it a UBS --

5 MR. MORRIS: UBS.

6 THE COURT: -- claim?

7 MR. MORRIS: Exactly right.

8 THE COURT: Okay.

9 MR. MORRIS: And then affiliates of Stonehill and
10 Farallon.

11 THE COURT: Okay.

12 MR. MORRIS: Because they had purchased --

13 THE COURT: They had Class 9 --

14 MR. MORRIS: They had purchased originally I think it
15 was Josh Terry, and the Redeemer Committee may have had a
16 piece. No, no. No, no, no. HarbourVest. HarbourVest had a
17 piece. Right? So, HarbourVest sold their claim, including
18 the Class 9 claim. Josh Terry sold his claim, including his
19 Class 9 claim. Then there's UBS, who still holds a piece of
20 their claim, and Mr. Daugherty. So, UBS, if you look at
21 Exhibit 59, you'll see the signatures of UBS and the
22 affiliates of Stonehill and Farallon, who all agreed to accept
23 lesser treatment.

24 THE COURT: Okay.

25 MR. MORRIS: So, at the end of the day, Your Honor,

1 the last slide is a slide that I didn't intend to present,
2 frankly, because I didn't ever believe that there was going to
3 be a challenge to authority by anybody other than The Dallas
4 Foundation. But as long as we have it attached, we might as
5 well see it.

6 As you can see, Your Honor, in the lower right-hand
7 corner, you can see Hunter Mountain is owned by Beacon
8 Mountain, which is owned by CLO Holdco. Like, there is no --
9 and Mr. Patrick controls it. And it's really on the other
10 side of the ledger, in the DAF house, so to speak, that any of
11 The Dallas Foundation got interested.

12 Dugaboy is not even on here, by the way. Like, Dugaboy is
13 nobody. The people in here who are now going to challenge the
14 authority of Mr. Patrick, no, not on here. And they're going
15 to do it, they're going to do it without ever having given us
16 notice.

17 I know Your Honor made your ruling and we'll deal with it,
18 but I don't know if Your Honor was aware of this: They're not
19 on here.

20 Your Honor, at the end of the day, this is a really,
21 really easy call to make from our perspective. We have been
22 waiting for this moment for years. Finally, a responsible
23 person understands that the way to preserve value is to put
24 the sword down.

25 Mr. Patrick, I don't know what happened between him and

1 Mr. Dondero. I don't care. I have no knowledge of that. But
2 clearly he is exercising independence. And that's why we're
3 here, because we finally have somebody who says, you know
4 what, give me everything I can possibly get and I will stop
5 fighting. I wish other people would say that, because then
6 this case would be over. Then the case would really be over.

7 But getting to a settlement with the Class 10 interest
8 holder who is going to have an allowed claim of \$337 million,
9 such that any value in the future is going to go to HMIT, I
10 hope that that -- you know, this is an easy call to make, Your
11 Honor.

12 I have nothing further at this time, but I look forward to
13 putting Mr. Seery on the stand and making sure that Your Honor
14 has, you know, an adequate, sufficient, overwhelming basis,
15 frankly, to approve this motion.

16 THE COURT: Okay. I don't mean to stifle you, but --

17 MR. MORRIS: Yeah.

18 THE COURT: -- anything more for an opening
19 statement? Mr. Phillips, I'm doing friendlies and then
20 friendlies.

21 OPENING STATEMENT ON BEHALF OF THE HUNTER MOUNTAIN ENTITIES

22 MR. PHILLIPS: Your Honor, just briefly. Louis M.
23 Phillips on behalf of the Hunter Mountain entities.

24 We fully embrace and concur with everything that Mr.
25 Morris has told the Court. From our perspective, and the

1 reason that -- and you'll see, the documents include all of
2 the back and forth -- we required the Court approval before
3 the effectiveness of any releases, litigation protections, et
4 cetera, for exactly the reason that we needed the Class 9 to
5 agree. And we obtained -- the Highland entities obtained the
6 approval of the Class 9 creditors to our treatment, and I
7 think that the bona fides of this settlement and the value of
8 the settlement and our -- what we are giving in the settlement
9 is, I think, established beyond even the slightest bit of
10 question by the fact that the Class 9 creditors and the
11 Oversight Board of the Claimant Trust all agreed that it was
12 important enough to the estate to get this settlement with
13 Hunter Mountain Investment Trust that they agreed to allow
14 Hunter Mountain Investment Trust to receive the money set
15 forth in the settlement upon the approval. And we have agreed
16 that, notwithstanding appeal rights of some people who really
17 don't have the right to be here, but that's going to be
18 determined by Your Honor, we're not worried about that. We
19 are giving our releases. And the releases are effective upon
20 approval by this Court. We are not requiring any type of
21 final unappealable order that doesn't -- that waits for years
22 before the releases are effective.

23 Very importantly, it seems to me, from Your Honor's
24 perspective, and I'm reluctant to suggest that I know about
25 that, but our releases are given upon the approval by this

1 Court of the settlement. They're not -- if the settlement is
2 reversed on appeal, our releases stay.

3 So the Class 9s that are above the Class 10 have voted,
4 and they have approved, and Mr. Seery is going to testify
5 about that. And we think that in and of itself is a
6 monumental accomplishment. And we appreciate everything Mr.
7 Morris has said. We agree with everything Mr. Morris has
8 said. We agree with everything Mr. Morris has said about the
9 absence of true objection. We agree with everything Mr.
10 Morris has said about the fallacy of suggesting that Mr. Seery
11 had to value the Hunter Mountain -- the Kirschner Litigation
12 proceeds, of which would come to us.

13 The idea that we need to worry about how much Mr. Dondero
14 entities can pay in connection with the Kirschner Litigation
15 so that we could value the Kirschner Litigation based on what
16 Mr. Dondero can pay, so that to suffice with an objection by
17 Dugaboy maybe that there was no value given. I mean, that's
18 all backwards. Value was given as described by Mr. Morris and
19 will be established by the evidence submitted by Mr. Seery's
20 testimony and the documents that are already in evidence.

21 And that is it from our standpoint, Your Honor. Thank
22 you.

23 THE COURT: Thank you. All right. I'll hear from
24 the Objectors. Daugherty's counsel, are you going to go
25 first?

1 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

2 MR. YORK: Thank you, Your Honor. If I may approach.

3 THE COURT: You may.

4 MR. YORK: Good morning, Your Honor. Drew York on
5 behalf of Mr. Daugherty.

6 We're here today regarding the 9019 and Mr. Daugherty's
7 objection. The 9019 motion should be denied. If you turn to
8 the third slide in there, we say that Highland -- Highland,
9 I'm referring to Highland collectively for the Movants --
10 attempts to put the cart before the horse. So really what's
11 going on here, Your Honor, is we're just asking the Court to
12 follow the rules of the road that it set forth in the plan,
13 the confirmation order, and, frankly, even Highland to follow
14 the terms of the settlement agreement it entered into with Mr.
15 Daugherty.

16 None of that is happening here as a result of this
17 proposed settlement that's being presented to you today for
18 consideration.

19 The first problem with the motion and the proposed
20 settlement is that it violates the absolute priority rule, it
21 violates the express terms of the Court's plan, the
22 confirmation order, as well as the Claimant Trust Agreement,
23 because it attempts to fund the contingent Class 10 claims
24 without first resolving, let alone satisfying, Mr. Daugherty's
25 remaining Class 8 claim.

1 And then, secondly, the settlement agreement does not
2 satisfy the *Jackson Brewing* factors because it prioritizes the
3 HMIT insiders over the estate creditors, including Mr.
4 Daugherty, and it forfeits potential recovery that would go to
5 the benefit of those to creditors to appease litigation
6 pressure.

7 So, first, I'm going to talk about why the settlement
8 violates the plan, the confirmation order, and the Trust
9 Agreement.

10 As everyone is aware, the HMIT entities are asserting a
11 Class 10 claim.

12 If you turn to the next page, as Mr. Morris has
13 acknowledged and admitted here today, Mr. Daugherty has a
14 remaining Class 8 claim. And, importantly, Your Honor,
15 because Mr. Morris and Highland continue to argue that that
16 claim is fully reserved, I would point out that in the
17 settlement agreement between Mr. Daugherty and Highland the
18 parties characterized that claim as a contingent unliquidated
19 claim. A contingent unliquidated claim. And in fact, they
20 went so far, Highland did, in its adversary complaint on the
21 next slide, Your Honor, to again refer to it as an
22 unliquidated and contingent claim that is dependent on the
23 final outcome of the 2008 audit, including the magnitude of
24 any adjustments.

25 And so Highland cannot come into this courtroom and on the

1 one hand argue that that claim is fully reserved, and at the
2 same time admit that it is a contingent unliquidated claim
3 that is subject to a myriad of adjustments depending upon the
4 outcome of that audit.

5 And in reality, when you look at the tolling agreement,
6 there is nothing that the parties said that that was a fully
7 reserved claim at all. That's simply not what they agreed to.
8 They just simply put a number in there, which was put into the
9 reserve account at the time. But it did not constitute a
10 fully reserved claim at all.

11 Nor has Highland pointed to anything -- in the plan, the
12 confirmation order, or the Claimant Trust Agreement -- that
13 allows Highland to come in and violate those documents by
14 simply saying that we fully reserved for Mr. Daugherty's
15 claim.

16 THE COURT: Okay. Well, we're going to hear the
17 evidence, but as I understood it, it was an agreed reserved
18 amount. And I asked earlier, was it \$2.5 million or -- I feel
19 like it was an agreed amount plus even some interest,
20 acknowledging there might be time. I don't remember every
21 detail from this case, but I'm just telling you that's what my
22 memory is. Am I correct?

23 MR. YORK: The --

24 THE COURT: Mr. Daugherty agreed, here's what we'll
25 agree is enough to set aside for our ultimately potentially

1 allowed claim, x amount plus interest? Can you confirm?

2 MR. YORK: What the tolling agreement provides is
3 that Mr. Daugherty agreed to provide the tolling of the
4 objection deadline. Okay. And Highland then agreed to put
5 \$2.56 million into the reserve.

6 And what the footnote says in the tolling agreement,
7 Exhibit 60, is that the estimated amount of that claim as of
8 -- and let's be clear about this -- as of October 23rd of
9 2020, was \$2.56 million and change. And that's it. And I'm
10 happy to have my colleague, Mr. Smeltzer, who is a tax
11 attorney and deals with these issues all the time, can come up
12 and explain why, at the end of the day, this is still a
13 contingent unliquidated claim and it's subject to a myriad of
14 factors that make it that that amount that Highland has set
15 aside is not necessarily going to be a fully-reserved amount.

16 That is why the parties have -- had called it both in the
17 settlement agreement and the tolling agreement, and Highland
18 has continued to call it -- characterize it in its adversary
19 complaint as a contingent unliquidated claim. So --

20 THE COURT: Okay. It's hard to wrap my brain around
21 it. It's a claim that I understood really couldn't be
22 liquidated with certainty until this potential audit of 2008
23 is final, and there was some discussion of how close to it
24 being final was it. But I guess -- well, I don't know where
25 I'm going here except to say this could be a contingent

1 unliquidated claim for a -- you know, it's already, what, 17
2 years?

3 MR. YORK: Based -- from when the tax return was
4 filed? I think that's correct, Your Honor.

5 THE COURT: Okay. Well, this is what the adversary
6 is about, right? I guess they're finally saying it should be
7 estimated, liquidated, pursuant to the Bankruptcy Code and
8 we'll be done.

9 MR. YORK: Correct. In violation of the terms of the
10 settlement agreement between Mr. Daugherty and Highland. Yes,
11 that's --

12 THE COURT: Wait. Wait. What?

13 MR. YORK: So, the settlement agreement between
14 Daugherty and Mr. Highland provides --

15 THE COURT: Mr. Highland?

16 MR. YORK: I'm sorry. I apologize. Between Mr.
17 Daugherty and Highland --

18 THE COURT: Uh-huh.

19 MR. YORK: -- provides that the -- as long as the IRS
20 audit has not had a final -- there's not a final
21 determination, --

22 THE COURT: Uh-huh.

23 MR. YORK: -- then any litigation concerning the
24 validity or the amount of Mr. Daugherty's claim is stayed and
25 cannot be brought before the Court. And that's exactly what

1 their adversary complaint did, which is -- because they admit
2 in their adversary complaint --

3 THE COURT: Well, okay. I won't pursue this anymore.
4 But what's an estate to do? They're getting criticized for
5 the Trust going on too long. Not by your client, but -- and
6 meanwhile you want, I mean, 2032, are we still going to be
7 waiting on the IRS?

8 MR. YORK: I don't know because we don't have any
9 insight into what the IRS audit is.

10 THE COURT: Well, it's been 17 years.

11 MR. YORK: I understand, Your Honor.

12 THE COURT: So, --

13 MR. YORK: But the bottom line is this. The plan --
14 that Highland entered into the terms of that settlement
15 agreement.

16 THE COURT: I'm going to say it right now. I'm not
17 keeping this estate open until 2032. I just, I was --

18 MR. YORK: I presume that --

19 THE COURT: -- kind of flippantly throwing that out
20 there.

21 MR. YORK: And --

22 THE COURT: But this happens in bankruptcy cases a
23 lot, where you've got a contingent unliquidated claim, and
24 there are provisions in the Bankruptcy Code to say what can be
25 done in that scenario. The Court can estimate or liquidate.

1 MR. YORK: Understood. Your point to me was --
2 before was that's why Highland brought the adversary
3 complaint, and I was simply pointing out that, pursuant to the
4 express terms of the agreement that Highland reached with Mr.
5 Daugherty, Highland was -- is not allowed to bring the
6 adversary complaint to challenge the validity or amount of Mr.
7 Daugherty's claim so long as the IRS audit has not been -- had
8 a final determination. That's exactly what's going on here
9 with the adversary complaint that they have filed.

10 THE COURT: Okay.

11 MR. YORK: Okay. So I think Your Honor is familiar
12 with the terms of the plan, the Fifth Amended Plan and the
13 subordination. But specifically we have two issues. One
14 begins with the Claimant Trust Agreement in Section 5.1(c),
15 which provides that the equity holders shall not have any
16 rights under the agreement unless and until the Claimant
17 Trustee files with the Bankruptcy Court a certification that
18 all of general unsecured creditor beneficiaries have been paid
19 indefeasibly, in full, including, to the extent applicable,
20 all accrued and unpaid postpetition interest, consistent with
21 the plan, and all disputed claims have been resolved.

22 That has not happened here and it cannot happen because,
23 for one, Mr. Daugherty's unresolved Class 8 claim, and also
24 the remaining Class 9 claims, as I think you'll hear from Mr.
25 Seery. And so there are no rights that can be given to the

1 HMIT entities pursuant to -- as a Class 10 holder, an allowed
2 Class 10 holder, pursuant to the Claimant Trust Agreement. So
3 the proposed settlement violates the Claimant Trust
4 Agreement's express terms.

5 It also violates the Court's confirmation order that was
6 entered at -- specifically on Page 45 of the order, in
7 Subparagraph (a): The holders of the equity interests --
8 which would be the Class 10 and Class 11 equity interests --
9 that are junior to the claims in Class 8 and Class 9 will not
10 receive or retain under the plan, on account of such junior
11 claim interest, any property, unless and until the claims --
12 the claims, not the allowed claims, but the claims -- in Class
13 8 and Class 9 are paid in full, plus applicable interest.

14 That's exactly what the settlement that is proposed here
15 is designed to do.

16 And if you turn two pages in, you'll see that in addition
17 to the assignment of the Kirschner claims, what we're also
18 having under this proposed settlement are interim cash
19 distributions that would be made to the HMIT entities, interim
20 cash distributions that theoretically could be made before the
21 resolution of Mr. Daugherty's Class 8 claim, which would be in
22 violation of the plan, the Claimant Trust Agreement, and the
23 confirmation order.

24 And that is, as best as they put in their agreement,
25 that's approximately \$23 million in cash that would be paid

1 out theoretically in those interim distributions.

2 One of the things that Mr. Morris said in his opening was
3 that they did not -- Mr. Seery did not negotiate with Mr.
4 Daugherty because he was difficult to deal with. Well, that's
5 surprising, Your Honor, considering, on the other hand, Mr.
6 Morris says to the Court that there were repeated tolling
7 agreements or amendments to the tolling agreement that were
8 entered into by Mr. Daugherty willingly and voluntarily to
9 benefit Highland.

10 And what really happened when Mr. Morris says that there
11 were good-faith arm's-length negotiations, well, there may
12 have been good-faith, arm's-length negotiations between the
13 HMIT entities and Highland, but what happened here was that
14 Highland actually sought to ice out Mr. Daugherty from all of
15 this completely.

16 And how did that happen? Well, the evidence is going to
17 show that Highland reached out to the other Class 9 creditors
18 over a month in advance of the motion being filed, sought
19 their consent to the proposed settlement, told them that Mr.
20 Daugherty was not going to be a part of it, told them that Mr.
21 Daugherty's Class 8 claim was going to have an adversary
22 complaint filed against it, told them that once that adversary
23 complaint was granted and the claim was disallowed, then those
24 funds would waterfall down to Class 9, so the Class 9
25 creditors would get that -- those funds that theoretically are

1 part of Mr. Daugherty's Class 8 claim.

2 So at no point in time prior to the filing of the
3 adversary proceeding, or even prior to the filing of the
4 motion for approval of this proposed settlement, did Highland
5 ever contact Mr. Daugherty to attempt to discuss any of this,
6 because they simply wanted to ice him out.

7 THE COURT: Okay. I'm going to hear evidence. I
8 don't mean to cut you off, but --

9 MR. YORK: Sure.

10 THE COURT: -- I was told that Mr. Daugherty was paid
11 \$800,000 --

12 MR. YORK: With respect to his --

13 THE COURT: -- on his Class 9 claim.

14 MR. YORK: Correct.

15 THE COURT: Is that not true?

16 MR. YORK: So, the day --

17 THE COURT: Is that true?

18 MR. YORK: It is true. The day after the motion for
19 entry of the proposed settlement was filed, Mr. Demo sent a
20 letter to my office that was a payoff --

21 THE COURT: I just wanted to -- I don't need to know
22 every detail.

23 MR. YORK: Yes. Sure.

24 THE COURT: Has he been paid?

25 MR. YORK: His Class 9 claim was paid in full the day

1 after the proposed settlement was filed.

2 THE COURT: Okay. So what is the asserted amount of
3 his Class 8 claim?

4 MR. YORK: We -- again, both sides do not know
5 because they do not have --

6 THE COURT: What was the asserted amount in the proof
7 of claim that's been reserved for, the Class 8 proof of claim?
8 What was the asserted amount?

9 MR. YORK: It was listed as contingent unliquidated.
10 And as I understood it, and Your Honor --

11 MR. MORRIS: No. I think it's approximately \$1.7
12 million, Your Honor.

13 MR. DAUGHERTY: That's not true.

14 THE COURT: \$1.7 million?

15 MR. DAUGHERTY: No.

16 THE COURT: I would look it up, but I don't know if
17 we --

18 MR. DAUGHERTY: Your Honor, I'll tell you. It was
19 like \$1.45 million, and then the interest to October, which
20 was like another \$1.3 million. I'm estimating it. But the
21 total is around \$2.6 million, \$2.7 million at October/November
22 2020. Up to that point.

23 THE COURT: Okay. Well, that's kind of a weird
24 process here for an opening statement. But I'm asking
25 because, you know, I always try to stray people into let's be

1 pragmatic whenever I can. And a pragmatic approach here might
2 have been, if your client didn't think the reserve was big
3 enough, you all could have a discussion about, oh, instead of
4 \$2.56 million, it now should, I don't know, \$3 million,
5 whatever you say the number is. And there could have been a
6 give and take, instead of all these people showing up in the
7 court and having an all-day hearing.

8 So I'm just trying to understand that. And you're saying,
9 okay, violation of the absolute priority, when your client
10 took a full payment on his Class 9 claim without Class 8 being
11 quite paid in full. I'm just trying to be pragmatic here.
12 What would it take to make Mr. Daugherty happy? Again, that's
13 just the bankruptcy judge speaking on Chapter 11 world that's
14 trying to get to a pragmatic result.

15 MR. YORK: We're happy to have that discussion with
16 the other side. We were -- we --

17 THE COURT: Well, what --

18 MR. YORK: Yes.

19 THE COURT: You can't tell me right now? You're here
20 ready to go to battle over this settlement, and I'm trying to
21 figure out what might happen here that would make you all
22 withdraw your objection. And that's what we do in Chapter 11.
23 If there's a way we can pragmatically resolve things, we do.

24 MR. YORK: Sure.

25 THE COURT: And it just, I'm picking on you because

1 we're talking about a \$2.5 or so million claim in a situation
2 where people are wanting the estate wrapped up and it's
3 holding hundreds of millions of dollars, I guess.

4 MR. MORRIS: Not that much, Your Honor.

5 THE COURT: Not that much anymore. Not that much
6 anymore. A lot has been paid out. But a lot more than \$2.56
7 million, shall we say.

8 MR. YORK: Understood, Your Honor. And I'm happy to
9 have a conversation with Mr. Morris and see if we can reach a
10 number that's agreeable to accept as, you know, the reserve.

11 THE COURT: How hard could that be? I don't mean to
12 be --

13 MR. YORK: Happy to do so. Sure.

14 THE COURT: How hard could that be, when we're
15 talking about he's been paid \$800,000 on his Class 9 ahead of
16 his Class 8, which, to understand your argument, would be an
17 absolute priority rule problem. But, you know, --

18 MR. YORK: Correct. We indicated that --

19 THE COURT: -- no picking and choosing what is
20 problematic here. And we're talking about \$2.56 million is
21 set aside, and we're talking about the prospect of liquidating
22 it and paying whatever is appropriate way before the IRS is
23 finished. Maybe. I don't know. So how hard could it be to
24 figure out --

25 MR. YORK: I'm sure we can -- we can have a

1 conversation real quick and try to see if we can --

2 THE COURT: Okay. Well, it'll have to be during a
3 break, --

4 MR. YORK: Sure. Happy to.

5 THE COURT: -- because we're plowing ahead. Okay.
6 Anything else on your opening statement?

7 MR. YORK: The only other thing I would point out
8 with respect to the best interests of the estate is that the
9 -- as part of the settlement, the Class 9 holders and the
10 Class 10 holders are actually getting more favorable treatment
11 than Mr. Daugherty's Class 8 claim because of the mutual
12 releases that they're getting pursuant to the terms of the
13 proposed settlement, including the fact that the Class 9
14 written consent holders who are all -- all have served on the
15 board here are getting those releases as well under the
16 proposed settlement.

17 THE COURT: It's not a release by your client.

18 MR. YORK: No, I understand that. I understand that.
19 But they're getting mutual releases from each other on
20 litigation that Highland has -- the Claimant Trust, excuse me,
21 has -- Trustee has, you know, consistently said that they had
22 all of those parties, all of those defendants, dead to rights
23 on.

24 So, that's all I have.

25 THE COURT: Okay. I really, I'm trying to focus on

1 people's standing. Your client has standing. He has a proof
2 of claim that's unresolved. But I'm just trying to understand
3 the economic impact, I guess, on your client. And all I'm
4 hearing is, I don't know, that maybe he thinks more than \$2.56
5 million ought to be reserved. I mean, I'm --

6 MR. YORK: Given the passage of time, and also given
7 the fact that it's still undetermined as to what's going to
8 happen with that audit and what the penalties might be,
9 considering that the amount that was --

10 THE COURT: But, again, this is bankruptcy-land. We
11 can't wait around 20 years, 30 years. The Bankruptcy Code
12 contemplates we can at some point estimate --

13 MR. YORK: Sure.

14 THE COURT: -- a contingent unliquidated claim.

15 MR. YORK: I understand.

16 THE COURT: So I -- all right. Thank you.

17 MR. YORK: Thank you.

18 THE COURT: And Mr. Lang?

19 OPENING STATEMENT ON BEHALF OF THE DUGABOY INVESTMENT TRUST

20 MR. LANG: We're down to three issues, one of which
21 is the scope of the release, which I think we can work out
22 with Mr. Morris, just to make sure people are carved out,
23 being Dugaboy.

24 The second issue is the use of the dollar value from the
25 capital account as the basis for the Class 10 claim versus

1 using the -- well, they're using it on the petition date
2 versus using it -- the current capital account balance or the
3 percentage interest of 99.5 percent, because that prevents the
4 class, as structured, class level (inaudible). And so we have
5 an issue with why they're using the capital account as the
6 basis for the allowed claim, when the plan is silent on how
7 that equity interest is to be valued.

8 Does that make sense?

9 THE COURT: Okay. You have a problem with the
10 valuation methodology used here, which was taking the capital
11 account balances from --

12 MR. LANG: On the petition date.

13 THE COURT: -- on the petition date?

14 MR. LANG: Versus using the ownership percentage of
15 the equity on, as repeatedly stated, 99.5 percent of Highland
16 is owned by HMIT, .5 is owned by the Class 11.

17 THE COURT: Okay. Well, I'm not sure what -- I guess
18 you'll cross-examine Mr. Seery on different possible
19 methodologies.

20 MR. LANG: Yes.

21 THE COURT: Okay.

22 MR. LANG: And so then the third one is the authority
23 issue on Mr. Patrick's authority to enter into the settlement
24 agreement and the transfer of the Dugaboy Note to Mr.
25 Patrick's entity, HMIT.

1 THE COURT: All right. And, again, I'll just clarify
2 my understanding. Dugaboy -- this came up earlier -- itself
3 has a .1866 percent Class A limited partnership interest?

4 MR. LANG: I think that's approximately right. Not
5 exact. Is that Mr. Morris' sheet?

6 THE COURT: It was in several pleadings.

7 MR. LANG: Okay. Yeah.

8 THE COURT: Okay. So the question will be, should
9 that be valued at \$740,000 or something different?

10 MR. LANG: More -- there's \$65 to \$70 million in
11 assets in the estate. There's \$20 million in Class 9 debt, is
12 what Mr. Seery -- unpaid Class 9, is what Mr. Seery testified
13 to.

14 THE COURT: Uh-huh.

15 MR. LANG: So it's \$45 to \$50 million would be left
16 after payment of the Class 9. And if they use the ownership
17 percentages, Class 11 gets some money. If they use a \$333
18 million capital account, Class 11 gets nothing.

19 THE COURT: Okay. I presume that's a material
20 difference, and I'm going to hear about that.

21 MR. LANG: Yes.

22 THE COURT: Okay. And then I guess my other thoughts
23 on his interest -- I say his; it's Dugaboy. We tend to equate
24 Dugaboy with Mr. Dondero since we've heard he and his family
25 are the hundred percent beneficiaries. There I guess is a

1 note that is addressed in the settlement.

2 MR. LANG: Yes.

3 THE COURT: I called it the \$24.2 million note in my

4 --

5 MR. LANG: That was --

6 THE COURT: -- preparation, but it's down to --

7 MR. LANG: Seventeen-ish.

8 THE COURT: -- \$17 million or whatever. So, right
9 now, Highland is a payee on that note, as well as Get Good
10 Trust, and Hunter Mountain under the proposed settlement gets
11 to substitute in as a co-payee.

12 So I guess I'm just trying to, in my brain, figure out all
13 the, just like I was doing with Mr. Daugherty, the economic
14 impact of this settlement on your client. And have I just
15 addressed the two things in your view?

16 MR. LANG: Yes.

17 THE COURT: Okay.

18 MR. LANG: I believe so.

19 THE COURT: Okay. Thank you.

20 All right. Can we start with evidence? At some point,
21 we'll break for lunch, but we'll figure out as we go. I don't
22 want to be inconvenient to people if people have ordered lunch
23 or something.

24 MR. MORRIS: We are going to be finished with Mr.
25 Seery on direct well before lunch.

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1 THE COURT: Okay.

2 MR. MORRIS: Or by lunch, for sure.

3 THE COURT: It's 11:30.

4 MR. MORRIS: Yeah.

5 THE COURT: So, all right.

6 MR. MORRIS: I do -- I would be remiss if I didn't
7 point out that Mr. Lang just raised yet another issue, the
8 calculation of the allowed amount of HMIT's Class 10 claim.
9 Nowhere in his pleading. Again, hearing about this for the
10 first time as I'm standing here. He raised three issues, only
11 one of which is in their pleading, only one of which I ever
12 heard about from Dugaboy, and that is the scope of the
13 release.

14 THE COURT: Okay. I don't know if it makes a
15 material difference or not. I am not a mathematician. But --

16 MR. MORRIS: So Highland -- the Movants call Mr.
17 Seery.

18 THE COURT: All right. Mr. Seery, if you could
19 approach the witness box. I swore you in earlier for purposes
20 of all testimony today, so you are under oath.

21 MR. SEERY: Thank you, Your Honor.

22 JAMES SEERY, CLAIMANT TRUST'S WITNESS, PREVIOUSLY SWORN

23 DIRECT EXAMINATION

24 BY MR. MORRIS:

25 Q Good morning, Mr. Seery.

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1 A Good morning.

2 Q Do you have three binders in front of you?

3 A I have four binders in front of me.

4 Q Okay. I just want to make sure you have ours.

5 A I think -- yes, sir.

6 Q The fourth has the last few exhibits that we filed on the
7 docket.

8 Should we wait for Mr. Edmond?

9 THE WITNESS: That would be good.

10 THE COURT: Yes. I just noticed. Okay. The
11 recording is always going, so never fear.

12 (Pause.)

13 THE COURT: All right.

14 THE WITNESS: Apologies, Your Honor.

15 THE COURT: Oh, I didn't see what happened. Was
16 there a spill episode?

17 And please, if people need breaks, let me know. I
18 sometimes go long without appropriate breaks, so let me know,
19 anybody, if we need to break for bathroom.

20 MR. MORRIS: May I proceed, Your Honor.

21 THE COURT: You may.

22 MR. MORRIS: All right.

23 BY MR. MORRIS:

24 Q Are you comfortable, Mr. Seery?

25 A Yes.

1 Q I want to actually start a little unscripted with the
2 argument that was just made on behalf of Mr. Daugherty. Did
3 you listen to that?

4 A I did, Your Honor. Yes, I did. I'll speak to Your Honor.
5 Yes, I did, Your Honor.

6 Q Did Mr. Daugherty have a Class 9 claim?

7 A He did have a Class 9 claim.

8 Q And what was the value of the Class 9 interest that he
9 held?

10 A It was approximately \$3.7 million.

11 Q And who are the other Class 9 claim holders?

12 A There are three -- I'm sorry, there are four other Class 9
13 holders. There is Muck Holdings, LLC. There is Jessup
14 Holdings, LLC. There is UBS AG. And there's UBS Securities,
15 LLC.

16 Q Okay. And if you can turn to Exhibit 58, which is in
17 Volume 1.

18 A VOICE: Mr. Morris, what was the exhibit number?

19 MR. MORRIS: It's 58.

20 A VOICE: Thank you.

21 MR. MORRIS: You're welcome.

22 BY MR. MORRIS:

23 Q Do you have that in front of you, sir?

24 A Yes.

25 Q What is that?

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1 A That is a distribution notice to Mr. Daugherty from the
2 Highland Claimant Trust with the eighth distribution. And I
3 believe this would be related to his Class 9 claim. It may be
4 some 8 -- some Class 8 as well. But March 25 is -- I'm sorry,
5 May 25, my eyes are not that great for close up, this is just
6 related to the payoff of his Class 9 claim. So he'd had a
7 \$3.7 million. This was the last -- final payment, so he's
8 been paid in full on his Class 9 claim.

9 Q So do I have this right, that before you sent this
10 \$800,000-plus to him, he had already received \$2.9 million on
11 account of his Class 9 claim?

12 A That's approximately correct, yes.

13 Q And how many different distributions were made to Mr.
14 Daugherty on account of his Class 9 claim before this last
15 one?

16 A Two -- two or three. I believe the way we had phrased and
17 put 8 is our total distributions including 8 and 9. So he had
18 a larger Class 8 claim as well. I think it was approximately
19 \$8.25 million. That's been paid in full. His Class 9 claim
20 was getting paid in full by this one.

21 Q Okay. And did Mr. Daugherty receive these prior
22 distributions -- withdrawn. Did the other holders of Class 9
23 claims also receive pro rata their Class 9 distributions at
24 the same time as Mr. Daugherty?

25 A Yes. The distributions were pro rata.

1 Q Okay. Did Mr. Daugherty ever return any of the Class 9
2 checks that he received and say, oh my goodness, it violates
3 the plan and the absolute priority rule and everything else
4 because his Class 8 claim hasn't been paid in full?

5 A No, he did not.

6 Q Did he -- did he suggest that UBS or Muck or Jessup should
7 return their checks that they received on account of their
8 Class 9 claims because his Class 8 claim had remained
9 unresolved?

10 A No, he did not.

11 Q Okay. Let's go to the reason that we're really here
12 today, the agreement itself. Did you negotiate the settlement
13 on behalf of the Highland entities?

14 A Yes, I did.

15 Q Can you describe for the Court how that came about?

16 A In December, we had a hearing on -- this is a little bit
17 convoluted, I apologize -- but in December we had a hearing on
18 the HCLOM claim in court, and we settled that claim as a \$10
19 million Class 10 interest.

20 We moved into the new year and we heard some -- at some
21 point that HMIT disagreed with that settlement, even though
22 HMIT had signed that settlement as acceptable to it in form
23 and substance. And the reason was because HMIT had been the
24 only Class 10 -- not allowed, but the only Class 10 interest
25 in -- under the plan, and defined that way, and we had agreed

1 pursuant to the plan to put HCLOM in there.

2 And although HMIT had signed in form and substance
3 acceptable by its attorney, we learned that Mark Patrick had
4 not been consulted and that attorney had simply -- because we
5 were in the room -- had gone in and gotten permission from Mr.
6 Dondero to approve that settlement in form and substance. We
7 didn't know it at the time.

8 That went away pretty quickly, and we understood that
9 somehow it got resolved.

10 Shortly after that, sometime I believe in January or early
11 February, there was contact between HMIT counsel and our
12 counsel about a potential settlement. And we had two issues,
13 really, with Mr. Patrick, who controlled two separate
14 entities. There's the DAF entities he controlled and there's
15 the HMIT entities. And we wanted to make sure -- and we had
16 disputes with both of them. We had a Fifth Circuit appeal
17 coming up in DAF and HMIT. And so we were contacted and said,
18 okay, we're willing to settle this if we can get to a place
19 that makes sense to us. And so that was the commencement of
20 those negotiations.

21 Q And can you describe -- how long did the negotiations
22 last?

23 A Well, there was negotiation around the NDA, which took
24 some time, and I think we probably got that finalized at
25 around the middle to end of March. And then we began

1 negotiations in earnest during April. And we took pretty much
2 the full month to get these negotiations done, maybe a month
3 and a half.

4 Q Can you describe for the Court just how the negotiations
5 were conducted?

6 A Well, initially, we ensured that the ground rules would be
7 set. We didn't want to waste our time and expense if we
8 weren't going to reach agreement around particularly
9 litigation protections, because that's essential to us, and
10 having any settlement required that.

11 Secondly, we then -- from their side, they wanted
12 information. So, pursuant to that NDA, which was rather
13 robust, we provided substantial information.

14 We then had a -- I believe one or two Zoom calls, and then
15 a face-to-face meeting, and then subsequently a number of Zoom
16 calls with our counsel -- usually, these were always with
17 counsel -- so, our counsel, their counsel, principals, my
18 team, Mr. Patrick and his team, to go through each of the
19 items that we exchanged. And then we worked through a
20 framework to -- back and forth on that to a term sheet, to a
21 negotiated structured settlement along the lines of the one
22 you see.

23 Q And did the parties exchange information as part of the
24 process?

25 A Yeah. As I explained, we, under our NDA, we gave a lot of

1 information. We got information back from Mr. Patrick, Mr.
2 Phillips, their teams, about the structure of their entities,
3 how we could interact with them, who was responsible for each
4 entity. And that caused us to, frankly, move from just HMIT
5 to a couple other entities to make sure we had full
6 protection.

7 Q Did you provide information concerning assets, budgets,
8 expenses, and the like?

9 A Yeah. The detailed information we provided, it was pretty
10 extensive. So we gave a high-level view of our budget,
11 assuming that we had a settlement with them. We have an asset
12 list that we keep and where each asset was located. So,
13 dollars amounts, what kind of form it was in, whether it was
14 cash, whether it was U.S. Treasuries, whether it was, you
15 know, equity interests. Some couple other assets, as Mr.
16 Morris explained in the opening, had not yet been disposed of.
17 And the valuations we put on those assets.

18 Q Can you turn, I guess, to any volume, and let's just look
19 at the exhibit list. Are you generally familiar with the
20 documentation concerning the negotiations?

21 A Yes.

22 Q Can you confirm that Exhibits 2 through 57 are the emails
23 and information that were disclosed between the Highland side
24 and the HMIT side during the negotiations?

25 A Yes. And I -- I could look through 2 through 57 now, but

1 --

2 Q Yeah.

3 A -- I have looked through them before, and this is the
4 information back and forth. We generally exchanged, other
5 than at the face-to-face meeting, we exchanged information on
6 Zoom calls as well, but when we get documents we gave them
7 counsel-to-counsel.

8 Q Okay. And did you instruct me to produce all of the
9 communications with the HMIT side in connection with the
10 discovery requests that were served in this case?

11 A Yes. We had discovery requests that we went through in
12 detail and reviewed them, and we produced in accordance with
13 those requests.

14 Q Are you aware of any document that we didn't produce that
15 reflects the parties' negotiations of this agreement?

16 A No, not at all.

17 Q Can you describe for the Court the general deal points
18 that were negotiated? Withdrawn. Who was your counterparty
19 to these negotiations?

20 A The principal on the HMIT side is Mr. Mark Patrick. He
21 had his team. And I was responsible on our side with my team.

22 Q And can you just describe for the Court what the primary
23 negotiating points were between the two teams?

24 A Yeah. Number one for us was dismissal of outstanding
25 litigations. So we needed, with prejudice, dismissal of those

1 litigations. Otherwise, why are we bothering?

2 Number two, we wanted to make sure that we had litigation
3 protections. These have been around since -- we came up with
4 them during our mediation. They're really important to us.
5 They set up a structure where we can actually count on the
6 estate and the principals of the estate and the indemnified
7 parties of the estate not being attacked. So that was
8 essential to us.

9 In exchange, we had to fix their claim and allow it in an
10 amount pursuant to the plan, which requires us to fix an
11 amount. And that's the Class 10 interest that they have,
12 which is senior to the Class 11 interests under the plan and
13 the Claimant Trust Agreement.

14 And then the way the Trust is set up in the plan, it's a
15 waterfall. They -- we advocated for getting everything for us
16 upfront and putting everything for them at the back. They,
17 understandably, didn't like that as much and wanted
18 distributions upfront. So we negotiated around those terms.
19 And I think those are the biggest terms.

20 We had some assets that we were -- we were -- difficult to
21 monetize that we also were happy to dispose of in this way,
22 with a credit, you know, towards their claim amount.

23 Q Did you -- and I may have missed this; I apologize if I
24 did -- but did you also negotiate the amounts and the timing
25 of the distributions that would be made to the HMIT entities?

1 A Yeah. That's what I alluded to, where we -- we had hoped
2 to get everything for us upfront, give them everything later.
3 I think it's the *Wimpy* 'For a hamburger you give me today,
4 I'll gladly pay you Tuesday' structure. That didn't like that
5 as much, so we did work on timing. And that did bring into
6 consideration the other Class 9 holders and timing with
7 respect to payments to the Class 9.

8 Q Was the topic of the allowed amount of HMIT's Class 10
9 interest the subject of negotiation?

10 A The topic of the allowed --

11 Q Did you discuss how the amount of its allowed interest
12 would be calculated?

13 A Oh, yeah, that was a, you know, a critical part of the --
14 or, you know, essential part of the structure. What's the
15 allowed amount they're going to get? The plan requires an
16 amount fixed for that class. We had already had a \$10 million
17 HCLOM amount allowed into that class. So we needed to fix
18 that amount.

19 Q So let's transition to that particular topic, the
20 calculation of HMIT's Class 10 interest. Are you familiar
21 with the methodology that was used to arrive at the Class 10
22 amount?

23 A Yes.

24 Q Can you tell me the process, before we get to the
25 methodology itself? Like, what work was done to figure that

1 out?

2 A Well, the structure of limited partnership is that the
3 equity account is treated as what's called a capital account.
4 Each limited partner in a limited partnership has a capital
5 account that tracks their equity interest. As a default rule,
6 it's the amount that a limited partner can expect to get on a
7 sale of the partnership or a liquidation of the partnership.
8 So we used the capital account that had been maintained
9 continuously by Highland to set their capital account amount.

10 I think the partnership agreement talks about 99-1/2
11 percent for HMIT. It doesn't talk about dollars because
12 that's kept in the accounting for the partnership. And that
13 amount was consistently kept by Highland up to the petition
14 date. And even after the petition date in the monthly
15 operating reports.

16 Q If you take a look back at the exhibit list, I would
17 direct your attention to Page 12 of 15. Actually, it starts
18 at the Page 11. At the bottom, it's got the heading, Capital
19 Account Amounts. Are you familiar with Exhibits 113 through
20 118? And if you need to look at the exhibits, take your time.

21 A Oh, I'm sorry. I thought you told me 15.

22 Q No. One -- I did. I mentioned Page 15. But we're just
23 looking at Exhibits 113 to 118.

24 THE COURT: 113 to what?

25 MR. MORRIS: 18.

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1 THE COURT: Okay.

2 THE WITNESS: Um, --

3 MR. MORRIS: If you look at the index, Your Honor, at
4 the bottom of Page 15 -- 11, you'll see a heading, Capital
5 Accounts --

6 THE COURT: Right.

7 MR. MORRIS: -- Amounts. And then that captures
8 Exhibits 113 to 118.

9 THE WITNESS: Yes.

10 BY MR. MORRIS:

11 Q Are those the documents that you and your team relied upon
12 in order to calculate the amount of the allowed Class 10
13 interest for HMIT?

14 A These are some of them. I don't know if you have the tax
15 returns in here and the K-1s. Oh, here they are. 115.

16 Q Yeah. That's 115?

17 A Yeah. You've got the K-1s for 2018, which fix an amount.
18 Those are signed by Mr. Dondero, and they give the amounts to
19 each partner. And then you've got the adjustments, because
20 those are done in -- they're 2018 year-end. They were done in
21 September of 2019, about a month before the filing.

22 Q And is that Exhibit 116?

23 A It's 115 and 116. I believe that's -- 116 is 2019, I
24 believe, and that would have been signed postpetition by -- I
25 believe that was signed by Waterhouse.

1 Q Okay.

2 A So it sets out the K-1. The numbers that we have are
3 slightly different because they're in the -- they're not
4 middle of the year, but they're for the petition date of
5 10/16/19. And there are -- there's economic activity that
6 happens during the year, that you take the year-end from '18
7 and you have economic activity that would affect, pursuant to
8 the partnership, the capital account of each partner during
9 that year, fixed it on the petition date, and then it's been
10 forward since.

11 Q Did you apply any of your own subjective views or beliefs
12 in the calculation of the amount of the Class 10 interest held
13 by HMIT?

14 A No. This was math.

15 Q And did you hear Dugaboy's counsel suggest in the opening
16 that there was a different methodology that perhaps you could
17 have used, a pro rata methodology, instead of the methodology
18 you used?

19 A I heard what he said, but it doesn't make any sense. You
20 can't fix an amount that way.

21 Q And do you understand that Dugaboy, under the partnership
22 agreement, is subordinated to HMIT?

23 A Dugaboy is subordinated under the partnership agreement
24 for certain distributions. But importantly for our purposes,
25 they're subordinated under the plan. So the Class 11

1 interests are explicitly subordinated to the Class 10
2 interests, in both the plan and the Claimant Trust Agreement.

3 Q Did the Debtor consider putting Dugaboy and HMIT in the
4 same class? Back when the plan was being formulated?

5 A I -- I don't recall.

6 Q Do you recall why they're in separate classes?

7 A They -- they're in separate classes because HMIT had a
8 senior -- a right to senior distributions under the
9 partnership agreement. We set it up that way. Nobody
10 objected to it. That was part of the confirmed plan and the
11 confirmed order.

12 Q Thank you very much. Let's talk for just a moment about
13 Mr. Patrick's authority. Before entering into the settlement
14 agreement, did you do anything to satisfy yourself that Mr.
15 Patrick had the authority to enter into the settlement
16 agreement on behalf of each of the HMIT entities?

17 A Yes.

18 Q What did you do to satisfy yourself?

19 A Well, as a default rule, I always look at the agreements
20 that I'm going to enter into and the organizational docs. And
21 we did do that. We looked at each of the organizational docs
22 to --

23 Q Let me stop you there for a second. Are those the
24 documents that are in the exhibit list from 70 through 104?

25 A I'd have to check the actual numbers, but --

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1 Q If you just look at the exhibit list.

2 A Oh.

3 Q It's at the front. You'll see on Page 8 of 15 of the
4 exhibit list there's a heading, --

5 A Yes.

6 Q -- E, Patrick Authority, and then I'm asking you if you
7 are aware of what Exhibits 70 through 104 are?

8 A Yes. So, these, these are -- there's a number of
9 organizational documents that we looked and made sure that Mr.
10 Patrick had authority.

11 We also knew from our own files that Mr. Patrick, you
12 know, previously had different interests assigned to him, and
13 we know from Mr. Patrick and documents he's given us that John
14 Honis, who was a former controller of some of -- controlled
15 some of these entities and a friend of Dondero's who
16 previously worked at Highland, is on some retail boards, in
17 2022 transferred those interests to an entity controlled by
18 Mr. Patrick.

19 Moreover, Mr. Patrick was here in court as the HMIT
20 Administrator, trying to sue the Highland estate. He
21 testified on behalf of HMIT as the Administrator. And the
22 documents are very clear that the Administrator has full
23 control of these entities.

24 Q We've heard some argument about a Cayman Islands
25 proceeding. Are you generally aware of what's happening in

1 the Cayman Islands?

2 A I hesitate to say generally aware. I'm aware that there's
3 a proceeding in the Cayman Islands about involving a blocker
4 corp. And there's disclosure in this Court about what that
5 entity is. It's a blocker corp. in the Caymans that prevents
6 the ultimate charitable entities -- and I put that in quotes
7 -- to -- from receiving UBTI, which is Unrelated Business
8 Income. And in that case, they would have to pay tax on it,
9 and the idea is that they don't want to pay taxes and they
10 don't pay taxes. So that corp. apparently is in some sort of
11 proceeding. That's on the DAF side. That is not on the HMIT
12 side.

13 Q Okay. So, based on the work that you did and the
14 documents that you reviewed, did you form a view as to whether
15 or not Mr. Patrick is authorized to enter into the settlement
16 agreement on behalf of each of the HMIT entities?

17 A Yes.

18 Q And what view did you reach?

19 A He has complete authority over each of these entities.
20 They run up to entities that he controls or he owns. And he's
21 had that, and it's the structure that was set up a long time
22 ago, and any changes to that structure are just consistent
23 with the documents that let him do these things. And the
24 proceeding in Cayman, whatever that is, has no impact on Mr.
25 Patrick's authority over these entities or any of the entities

1 in this chain.

2 Q Did you see anything in the diligence that you conducted
3 that required Mr. Patrick to seek anybody's authority,
4 consent, or approval before entering into the settlement
5 agreement on behalf of the HMIT entities?

6 A No. And we could go through each document. He has
7 complete authority on each of these entities. And even the
8 objections that were filed that were withdrawn from The Dallas
9 Foundation, they have no -- it's absolutely clear that they
10 have no rights to deal with at all the management of each of
11 these entities. They don't have an ownership interest in it.
12 Crown issued an annuity policy that's a variable policy. They
13 have no rights.

14 Q All right. Let's turn to the agreement itself. Can you
15 tell the Court why you believe that the settlement agreement
16 is in the Claimant Trust's best interests?

17 A Number one, this case has been going on for a full five
18 years. We have spent tens of millions of dollars dealing with
19 vexatious and frivolous litigation and attacks. The
20 opportunity to settle with a Class 10 holder and allow their
21 claim under the terms of the settlement is extremely valuable
22 because it moves us much, much closer to a potential
23 resolution of this case, which we would all love to resolve.

24 Number two, it's fair value for the estate. We are making
25 sure, while we're paying some money out in front, we have

1 triggers on the backend payments to ensure that the Indemnity
2 Trust has enough assets to protect parties if there are
3 unforeseen litigations. And I can almost bet there'll be at
4 least one or two of those. So it's really, really valuable in
5 that respect.

6 Three, it cuts down tremendously on what future expenses
7 could be. Because we have gotten these litigation
8 protections, we've basically walled off a potential avenue to
9 be attacked. And I think the structure of this deal is
10 valuable, not only to the fiduciaries and folks who have been
11 responsible for managing this process and who are indemnified
12 by the Claimant Trust or HCMLP, it also enables us to, down
13 the road, pay off the Class 9s and ultimately make
14 distributions to the Class 10s.

15 Q Is one of the other benefits to this agreement is that it
16 enables the Claimant Trust to dispose of certain illiquid
17 assets?

18 A Well, that's a -- that is a benefit, because we do have to
19 resolve these claims and dispose of these assets, and we're
20 not in a position to hang around until 2030 or more to do
21 that.

22 So we've got the Kirschner claims, which would go to HMIT.
23 Again, the way that the waterfall is set up, to the extent
24 that they have value, they are very expensive to pursue.
25 We've spent a ton of money setting them up. We've produced

1 seven million documents, pages, and received zero in return.
2 We stayed them because we didn't think we needed them for the
3 Class 8 and 9 and it was prudent to do so, and the question
4 was would we need them for indemnification. So disposing of
5 those claims now at this time as part of this settlement,
6 where that value would go to Class 10 anyway, is very
7 valuable.

8 Q Had you made any efforts prior to entering into this
9 agreement to monetize or otherwise sell the Dugaboy Note?

10 A Yes.

11 Q Can you describe for the Court what your efforts were in
12 that regard?

13 A So, we set out to try to monetize the Dugaboy Note. I
14 contacted -- we put together what we call a teaser, laying out
15 what we knew about Dugaboy, at least up until the time that
16 Dugaboy was no longer part of our computer system. Laid out
17 what we thought the assets were. There's not a lot of public
18 information. Laid out the amortizing of the note. It's a 3.2
19 percent-ish, 3.26 percent note, I believe, goes to 2047, '46
20 on the amortization, 2047. And then presented that to I
21 think it's five different investors in distressed funds. Had
22 no interest whatsoever. One investor laughed at me, which I
23 understood that he was aware of the parties and the principals
24 and the collection efforts that would be difficult on that
25 note.

1 The note is performing, because if it hadn't performed I
2 would have accelerated on the first second and we would have
3 collected the whole thing. But we've seen that show in the
4 other Notes Litigation. And so we didn't -- we didn't get any
5 reception.

6 We also reached out to Mr. Dondero, in writing, through
7 D.C. Sauder, and made them an offer and tried to get them to
8 respond, and they indicated they had no interest in the note.

9 Q Turning back to the exhibit list, if you can turn your
10 attention to Page 11 of 15 of the exhibit list, is Section F,
11 Exhibits 105 through 112, the documents that reflect the note
12 and your efforts to dispose of the note?

13 A Yes.

14 Q And let's take a look at Exhibit 112 quickly, since that
15 involves Mr. Dondero. Can you just tell the Court what this
16 exhibit is?

17 A Yes. This is an exchange between D.C. Sauder, Matt
18 McGraner, both of whom work for Dondero, and Dave Klos, our
19 CFO. I'd authorized Dave to make an offer to them to see if
20 we could get cash for the Dugaboy Note. And as you see right
21 below the reply from Mr. Klos, which is -- this is friendly,
22 but Mr. Sauder's indication that they have no interest.

23 Q Okay. So Highland offered to sell the Dugaboy Note to Mr.
24 Dondero or entities controlled by him, and that offer was
25 rejected without a counteroffer. Do I have that right?

1 A That's correct.

2 Q Okay. Let's finish up here. Are you familiar with the
3 objections of Dugaboy and Mr. Daugherty that the settlement
4 somehow violates the plan because it's making distributions to
5 Class 10 before junior classes are paid in full?

6 A Yes. I'm familiar with those.

7 Q Do you believe the settlement violates the plan?

8 A Not at all.

9 Q And why is that?

10 A The plan specifically contemplates that -- I don't think
11 it's -- we showed the 9 and 10s, but I think it's any claimant
12 could take less than is being offered by the plan. What we
13 did very specifically is go to the Class 9 claimants and
14 discuss with them this opportunity to settle with HMIT and
15 what it would take, which included some, as I described
16 earlier, payments upfront.

17 After being fully informed -- they asked a lot of
18 questions, they pushed back quite a bit, as you can expect
19 that they would -- and we reached agreement with those Class 9
20 claimants in writing to approve the structure of the deal and
21 the settlement and the concurrent payments, as well as the
22 final small payment to Mr. Daugherty on behalf of his Class 9
23 claim.

24 Q Could I trouble you to turn to Exhibit 59, please, Mr.
25 Seery?

1 A I've got it.

2 Q Are you familiar with that document?

3 A I am, yes.

4 Q Can you explain to the Court what that document is?

5 A This document is the written consent that we entered into
6 with the Class 9 claimants, approving the settlement agreement
7 as well as the payment to Mr. Daugherty.

8 Q Okay.

9 A And -- and -- so these -- the payment to Mr. Daugherty
10 would have been non-pro rata, so they agreed to that. And the
11 concurrent payments under the settlement agreement to Class 10
12 were agreed to by the Class 9 claim holders.

13 Q So looking at Page 2 at the top, do I have this right,
14 that Mr. Daugherty's original Class 9 subordinated claim was
15 in the amount of \$3.75 million, and that with the payment
16 described in this document his claim was paid in full?

17 A That's correct, yes.

18 Q And did he complain that he was getting paid in full but
19 the other Class 9 holders were not?

20 A No. That had never been his complaint.

21 Q Did he complain that he was getting paid in full on his
22 Class 9 claim but his Class 8 claim remained unresolved?

23 A No. I think that, as indicated before in my testimony and
24 indicated here, this was the last payment, the 781. Before
25 that, he'd received almost \$3 million on account of his Class

1 9 claim. And pro rata with the other Class 9 claimants.

2 Q I think you mentioned that your understanding is that,
3 under the plan, creditors can elect to receive less favorable
4 treatment than the plan otherwise provides. Is that right?

5 A That's correct. And I think that's a pretty standard
6 provision in virtually every plan that I see.

7 Q Can we just grab that for a second? It's the last
8 exhibit, 126, which is probably in the skinny binder, if you
9 have one.

10 A Yes. Do you want me to go to the section?

11 Q Yeah. Just one minute. I want to make sure the judge is
12 with us. Give her a second.

13 MR. MORRIS: Are you with us, Your Honor?

14 THE COURT: Yes.

15 MR. MORRIS: Okay.

16 BY MR. MORRIS:

17 Q So if you can turn to Page 23 of Exhibit 126. Does
18 Section 9, under Treatment, Romanette (ii), is that the
19 provision that you were just describing that gives Class 9
20 holders the ability to receive such other less-favorable
21 treatment as to which such holder and the Claimant Trust may
22 agree upon in writing?

23 A That's correct.

24 Q And the same is true with respect to the Class 10 claims,
25 at the top of Page 24?

1 A That's also correct, yes.

2 Q All right. And so was the consent that was executed by
3 the Class 9 holders that's Exhibit 59 done in satisfaction of
4 these plan provisions?

5 A I'd say it's consistent with these. They could elect to
6 receive it or not, but this was, you know, did it under this
7 provision and they were entitled to elect to take lesser
8 treatment, if that's what they agree to.

9 Q Okay. Can you describe for the Court why you believe that
10 the Class 9 claim holders are receiving less-favorable
11 treatment under -- as a result of this settlement agreement
12 than they would otherwise be entitled to under the plan?

13 A Well, they would be entitled to receive payments in front
14 of any payments that would be made to Class 10. In addition,
15 they would have been entitled to receive a pro rata
16 distribution of the \$800,000 that was paid to Mr. Daugherty,
17 and they agreed to waive those provisions.

18 Q Okay. Is it your understanding that HMIT is also
19 accepting less favorable treatment than it might otherwise
20 receive if it pursued and succeeded in the prosecution of its
21 claim?

22 A I suppose, ultimately, if everything was resolved, that
23 they could have gotten a Class 10 interest that wasn't
24 structured along the lines of the settlement agreement. So
25 the settlement agreement takes some of that structure and what

1 arguably would be value away from them, and this is the amount
2 that they've agreed to have as their allowed claim, as
3 structured by the settlement agreement.

4 Q And is it your understanding that under the settlement
5 agreement HMIT has disavowed any rights under the Claimant
6 Trust Agreement?

7 A Under the Claimant Trust Agreement, yes. They have rights
8 under the settlement agreement to receive distributions, and
9 those will ultimately come from the Indemnity Trust as we wind
10 down the Claimant Trust.

11 Q And did HMIT also agree that it would not be a Claimant
12 Trust beneficiary under the Claimant Trust?

13 A Yes. And that's very important to us because we have seen
14 lots of litigation, lots of emails, trying to use these types
15 of structures just to create claims, even when there's
16 literally no basis for it. I should -- well, I'll control
17 myself.

18 Q Yeah. We can stop there.

19 MR. MORRIS: Your Honor, I have no further questions
20 at this time.

21 THE COURT: All right. We're going to figure out,
22 are we taking a bathroom break or a short lunch break. I'll
23 poll the audience and then I'll decide. Do people want to
24 take maybe a 30 to 45-minute lunch break, or just a bathroom
25 break and keep going?

Seery - Direct

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1 THE WITNESS: Thirty minutes.

2 THE COURT: I'll say -- are you going to have any
3 further examination?

4 MR. PHILLIPS: I'm going to maybe ask one question,
5 just to bring it up. It's already been -- but one question.

6 THE COURT: Okay. And then what about Dugaboy and
7 Daugherty? Guesstimate how much examination you'll have.

8 MR. YORK: Fifteen minutes, maybe.

9 MR. LANG: Twenty minutes or so.

10 THE COURT: Why don't we take a five-minute bathroom
11 break, --

12 MR. PHILLIPS: Sure.

13 THE COURT: -- and then we'll at least finish this
14 witness.

15 MR. PHILLIPS: Perfect.

16 THE COURT: All right?

17 MR. PHILLIPS: Thank you, Your Honor.

18 THE WITNESS: Thank you.

19 THE CLERK: All rise.

20 (A recess ensued from 12:07 p.m. until 12:15 p.m.)

21 THE CLERK: All rise.

22 THE COURT: Please be seated.

23 (Pause.)

24 THE COURT: All right. Can I get some help rounding
25 people up?

Seery - Cross

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1 (Pause.)

2 THE COURT: All right. We're missing -- okay. We're
3 going back on the record in Highland Capital. We still have
4 Mr. Seery on the witness stand. Mr. Phillips, you had
5 examination. You said one question.

6 MR. PHILLIPS: I did, Your Honor. And I meant it.

7 THE COURT: Okay.

8 CROSS-EXAMINATION

9 BY MR. PHILLIPS:

10 Q Could you look at Exhibit 118, please?

11 A You said 118?

12 Q Yes, sir.

13 A Certainly.

14 Q Did the calculation of the Class 10 claim amount of
15 \$336,940,230.58, is that the result of applying the full value
16 to the Highland or Highland Claimant Trust of the HMIT note
17 receivable?

18 A Apologies, because I can't read this because it's too
19 small, but I can answer the question.

20 THE COURT: Would you like this?

21 THE WITNESS: I think I can answer the question
22 without it.

23 THE COURT: Okay.

24 THE WITNESS: The -- what we used was the petition
25 date capital account.

1 BY MR. PHILLIPS:

2 Q Correct.

3 A And just like every other claim in bankruptcy, fixed at
4 the petition date. And what we subtracted from that petition
5 date was the petition date amount principal and interest of
6 that HMIT note which was owed to Highland Capital.

7 Q Thank you.

8 THE COURT: All right. That was one question.

9 All right. Counsel?

10 MR. YORK: Thank you, Your Honor. Get it organized
11 here.

12 CROSS-EXAMINATION

13 BY MR. YORK:

14 Q Good afternoon, Mr. Seery.

15 A Good afternoon.

16 Q Would you take a look at Exhibit 1 in Daugherty's witness
17 and exhibit binder? It's the settlement agreement between
18 Highland and Mr. Daugherty, I believe.

19 A Yes, I have it.

20 Q All right. And can you confirm that is the settlement
21 agreement that Highland and Mr. Daugherty entered into in
22 connection with the claims Mr. Daugherty asserted in the
23 bankruptcy?

24 A It appears to be, yes.

25 Q Would you turn to Section 9, then, which is on Page #11,

1 starts on Page #11?

2 A Yes.

3 Q And that relates to a reserved claim that Mr. Daugherty
4 had as part of his proof of claim against Highland in the
5 bankruptcy, correct?

6 A That's correct.

7 Q And would you agree with me that the second line of
8 Section 9 there of the settlement agreement describes that
9 claim as a contingent unliquidated claim against the Debtor?

10 A I would not agree with you on that, no.

11 Q Why not?

12 A Because it says, Daugherty contends --

13 Q Ah. Daugherty contends.

14 A -- he has a contingent unliquidated claim against the
15 Debtor.

16 Q Okay. Well, why don't you then turn with me to Daugherty
17 Exhibit #2, which is the -- which is the -- Highland's
18 adversary complaint that was filed against Mr. Daugherty on I
19 believe May 2nd of 2025. Correct?

20 A I don't recall the specific date and it's blurred at the
21 top. So if you say so, I'll accept that.

22 Q All right. And if you look at Paragraph 1, the third
23 line, there's a sentence there that says, All of Mr.
24 Daugherty's claims were settled except his unliquidated
25 contingent claim that the Debtor has a continuing and

1 indefinite obligation to make him whole if a tax refund he
2 apparently received for tax year 2008 on account of his
3 partnership interest is ever successfully challenged by the
4 IRS.

5 Did I read that correctly?

6 A You did read that correctly, yes.

7 Q All right. This reserved claim under the settlement
8 agreement is a Class 8 unsecured claim, correct?

9 A It is the claim that he asserted and that we initially
10 classed under Class 8 in a fixed amount for a tax refund which
11 is on his statement that he got that he claims he's entitled
12 to more, which would be unsecured as of the petition date. I
13 believe the amount on his payment statement from 2009 is
14 \$1.475 million.

15 Q All right.

16 THE COURT: Could you pull the microphone closer to
17 you?

18 THE WITNESS: I'm sorry, Your Honor.

19 THE COURT: Okay. Good.

20 MR. YORK: All right.

21 BY MR. YORK:

22 Q And, again, my question is pretty simple. And it's a
23 Class 8 unsecured claim, right?

24 A It's not a Class 8. It was in Class 8. It's been
25 objected to.

1 Q Right.

2 A So it is not in a class now at all. We seek to disallow
3 it in its entirety, or, at worst, subordinate it to all
4 creditor claims.

5 Q Understood. But it has been asserted as a Class 8 general
6 unsecured claim, right?

7 A He asserted it as that, yes.

8 Q Okay. And is it fair to say that in the adversary
9 complaint, if you go to Page -- I'm sorry, Paragraph 4 --
10 Highland alleges that: However, even if Mr. Daugherty's claim
11 is not disallowed in its entire -- I think that should be
12 entirety. Right?

13 A It should be, yes.

14 Q It remains contingent on the outcome of the 2008 audit.
15 Correct? Did I read that correctly?

16 A You did read that correctly, yes.

17 Q And the next sentence says, It is unclear when, how, or if
18 the 2008 audit will finally be resolved. Correct?

19 A Correct.

20 Q And in fact, if you go to, then, Page #7 of the complaint
21 and you look at Footnote 6, at the very end of that footnote
22 it indicates that Highland has an understanding that the
23 resolution may not be expected until approximately 2029. Is
24 that correct?

25 A The litig... I can't read it because it's small, but the

1 litigation may not be resolved. The IRS has already issued a
2 final determination on the audit.

3 Q How do you know that?

4 A I was advised that by another partner.

5 Q Who?

6 A Kurt Plumer.

7 Q Have you seen the FPAA that was issued by the IRS?

8 A No, I have not.

9 Q Have you asked for it?

10 A Yes.

11 Q You did, personally?

12 A My lawyers did.

13 Q Your lawyers did?

14 A Yes.

15 Q Okay. But you -- but you did not, right? Just to be
16 clear.

17 A No, I did not. My lawyers, acting at my direction, did.

18 Q Asked the tax matters partner for Highland for that
19 information?

20 A Asked Mr. Daugherty.

21 Q Asked Mr. --

22 A I think asked you, I'm sorry.

23 Q Oh, asked me for that information?

24 A Yes.

25 Q Well, so tell me, why is Mr. Daugherty -- first off, do

1 you know if Mr. Daugherty has received the FPAA?

2 A I don't know.

3 Q Okay. Do you know if anybody else has received an FPAA?

4 A I was told there was a final determination. I don't know
5 if they've actually received an FPAA. But I do know that Mr.
6 Daugherty has produced a document where the IRS has requested
7 additional information for him. Since they hadn't done that
8 for 17 years, I suspect that they've reached a final
9 determination of the audit.

10 Q All right. So you don't know whether an FPAA has actually
11 been issued?

12 A I --

13 Q True?

14 A I don't know. And for the Court's benefit, that's a Final
15 Partnership something Determination.

16 Q Okay. What -- where --

17 THE COURT: F-A --

18 THE WITNESS: F-P-P -- I think it's --

19 MR. YORK: F-P-A-A.

20 THE WITNESS: -- F-P-A-A.

21 THE COURT: Okay. The court reporter will no doubt
22 ask, so good.

23 BY MR. YORK:

24 Q Tell me, where in the universe is it that -- is it Mr.
25 Daugherty's obligation to provide Highland with the FPAA?

1 A I don't -- I don't think there's any such obligation that
2 I've seen.

3 Q And in fact, the IRS audit is handled by the tax matters
4 partner for Highland Capital, correct?

5 A The IRS audit for Highland Capital's -- from Highland
6 Capital's position is handled by that. The IRS handles their
7 side.

8 Q Right. From Highland's side. Okay. And that tax matters
9 partner is doing that on behalf of Highland Capital, right?

10 A I think at this point it's doing it on behalf of the old
11 Highland Capital, not Reorg Highland Capital. We don't have
12 any liability with respect to it, nor do we have any
13 visibility as to what's going on in the tax audit.

14 Q So even though, under the partnership agreement, that's
15 the tax matters partner that's referred to, Highland Capital
16 cannot compel that tax matters partner to provide that
17 information to them, if an FPAA actually exists?

18 A I don't think so. That partnership agreement is the pre-
19 effective date partnership agreement.

20 Q All right.

21 A The new Highland Reorg Debtor doesn't have these partners
22 and is not a tax matter partner for those -- those audits.

23 Q So let's go back, then, to Paragraph 4 of the adversary
24 complaint that was filed. And I want to look at the next
25 sentence that Highland wrote there. It says: Moreover, if

1 the claim is not disallowed, it will need to be estimated,
2 after taking into account the likely outcome of the 2008
3 audit, including adjustments that result therefrom.

4 Did I read that correctly?

5 A You read that correctly.

6 Q Have -- has anyone at Highland conducted any analysis as
7 of today to determine what Mr. Daugherty's potential liability
8 would be from that IRS audit if that audit was completed today
9 and all interest and penalties were assessed as of today?

10 A Yes.

11 Q How much?

12 A It would be \$1.475 million, the amount of his prepetition
13 claim in his proof of claim. Since it's unsecured, whatever
14 happens with the IRS is not a concern of Highland. His claim
15 is that he didn't get that amount as a refund. Either he got
16 that amount or he got some -- some lower amount. It would be
17 a petition -- prepetition-date amount. And under Texas law,
18 he would be entitled to prejudgment interest from 2009 to the
19 petition date at a rate of five percent.

20 Q Which would be how much?

21 A It would be approximately \$2.2 million in aggregate.

22 Q Okay. And there would be -- you're saying there would be
23 no penalties or any other -- any other interests or
24 assessments that would -- Mr. Daugherty would be liable for
25 that Highland would also then be liable for under that claim?

1 A No. There would not. It would not impact his claim
2 against Highland. His claim against Highland is simply: I
3 did not get this refund.

4 He got the refund. He's now claiming it might be
5 adjusted. If the IRS otherwise has penalties, interest
6 against him for his tax attributes somewhere between 2009 and
7 2019, that wouldn't be subject to his proof of claim and it
8 wouldn't be the responsibility of Highland.

9 Q Even if Highland had promised at the time that that refund
10 was made that it would -- it would make him whole with respect
11 to any IRS audit whatsoever?

12 A It simply --

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

14 THE WITNESS: It simply didn't do that.

15 MR. MORRIS: Yeah.

16 THE COURT: Okay. Overruled.

17 THE WITNESS: We can -- you could litigate the claim,
18 but that's just not what it says.

19 BY MR. YORK:

20 Q So you talked earlier about the Class 9 consent that was
21 obtained, and no one from Highland reached out to Mr.
22 Daugherty to try to seek his consent. Right?

23 A That's correct.

24 Q Why not?

25 A Because I didn't want to.

1 Q Why?

2 A Because Mr. Daugherty is an extremely difficult person to
3 deal with. The last time I dealt with Mr. Daugherty on the
4 phone with respect to anything, I had extreme difficulty and
5 got sucked into a stalking lawsuit that I had to testify to
6 that is a complete mess that I want nothing to do with. So
7 originally my counsel said, have no communication with him.
8 But with respect to this, we were objecting to his claim. We
9 knew he would try to hold this up. You have tried to do that
10 and demanded \$20 million. So that's why we didn't reach out
11 to you. We just paid the 9 and we have a fully-reserved
12 amount on the 8.

13 Q You thought that the stalking case that you were pulled
14 into was completely fabricated, didn't you?

15 A I thought that at the time. I'm not as sure anymore.

16 Q Oh, really?

17 A Yeah.

18 Q Okay. And you actually also told Mr. Daugherty that Mr.
19 Ellington, who brought that case, was a complete liar and POS,
20 right?

21 A I don't know if I used POS, but I do not think Mr.
22 Ellington is an honest person.

23 MR. MORRIS: Your Honor, at some point I'm going to
24 on relevance grounds. I think we've got a settlement
25 agreement before the Court that we're trying to get approved

1 today, not to take discovery on any other matters.

2 THE COURT: Okay. I'm going to overrule to the
3 extent there was an objection, but I think it's appropriate to
4 worry that we're straying down a road that is not relevant.
5 So, --

6 MR. YORK: Understood.

7 THE COURT: -- reign it in.

8 MR. YORK: All right.

9 BY MR. YORK:

10 Q You'd agree that the -- under the terms of the proposed
11 settlement, there will be some interim distributions will be
12 made to the HMIT entities in cash totaling approximately \$23
13 million. Correct?

14 A Not necessarily, no.

15 Q Why not?

16 A Because there's an initial distribution. I believe it's
17 \$10 million.

18 Q Yes.

19 A And then subsequent distributions are predicated on
20 whether there are threats, either outstanding litigation or
21 threats as defined in the agreement.

22 Q And so long as those threats don't occur, then those
23 interim -- those additional interim distributions will be
24 made, right?

25 A Yes. The Indemnity Trust would make those distributions

1 at those times, and then I have to make -- it's a double
2 trigger, because it has to be no threats and I have to
3 determine that the Indemnity Trust had sufficient assets to
4 meet its obligations for both actual and contingent
5 indemnification obligations.

6 Q But at a minimum, the HMIT entities will receive at least
7 \$10 million?

8 A Yes.

9 Q On an interim basis?

10 A Yes.

11 Q All right. And you'd agree with me that, under the terms
12 of the plan, the plan provides that the classes get paid in
13 order of priority, correct?

14 A That's correct.

15 Q All right. And if you turn to Daugherty Exhibit 4, which
16 is the confirmation order, at Page 45. And Subsection A there
17 in the middle of that has a sentence that says: Accordingly,
18 as the holders of the equity -- excuse me. Strike that. Let
19 me start over. Are you there yet, Mr. --

20 A Now I am.

21 Q All right. Accordingly, as the holders of equity
22 interests that are junior to the claims in Class 8 and Class 9
23 will not receive or retain under the plan on account of such
24 junior claim interest in any property unless and until the
25 claims in Class 8 and Class 9 are paid in full, plus

1 applicable interest, --

2 Did I read all that correctly?

3 A Yes.

4 Q Okay. And the term "Claim" there is a capitalized term,
5 right?

6 A Yes.

7 Q It's not -- it doesn't say allowed claims. It just says
8 claims. Right?

9 A That's correct.

10 Q All right. All right. Now, if you'd turn with me to the
11 Claimant Trust Agreement, which is Daugherty Exhibit 5, and go
12 to Section 5(c). Excuse me. 5.1(c). I apologize.

13 A Yes.

14 Q And this is -- this is -- relates to the contingent trust
15 interests associated with the Class 10 and Class 11 limited
16 partnership interests in Highland, correct?

17 A Generally, yes.

18 Q All right. And you'd agree with me that, in the -- about
19 four lines down, it says: The Claimant Trustee shall allocate
20 to each holder of allowed Class 10-B and C limited partnership
21 interests and each holder of allowed Class 11 Class A limited
22 partnership interests a contingent trust interest equal to the
23 ratio that the amount of each holder's allowed Class 10 or
24 Class 11 interest bears to the total amount of the Class 11 or
25 -- Class 10 or Class 11 interest, excuse me, as applicable

1 under the plan.

2 Did I read all of that correctly?

3 A I believe you did, yes.

4 Q All right. And under the terms of the proposed
5 settlement, the HMIT entities are getting an allowed Class 10
6 interest, correct?

7 A That's correct, yes.

8 Q All right. And then the next sentence goes on to say:
9 The contingent trust interest shall not vest and the equity
10 holder shall not have any rights under this agreement unless
11 and until the Claimant Trustee files with the Bankruptcy Court
12 a certification that all GUC beneficiaries have been paid
13 indefeasibly in full, including, to the extent applicable, all
14 accrued and unpaid postpetition interest consistent with the
15 plan and all disputed claims have been resolved. The GUC
16 Payment Certification.

17 Did I read that correctly?

18 A You did, except you used the article "The" before
19 "contingent trust interest" at the start of the sentence.

20 Q Fair enough. And the GUC beneficiaries there would be the
21 general unsecured creditor beneficiaries, correct?

22 A That's correct.

23 Q And this certification has not been issued yet by the
24 Claimant Trustee in this bankruptcy, correct?

25 A That's correct.

1 Q In part because of Mr. Daugherty's remaining unresolved
2 Class 8 claim, correct?

3 A In part, yes.

4 Q And also in part because of the remaining Class 9 claimant
5 holders who still have money owed to them on their Class 9
6 claims?

7 A In part, yes.

8 Q Okay. Does the term of the proposed settlement agreement
9 provide those Class 9 consent holders with releases from the
10 HMIT entities?

11 A No.

12 Q It does not?

13 A No.

14 Q At all?

15 A No.

16 Q Even if they were in their capacity serving as board
17 members for Highland Capital?

18 A Certain of the Class 9 holders are also on the Oversight
19 Board. In their capacity as Oversight Board members, yes,
20 they get -- they get broad releases. UBS, for example, is
21 not. There are no releases in there for the two UBS entities.

22 Q Would you now -- you can set that binder aside. And if
23 you'd turn with me to Exhibit 60 in the -- Highland's exhibit
24 list.

25 A Six zero?

1 Q Yes, sir.

2 A Yes.

3 Q This is a copy of the tolling agreement extending
4 objection deadline between -- that's on -- dated July 27th of
5 2022 between Mr. Daugherty and Highland Capital Management, LP
6 and Highland Claimant Trust. Correct?

7 A Yes. That's what it appears to be, yes.

8 Q All right. If you would, go with me to Page 2 at the
9 bottom. There is a Footnote #3. Do you see that?

10 A Yes.

11 Q And that footnote relates to, up above, a defined term
12 called a "Reserved Claim," the Reserved Claim being what was
13 discussed earlier in Mr. Daugherty's settlement agreement with
14 Highland, right?

15 A That's correct, yes.

16 Q And it states in here that that Reserved Claim means "the
17 contingent and unliquidated claim as referenced in Proof of
18 Claim #205."

19 Did I read that portion of the footnote correctly?

20 A Yes.

21 Q All right. And it goes further to say that the amount
22 listed there of 2.65 million three hundred -- two point six --
23 let me start over. \$2,650,353 is the amount estimated as of
24 October 23, 2020. Correct?

25 A That's correct.

1 Q All right. It doesn't say it's -- anywhere in there that
2 it's a fully -- it fully reserves that unliquidated contingent
3 claim. Correct?

4 A In what you just read, no.

5 Q All right. And if you go to Page 1 -- or, I'm sorry, to
6 Page 3, Paragraph 1, the covenant to reserve where Highland
7 agrees to reserve \$2,650,353 on account of the reserved claim,
8 does it say anywhere in there that that is -- fully reserves
9 that contingent unliquidated claim anywhere?

10 A It says exactly what it says. And you read it.

11 Q That's not my question. Does it say --

12 A I don't -- well, it says, Further agree to reserve \$2.650
13 [million] on account of the reserved claim in disputed claim
14 reserve.

15 Q All right. Does it say anywhere in there that that is the
16 fully-reserved amount of that claim?

17 A Not in that sentence, no.

18 Q Thank you. All right.

19 MR. YORK: Your Honor, give me one second. Let me
20 confer.

21 THE COURT: Okay.

22 (Pause.)

23 BY MR. YORK:

24 Q Mr. Seery, UBS is one of the consent holders, Class 9
25 consent holders related to the HMIT settlement. Correct?

Seery - Cross

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1 A There are two UBS entities, UBS AG 66 and UBS Securities,
2 LLC.

3 Q All right. Did either of those entities sit on the
4 Unsecured Creditors' Committee in this bankruptcy?

5 A A UBS entity did. I'm not sure which of those did, or
6 whether it was both with one counsel. I don't -- there's a
7 UBS entity on that Creditors' Committee.

8 Q Is the -- are the members of the Unsecured Creditors'
9 Committee within the definition of the Highland released
10 parties under the proposed HMIT settlement? Do you know?

11 A I don't know. The members of the Creditors' Committee, I
12 believe, have exculpation anyway, so I don't -- I don't -- I
13 don't know if it captures the old members of the Creditors'
14 Committee. I don't -- for example -- I don't think so. I
15 don't -- I don't know.

16 MR. YORK: Pass the witness.

17 THE COURT: All right. Mr. Lang?

18 THE WITNESS: Do you have a separate binder?

19 MR. LANG: No.

20 THE WITNESS: Okay. Will you be using Mr.
21 Daugherty's binder?

22 MR. LANG: No.

23 CROSS-EXAMINATION

24 BY MR. LANG:

25 Q All right, Mr. Seery. Just to be clear, the Class B and C

1 -- or the Class A interests and the -- of Highland under the
2 plan, they have 99.5 percent of the -- Highland Capital
3 Management. Correct?

4 A Could --

5 Q Sorry. The Class B and C --

6 A Limited partnership interest.

7 Q -- shareholder -- limited partnership interests were 99
8 point -- or, were .5 percent of Highland Capital Management?

9 A I -- I'm not trying to be difficult.

10 Q No, it's fine. It's a terrible -- terrible --

11 A I don't -- I just don't -- I don't understand your
12 question. I apologize.

13 Q Okay. So, at the time of the petition, --

14 A Yes.

15 Q -- Hunter Mountain Investment Trust owned 99.5 percent of
16 Highland Capital Management?

17 A It owned 99-1/2 percent of the limited partnership
18 interest in Highland Capital Management.

19 Q And the remainder -- and HMIT has the Class 10 claims.
20 Correct?

21 A You said something, the remainder? The --

22 Q Oh, sorry. The remaining interests are owned by the Class
23 11 claims under the plan.

24 A The remaining partnership interests are among those
25 entities I testified earlier to, which are Dugaboy, Strand, --

1 Q And Okada?

2 A -- Mark Okada individually, and two Mark Okada and Pamela
3 Okada trusts.

4 Q Okay. And the total assets in the estate right currently
5 you testified are between \$65 to \$70 million?

6 A I -- off the top of my head, I don't recall, but it --
7 rough range, it could be in that general vicinity. That does
8 not include the payments that have to be made to the 9s and
9 expenses. So I believe there's documents in here that we
10 could go through, if you like.

11 Q And I believe you testified that the remaining unpaid 9s
12 are owed approximately \$20 million?

13 A Approximately \$20 million, yes.

14 Q Okay. And the plan does not say that the equity claims
15 for Class 10 and 11 are to be determined by the capital
16 account values of the limited partnership interests in the
17 Debtor LP?

18 A That's correct. It says to set an amount. It doesn't
19 tell you how to do the amount.

20 Q Okay. And under the settlement agreement, Class 10
21 interests will be allowed in the amount of \$336,940,230.58?

22 A Approximately \$336 million, yes.

23 Q \$336 million. Fair. And this is the capital account
24 balance as of -- HMIT's capital account balance as of the
25 petition date, less, I believe, the HMIT note?

1 A That's correct. So that amount is the net amount.

2 Q The net? And do you know how the capital account balances
3 were calculated --

4 A Yes.

5 Q -- on the petition date?

6 A Yes.

7 Q And how were they calculated?

8 A So, you take the 2018 year-end capital account amount, and
9 then there's activity in the company that gets passed through
10 through the partnership. The partnership agreement -- in this
11 instance, the prepetition Debtor partnership agreement passed
12 through profits and losses on a pro rata basis. There was
13 activity in the first half of the year that affected that
14 capital account. You can see that reflected in the year-end
15 auditeds as well as the K-1 statement that -- for 2018 that
16 was given to HMIT. That would be their 2018 year-end. That
17 then, from an accounting perspective, was used and brought
18 down to the petition date. And between the petition date and
19 year-end 2019, there was additional capital activity, the
20 biggest one of which was the reserve -- full reserve for the
21 \$50-plus million for the HMIT note. And so then you'll see
22 the 2009 auditeds that are signed off by Mr. Waterhouse. And
23 in those interim months, then you also see the gross amount of
24 the partner capital each month in the monthly operating
25 reports.

1 Q And correct me if I'm wrong, but I believe you testified
2 that the capital account balances continued to go down after
3 2019. So you have the petition date, you have the next year,
4 and did they continue to --

5 A I don't think I testified to that. What I testified to is
6 that there was economic activity in 2019 that affected the
7 year-end '18 to the petition date. And then from the petition
8 date there was year-end activity -- there was activity from
9 the petition date to year-end '19 that would affect the
10 capital account as reflected in the 2018 auditeds -- they
11 weren't auditeds -- 2018 tax returns signed off by Waterhouse.
12 The biggest part of that activity was the application or the
13 reserve for the Hunter Mountain Note.

14 Q And was there any activity after the 2019 tax return?

15 A There was postpetition activity in the partnership,
16 certainly.

17 Q And did it reduce the capital accounts during those years?

18 A I assume it would have reduced all of the capital accounts
19 pro rata.

20 Q Okay. And why'd you use the petition date as the date to
21 determine the value of the capital accounts?

22 A Because this is bankruptcy and that's the date on which
23 you fix all your claims and interests.

24 Q If you used -- have you ever used equity ownership
25 percentages to determine the payment to the equity versus

1 their capital account balances?

2 A In this case, or elsewhere?

3 Q Elsewhere.

4 A I think that's standard. I can't cite you a specific
5 thing, but typically when a partnership liquidates or a
6 partnership is sold, amounts get distributed pursuant to the
7 capital accounts and -- and -- in up to amounts in the capital
8 accounts.

9 Q You would agree, if you use the percentage of ownership,
10 being 99.5 percent for Class 10 and the .5 percent for Class
11 11, would potentially leave money for the Class 11 creditors
12 to recover?

13 A I don't think so. No, I don't agree with that.

14 Q Why do you say that?

15 A Because Class 11 is subordinated to Class 10.

16 Q Okay. So explain how, if \$60 million exists and you pay
17 \$20 million to the Class 9, --

18 A Roughly. Yeah.

19 Q Rough. Just rough math.

20 A Okay.

21 Q That leaves \$40 million.

22 A Okay.

23 Q Correct? And if the ownership interests or the allowed
24 claim for HMIT was 99.5 percent, wouldn't that leave .5
25 percent of \$40 million for the remaining creditors?

Seery - Cross

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1 A That doesn't make any sense, because 99-1/2 percent of a
2 senior thing means you get everything. So that Class 10 has
3 to be paid in full before the 11.

4 In addition, there's already an agreed-upon amount on
5 HCLOM for \$10 million. So how do I give HCLOM \$10 million and
6 99-1/2 percent to somebody else? There has to be numbers.

7 Q But to be clear, the plan does not say that the equity
8 claims are determined on capital accounts. Correct?

9 A That's correct.

10 Q All right.

11 MR. LANG: No further questions.

12 THE COURT: All right. Any redirect?

13 MR. MORRIS: Just one moment, Your Honor.

14 (Pause.)

15 MR. MORRIS: We have no questions, Your Honor.

16 THE COURT: All right. Any redirect from --

17 MR. PHILLIPS: No, Your Honor. Thank you.

18 THE COURT: -- the one question?

19 Okay. Thank you, Mr. Seery. You are excused from the
20 witness box.

21 THE WITNESS: Thank you, Your Honor.

22 (The witness steps down.)

23 THE COURT: Okay. I'm going to again take proposals.
24 I can live with a 30-minute lunch break. I and my staff can.
25 But it's easier for us than all of you. So do you all want to

1 negotiate for more?

2 MR. MORRIS: I just wanted to let the Court know
3 that, with that, the Movants rest. We're not -- we're not
4 going to call anybody else.

5 THE COURT: Okay.

6 MR. MORRIS: We reserve the right to cross-examine.
7 We reserve the right to call rebuttal witnesses, including Ms.
8 Deitsch-Perez and Mr. Dondero, depending on what testimony is
9 elicited. So we reserve the right to call rebuttal witnesses.
10 But we're not calling anybody further on our direct case, and
11 we rest.

12 THE COURT: Okay. So let me --

13 MR. MORRIS: I'll let them --

14 THE COURT: -- follow up on that point.

15 MR. MORRIS: Uh-huh.

16 THE COURT: There had been a discussion of Mr.
17 Patrick.

18 MR. MORRIS: Uh-huh.

19 THE COURT: Limited to one total hour. Thirty
20 minutes collectively, Debtor and HMIT. Thirty minutes
21 collectively, Dugaboy and Daugherty.

22 MR. MORRIS: You know what, Your Honor.

23 THE COURT: You're -- you're not asking --

24 MR. MORRIS: No, maybe I -- I forgot that you had
25 told us we could do it, too. So let's take the lunch break,

1 let us figure it out, we'll let you know when we come back.

2 THE COURT: Well, I'm clarifying because I'm deciding

3 --

4 MR. MORRIS: Yeah.

5 THE COURT: -- who gets to go first.

6 MR. MORRIS: Understood.

7 THE COURT: Each witness.

8 MR. MORRIS: Understood.

9 THE COURT: And I presume --

10 MR. MORRIS: Understood.

11 THE COURT: -- the Debtor/HMIT would go first.

12 MR. MORRIS: Yeah.

13 THE COURT: And then with regard to Dondero, --

14 MR. MORRIS: Yeah.

15 THE COURT: -- you all would go first.

16 MR. MORRIS: So I withdraw what I said. Let us
17 confer during the lunch break and we'll figure out who's going
18 first, whether we do rest or whether we put Mr. Patrick on for
19 a short direct.

20 THE COURT: Okay. Which leads me to our lunch break.
21 Do people want to negotiate for more than 30 minutes? I don't
22 want to make someone collapse if --

23 MR. MORRIS: Thirty minutes, or 1:30?

24 MR. PHILLIPS: 1:30.

25 MR. MORRIS: 1:30, Your Honor. It's nice and round.

1 MR. PHILLIPS: One clarification, Your Honor.

2 Because I don't -- I don't -- if one side doesn't take the
3 half hour, does that go over to the other side, or --

4 THE COURT: No.

5 MR. PHILLIPS: No?

6 THE COURT: I don't think -- I'm just giving --

7 MR. PHILLIPS: Great. Thank you.

8 THE COURT: And my law clerk said maybe I was
9 confusing about that earlier today.

10 MR. MORRIS: Yeah.

11 THE COURT: One hour total, but 30 minutes each. And
12 if one collective team doesn't use the whole 30 minutes, we're
13 not --

14 MR. MORRIS: Yeah.

15 THE COURT: -- giving it to the other side. Okay?

16 MR. PHILLIPS: That was my question.

17 MR. MORRIS: Understood, Your Honor.

18 THE COURT: And while I'll let you all discuss
19 whatever you want, what I envisioned is you all would go first
20 with Mr. Patrick, --

21 MR. MORRIS: Uh-huh.

22 THE COURT: -- and then Dugaboy and Daugherty would
23 go first on Mr. Dondero. But if you all collectively think it
24 makes sense to do something different, I'll hear.

25 MR. MORRIS: No. That makes sense, Your Honor.

1 MR. PHILLIPS: Thank you, Your Honor.

2 THE COURT: All right. So we'll come back at 1:30 --

3 MR. YORK: Yes.

4 THE COURT: -- and resume.

5 MR. YORK: Thank you so much.

6 THE COURT: Okay. Thank you.

7 THE CLERK: All rise.

8 (A luncheon recess ensued from 12:51 p.m. until 1:33 p.m.)

9 THE CLERK: All rise.

10 THE COURT: Please be seated. All right. We're back
11 on the record in the Highland Capital matter, the Rule 9019
12 motion for approval of a settlement. When we broke, we were
13 waiting to talk about Mr. Patrick and Mr. Dondero as
14 witnesses. Are they going -- is Patrick going to be your
15 witness?

16 MR. MORRIS: No, Your Honor. We're going to reserve
17 our 30 minutes for rebuttal.

18 THE COURT: Okay. Thank you.

19 All right. I'll hear from the Objectors now.

20 (Pause.)

21 MR. YORK: Sorry, Your Honor. I didn't realize they
22 were going to observe. So, --

23 THE COURT: Well, yes. If you understood what I was
24 saying before the break, I presumed they might want to go
25 first with Mr. Patrick, but it was -- you're the one who

1 wanted him, so if they want to go second, they can go second.

2 MR. YORK: Well, --

3 THE COURT: Well, I say "you're." I'm sorry.

4 MR. LANG: No, it's okay.

5 THE COURT: Mr. Lang wanted to go --

6 MR. YORK: Yeah. So are we definitely doing Mark

7 Patrick now?

8 MR. PHILLIPS: No.

9 MR. YORK: Oh, okay.

10 MR. PHILLIPS: We just rested.

11 THE COURT: Okay.

12 MR. MORRIS: They can call whoever they want.

13 THE COURT: They have rested. If you don't want to
14 go forward with any witnesses, you don't have to.

15 MR. YORK: Oh, we --

16 THE COURT: But you had wanted to go forward -- you
17 wanted to question Patrick and I said, if he's going to be a
18 witness, then Dondero should also be a witness. Okay? And at
19 most an hour collectively for each witness. If you don't want
20 to call either one of them, you don't have to call either one
21 of them.

22 MR. LANG: We're going to. I think that they were
23 just going to call Daugherty first. I didn't know if you had
24 an order that you wanted to do this in.

25 THE COURT: Well, no. I don't care. I guess I don't

1 care. Was Daugherty listed? I mean, --

2 MR. YORK: Yes.

3 THE COURT: I'm sorry. Did you say Daugherty or
4 Dondero?

5 MR. LANG: Daugherty.

6 THE COURT: Okay. I'm sorry. So you want to call
7 Daugherty?

8 MR. YORK: Yes.

9 THE COURT: And you listed him as a witness?

10 MR. YORK: Yes.

11 THE COURT: So you may call Daugherty.

12 MR. YORK: All right.

13 MR. MORRIS: Yes. I --

14 MR. YORK: We'll call Patrick Daugherty, then.

15 THE COURT: Okay.

16 MR. MORRIS: I don't believe Dugaboy did, but --

17 MR. YORK: Right.

18 MR. MORRIS: -- if they -- if they want to call him,
19 by all means.

20 THE COURT: Okay.

21 MR. MORRIS: Yep.

22 THE COURT: All right. Mr. Daugherty, if you could
23 approach the witness box, I will swear you in. Please raise
24 your right hand.

25 PATRICK DAUGHERTY, PATRICK DAUGHERTY'S WITNESS, SWORN

Daugherty - Direct

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1 THE COURT: All right. Please be seated.

2 THE WITNESS: Oh, wow. A lot of water up here.

3 THE COURT: Plenty of water for everyone.

4 DIRECT EXAMINATION

5 BY MR. YORK:

6 Q Good afternoon, Mr. Daugherty. Could you state your name
7 for the record, please?

8 A Patrick H. Daugherty.

9 Q Mr. Daugherty, are you a creditor in the Highland Capital
10 bankruptcy?

11 A Yes, I am.

12 Q All right. And would you turn to, in the Daugherty
13 exhibit binder, turn to Exhibit 1, please?

14 A Yes.

15 Q And this is a settlement agreement between you and
16 Highland Capital Management relating to claims -- your proof
17 of claim that you made in this bankruptcy, correct?

18 A Yes.

19 Q And we looked earlier. You were in the courtroom for Mr.
20 Seery's testimony, correct?

21 A I was.

22 Q All right. And we talked in Section 9 about the defined
23 Reserved Claim in there. Do you remember that?

24 A I did.

25 Q All right. Can you describe what --

1 A I consider it the Compensation Claim, but yes.

2 Q Can you describe what the Reserved Claim is?

3 A Yeah. Basically, it, background, it dates back to the
4 financial crisis of 2008, 2009. Highland was on the brink of
5 filing for bankruptcy. We had a creditor bank led by Bank of
6 America and Scotia, and we were in default. And so the banks
7 came in, declared default, and basically put a limit or
8 terminated our ability to pay cash bonuses. And that -- right
9 after Lehman Brothers failed, so call it September 2008 and
10 going into 2009.

11 And the problem with that is we were losing people right
12 and left. We had about 22 senior-level guys. We were down --
13 and I say guys. I think there were some women, too. But we
14 were down to about 12 people. And they were trying to stem
15 the tide of people running out of the doors in order to save
16 the value of Highland. We started the year at about \$40
17 billion under management, and by that time, we were -- I think
18 we were as low as \$19 or \$20 billion under management.

19 Hedge funds were rolling up. CLOs did fine. Private
20 equity did fine. Retail funds were having problems. And
21 separate accounts were okay. But we were definitely a firm in
22 crisis and trying to hold on to people.

23 So the nature of this compensation claim, you know, every
24 year, everybody except Dondero and Okada would get what's
25 called a compensations and award letter. Because Dondero and

1 Okada were really the only partners. I think you can kind of
2 see that, given your experience. They were called the
3 founding partners. They were the only ones that got true
4 distributions from the firm annually. Guys like us, you know,
5 the other 12 or so, we got cash bonuses and incentive comp and
6 deferred comp. And, you know, obviously, cash compensation
7 was a big part of our compensation, and they were prohibited
8 from the banks from paying it.

9 So Dondero, with the help of Rick Swadley and some of the
10 other tax people, I don't know if we used out outside firms or
11 not, they came up with this scheme, if you will, where
12 Highland was going to go and use whatever they came up with
13 with the partnerships and whatnot and then generate a tax
14 refund to the senior-level guys. As or in lieu of the cash
15 bonuses that couldn't be paid, they were going to go make
16 these elections and then we were going to get this money.

17 And if you look at our awards agreement, it says you're
18 going to get x amount of money. And it's in the line that
19 historically is the cash bonus.

20 Also, when we got like our email or whatever that year
21 from Patrick Boyce, our CFO, he was like, Congratulations,
22 your bonus this year was x. And it was whatever that amount
23 was on your compensation and award letter.

24 Well, several of us had the same accountant, John Garvey,
25 at Bland Garvey. Me, Joe Daugherty, and Davis Deadman. And

Daugherty - Direct

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1 we took this concept to our accountant and he's like, man,
2 that's really precedent. And so you guys are going to have to
3 basically protect yourselves from -- sorry, go ahead. Make
4 your objection. I'm sure I'm --

5 MR. MORRIS: I just, I just don't remember what the
6 question was at this point and he's testifying to --

7 THE WITNESS: Why I got this thing.

8 THE COURT: It was --

9 THE WITNESS: My apologies.

10 MR. MORRIS: -- to conversations and hearsay.

11 THE COURT: What is the --

12 MR. YORK: Let me ask a question and I'm going to try
13 to --

14 THE COURT: -- proof of claim about, was the essence
15 of the question.

16 MR. YORK: Yeah. Right.

17 THE COURT: So I sustain. We're getting a little
18 narrative, shall we say.

19 THE WITNESS: My apologies.

20 MR. YORK: So, --

21 THE WITNESS: I'll tighten it up.

22 BY MR. YORK:

23 Q All right. So, Mr. Daugherty, what you were getting under
24 this scheme, as you describe it, was a cash bonus that was
25 masked as a refund, correct?

1 A Look, Highland paid for it however they're going to pay
2 for it. They're the one who created whatever that they did.
3 But for us, it was a cash bonus.

4 Q Okay.

5 A But given that I was -- what I was just alluding to, there
6 were concerns about the tax impacts if the IRS didn't agree
7 with Highland. And so what we did is we negotiated for and
8 got from Dondero -- really, I mean, Jim ultimately made the
9 decisions at Highland. He said, look, if you don't -- if this
10 doesn't work, if it doesn't go through, we'll make you whole.
11 And so we got that provision in the compensation and award
12 letter that says if the actual refund deviates materially from
13 the refund, then you'll get substitute compensation. And that
14 was enough for us, --

15 Q And --

16 A -- and that's what led to this claim.

17 Q And was it your understanding that, in terms of making you
18 whole, that was not just whatever you had to pay back for the
19 refund, but also interest and penalties?

20 A Yeah.

21 MR. MORRIS: Objection. Leading.

22 THE COURT: Sustained.

23 THE WITNESS: That's fair enough.

24 BY MR. YORK:

25 Q What was your understanding as to what that 'make you

1 whole' constituted?

2 A It was basically to put me and the others back in the
3 position of getting to that number that was listed in the
4 document. So if there were any interest, penalties, pullbacks
5 from the IRS, then we would be made whole at that -- we'd get
6 back the net of that number. However, if the IRS was fine
7 with it, we wouldn't get anything.

8 Q So there's a chance, depending on how the IRS audit turns
9 out, if the IRS says what Highland did was fine, then you
10 don't owe the IRS anything, right?

11 A Yeah. That's been a critical thing, that I may not owe
12 the IRS anything, and certainly I wouldn't expect Highland to
13 give me anything.

14 Q And at that point, what's been reserved as your reserved
15 claim would effectively at that point, from the IRS
16 perspective, the IRS audit perspective, would be a zero dollar
17 amount, right?

18 A Yeah. I mean, more so. I mean, Jim Seery offered to buy
19 me out with an amount of the reserved claim. And I said,
20 listen, I'm not looking for a windfall here. What I'm looking
21 for is to be made whole, --

22 Q Right.

23 A -- it's my insurance policy on what I earned back in 2008,
24 because the alternative is I will have ended up working for
25 free in 2008, plus have to pay penalties and interest going

1 forward that could wipe out my net worth.

2 Q All right.

3 A So I wanted the insurance policy aspect of it.

4 Q So you heard Mr. Seery's testimony earlier where he said
5 the total amount you would owe was somewhere in the range of
6 \$1.4 to \$1.5 million if there was --

7 A He's wrong about that, if that's what he said.

8 Q Why?

9 A At the time -- I think the number he was referencing was
10 in our claim number that I filed back in, I want to say,
11 October 2020. And the \$1.45 million, what was in the
12 compensation -- was the number in the compensation and awards
13 letter.

14 The other number that I spoke about from the gallery out
15 there was one point -- I don't know, whatever the interest --
16 whatever I guessed the interest might be. And then I didn't
17 have anything for penalties. So, at that particular time,
18 took those numbers and said, okay, if the IRS says no way on
19 all this, this is what I'd have to pay, not including
20 penalties.

21 Q All right. So you've seen today and you listened to the
22 testimony about the footnote in Highland's adversary complaint
23 against you in which they say that the resolution may not be
24 until 2029 of this IRS audit?

25 A That's correct. I've heard that.

1 Q All right.

2 A I've seen it and heard it.

3 Q All right. As you've sat here today, have you done any
4 calculation back of the napkin to try to estimate what your
5 potential exposure would be to the IRS in terms of interest
6 and penalties as a result of that audit dispute if it wasn't
7 resolved until 2029?

8 A Yeah. I listened to the judge. I went and ran '33
9 because that was a number that was just thrown out. At '33,
10 if it's 2033, it's \$7.4 million, and if it's 2029 it's \$5.7
11 million.

12 Q What sort of financial impact would that have on you?

13 A The latter would pretty much wipe me out. I'm sorry. The
14 former would -- the \$5.7 million would wipe me out. The
15 latter would cause me to file for bankruptcy.

16 Q Okay. Mr. Seery also discussed his -- that he had heard
17 through the grapevine that the IRS audit had been resolved.
18 Has anyone from Highland ever told you that the IRS audit is
19 resolved?

20 A No one's told me that from anywhere, anyhow, anyway.

21 Q Have you had a conver... have you had -- so nobody at all,
22 right?

23 A No one at all.

24 Q Have you -- did you have a conversation recently with Kurt
25 Plumer over it?

1 A I did. I had lunch with him at Hillstone.

2 Q Did he mention it at all?

3 A No.

4 Q All right. Could you turn with me to, in your exhibit
5 binder, Exhibit 8, please?

6 A Yeah.

7 Q All right. Can you just identify for us what this
8 document is?

9 A This is a letter I got from the IRS dated November 20th,
10 2024, basically telling me that the case is open and I may owe
11 money.

12 Q And specifically, if we look at the first paragraph, it
13 says, "Why You're Receiving This Letter," in bold, right?

14 A It does.

15 Q And then below that it says: We might have to adjust your
16 tax return based on our examination of the Highland Capital
17 Management listed above.

18 Did I read that part correctly?

19 A Yes.

20 Q And so is it your understanding that your -- that this is
21 related to the IRS audit of Highland?

22 A That is my understanding.

23 Q And that your tax return, your personal tax return may be
24 adjusted as a result of that?

25 A Mine and my wife's.

1 Q Which would mean you're subject to interests and penalties
2 as well?

3 A As is she.

4 Q Okay. And is this the only letter you've ever received
5 from the IRS?

6 A No.

7 Q Related to the Highland Capital Management audit?

8 A No.

9 Q All right. Do you receive these periodically?

10 A Yes. The initial one came I want to say about five months
11 after we filed the returns in two thousand -- it was for the
12 calendar year 2008, so it was April 15th, 2009, I want to say.
13 Maybe it was -- I think the first one came around October,
14 late October 2009.

15 Q And --

16 A Like this. I can't -- I don't remember it verbatim.

17 Q Is this the last communication you have received from the
18 IRS relating to Highland's IRS audit?

19 A This was it. Yeah.

20 Q Okay. Has anyone from the IRS ever told you that an FPAA
21 has been issued --

22 A No.

23 Q -- with respect to the Highland's audit?

24 A No. I don't even know what that -- I didn't even know
25 what that was.

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1 Q And you've never received an FPAA from the IRS, right?

2 A I have not.

3 Q And you've never -- nobody else has ever sent you an FPAA
4 related to the Highland audit, right?

5 A No.

6 MR. MORRIS: I'm being kind, but this is just --

7 THE COURT: It's leading.

8 MR. MORRIS: -- testifying from the podium.

9 THE COURT: Sustained.

10 THE WITNESS: Yeah.

11 BY MR. YORK:

12 Q All right. Mr. Daugherty, would you turn -- we'll switch
13 topics real quick to the tolling agreement. Would you turn in
14 Volume 1 of the Highland exhibits to Exhibit 60, please?

15 A Volume 1, and then which one, I'm sorry?

16 Q Exhibit 60.

17 A Yeah. Yes, I'm there.

18 Q Why did you enter into -- well, back up. Strike that.
19 Start over. This is the tolling agreement extending a claim
20 objection deadline between you and Highland Capital and the
21 Highland Claimant Trust as of July 27th, 2022, correct?

22 A That is correct.

23 Q And is it your signature on Page 6 or 7 of the document on
24 the left-hand side?

25 A It appears to be, yes.

1 Q All right. Why did you enter in this tolling agreement?

2 Why did you enter into --

3 A I'm sorry, what was your question?

4 Q Why did you enter into this tolling agreement?

5 A Jim Seery had reached out to me in 2022 and said that they
6 had a problem with -- the Court had an objection deadline that
7 was running and that was somewhat inconsistent with the
8 settlement agreement that we had just gotten approved in early
9 March of 2022 that said they couldn't object, they being
10 Highland, object to the legitimacy or amount of my
11 compensation claim.

12 So he said, look, you know, we're in a little bit of a
13 predicament here. We can go to the Court or we can try and
14 work this out. And I'm like, hey, I'm fine to work it out. I
15 don't want the estate to be burdened or any way. So we went
16 back and forth on the document, and ultimately I felt that it
17 was the right thing to do. The spirit of our settlement was,
18 you know, I -- they couldn't -- they couldn't challenge this
19 part of my claim, but the *quid pro quo* was I'm not going to be
20 able to beat them out on a technicality by running in here,
21 saying, ah, the objection deadline, you know, expired.

22 So his solution seemed to be a reasonable one. And we
23 worked with their counsel, I think Demo and to some degree
24 Morris, to work that out for them.

25 Q How did the estimate come about in Footnote 3?

1 A I don't know. Nobody ever asked me about it. There was
2 no -- Mr. Morris is right, there was no negotiation about it.
3 Because, frankly, I didn't see that as my problem. They had
4 something to fulfill pursuant to the plan. And there was no
5 back and forth on that reserve amount with Seery whatsoever.
6 He just said, This is what we're doing and, you know, we're
7 going to put this -- and my perception is I didn't have any
8 right to challenge it other than what was in my settlement
9 agreement. And I looked at that as a one-time right to go and
10 seek an estimate, and I didn't want to do it that early in the
11 process.

12 Q Would you take a look with me at the last recital that's
13 on Page 3 of the document? All right. It says, --

14 A Oh. You're going to make me read. All right.

15 Q It says: Whereas, solely to avoid the expense,
16 inconvenience, and uncertainty associated with litigation, and
17 without any party admitting liability, fault, or wrongdoing,
18 or releasing or waiving any rights or defenses with respect to
19 the reserved claim, the parties desire to enter into this
20 agreement to extend the claim objection deadline solely with
21 respect to the reserved claim to January 11th, 2023 at 5:00
22 p.m. Central Time, defined as the Objection Deadline.

23 Did I read that part correctly?

24 A You did.

25 Q What was your understanding of this recital provision

1 being put in here?

2 A Well, I think I just kind of summarized it. There was a
3 problem that the parties didn't, you know, fully recognize
4 could occur that would give me a windfall, and so this was to
5 kind of solve that on an interim basis until we got to a final
6 resolution on this tax refund thing.

7 I mean, the honest truth, God -- Judge. Not God, Judge.
8 But the honest-to-God's truth is Seery and I had a very good
9 relationship, and we were going back and forth, and his view
10 was that this thing could get resolved in 2022.

11 Q Did you have an understanding as to whether or not you
12 were reserving all rights with respect to your reserved claim
13 under the terms of the tolling agreement?

14 A Absolutely I did. Both in emails and in the document.

15 Q All right.

16 MR. YORK: Pass the witness.

17 THE COURT: All right. Any cross? I'm assuming
18 Dugaboy did not have questions. And, Mr. Daugherty, I should
19 have --

20 MR. LANG: No, we do not.

21 THE COURT: Okay. Thank you. Cross?

22 CROSS-EXAMINATION

23 BY MR. MORRIS:

24 Q Good afternoon, Mr. Daugherty. Take your time.

25 A How are you, Mr. Morris?

1 Q Good. I just have a few questions. You have been paid in
2 full on your Class 9 claim, correct?

3 A Evidently, yes.

4 Q And that Class 9 claim was for \$3.7 million, correct?

5 A I believe it was \$3.75 million.

6 Q Thank you for the clarification. Do you recall how many
7 payments you received that resulted in your receipt of \$3.75
8 million?

9 A I don't.

10 Q When you received those payments, did you tell Mr. Seery
11 -- did you send it back to Mr. Seery out of any concern that
12 your Class 8 claim has not been resolved?

13 A No.

14 Q When you received those payments, did you object to Mr.
15 Seery or to anybody else that it was improper for the other
16 Class 9 holders to receive the payments when your Class 8
17 claim had not been resolved?

18 A I had no idea what they were receiving.

19 Q Did you have any reason to believe that you were receiving
20 a benefit that the other Class 9 claim holders were not
21 receiving?

22 A Again, I had no idea what they were receiving, so I can't
23 compare the two.

24 Q Okay. But it is true that you accepted without protest
25 your Class 9 payments, even though your Class 8 claim had not

1 been resolved, correct?

2 A I think that's accurate.

3 Q Okay. I think you mentioned in your proof of claim it had
4 \$1.4 million; is that right?

5 A Again, I'm cuffing it. If you could grab it, I'll -- I
6 want to say it was -- the proof of claim had two components,
7 as I mentioned. There was a, as I mentioned, there was the
8 compensation award amount from my compensation letter of like
9 \$1.475 million.

10 Q Uh-huh.

11 A Don't quote me on that, but close enough.

12 Q Approximate.

13 A And then an interest component that would take me up to
14 that particular time if the IRS reversed it.

15 Q Okay.

16 A But no penalties were included.

17 Q And that approximately \$1.45 million, that's money that
18 you received back in 2009?

19 A I didn't get that full amount in 2009. That was -- I
20 don't want to broaden this up too much, but many times what
21 was promised was not what was delivered. So I got a lesser
22 amount from the IRS.

23 Q How much less did you receive?

24 A I want to say, on a net basis, it was just under \$1.2
25 million.

1 Q Okay. And so it's true that you've had the benefit of the
2 \$1.2 million for 15 years now?

3 A When you say the benefit, what do you mean?

4 Q It went into your pocket 15 years ago.

5 A Yeah, but it's a contingent liability I have back to the
6 IRS, so I can't say that it's, you know, not without
7 reservations.

8 Q But you've had possession of that million and a half
9 dollars now for 15 years, correct?

10 A Right. And with it comes an obligation --

11 Q Okay.

12 A -- contingent back to the IRS.

13 Q Your claim is a prepetition claim; is that right?

14 A What do you mean by my claim? Are you talking about the
15 compensation one?

16 Q Yes.

17 A Yeah. I mean, that -- that contractual obligation
18 originated in, well, yeah, February 2009.

19 Q It's not an administrative claim, right?

20 A I don't believe so, no.

21 Q It's just -- it's just a claim that existed prior to the
22 petition date. Fair?

23 A That is fair.

24 Q Okay. With respect to the reserve, you did agree to that
25 amount of the reserve, fair?

1 A I did not. I mean, I -- I signed the document, but I did
2 not agree to that amount.

3 Q Well, --

4 A I did not negotiate for it or anything like that.

5 Q Well, but if you turn to Exhibit 60 that you just looked
6 at, --

7 A sure.

8 Q -- and you go towards the end of the document, that is
9 your signature on the first Page 7, right?

10 A Yeah. I've already admitted that.

11 Q And Paragraph 1 of the agreement that you signed
12 specifically set the reserve at the amount set forth in
13 Paragraph 1, correct?

14 A That much is true.

15 Q Okay. And you --

16 A You just said, did I agree to it, and I'm like, it was in
17 the document.

18 Q It's in the agreement that you signed, correct?

19 A For sure.

20 Q Okay. And you've never asked for that amount to be
21 adjusted, correct?

22 A I've spoken many times to Mr. Seery and told him that it
23 will need to be adjusted upward as years go by. We've had
24 quite a dialogue along those lines.

25 Q Okay. But he's never agreed to do that, correct?

1 A He said when the time comes, we'll figure out -- listen,
2 we had a very collaborative relationship up until like the
3 last year. And so it was like, hey, I'm not going to press
4 you. You don't -- he's fighting off Dondero right and left.
5 You know, and I'm like, I don't want to get in the middle of
6 all this. You go do what you've got to do. We'll both sit
7 tight. In fact, there was dialogue to that very effect.

8 Q Uh-huh.

9 A And so this was just all part of sitting tight, thinking
10 that the right thing would be done when we got final analysis
11 to this.

12 Q Okay. So would you just agree with me that, since signing
13 this agreement, you haven't come to court to seek an
14 adjustment --

15 A No.

16 Q -- of the reserve?

17 A I did not want to be a burden.

18 Q Okay. And since signing this agreement back in 2022, you
19 and Mr. Seery have not come to an agreement on any adjustment
20 to the reserve, correct?

21 A We have not.

22 Q Okay. Do you believe that you have claims against
23 Highland's employees?

24 MR. YORK: I'm going to object on relevance grounds.
25 Also, outside the scope.

1 THE COURT: What is the relevance?

2 MR. MORRIS: We're going to get to the \$20 million
3 demand in a moment. I'm laying the foundation. But we have
4 anybody on anybody --

5 THE COURT: But what's the \$20 million demand?

6 MR. MORRIS: I'll get to it in a moment.

7 THE WITNESS: There's --

8 THE COURT: I can't figure out if --

9 MR. MORRIS: I can make a proffer if you'd like.

10 THE COURT: -- that's relevant.

11 MR. MORRIS: I can make a proffer, Your Honor. I'll
12 tell you. I'll tell you right now.

13 On June 5th, Mr. York called me and said that Mr.
14 Daugherty asserts that he has claims against the Highland
15 employees, and if Highland didn't pay him \$20 million he was
16 going to sue them, and he was going to file this objection
17 together with a petition in the Supreme Court opposing
18 Highland's request to stay the issuance of a mandate in the
19 Fifth Circuit.

20 MR. YORK: First off, if Mr. Morris is going to
21 become a witness, we've got a problem here. Secondly, any
22 sort of communications between us would be 408. And third,
23 it's not relevant to the issue we're here on today.

24 THE COURT: Okay.

25 MR. MORRIS: My response to that, Your Honor?

1 THE COURT: All right. I'm going to allow a little
2 latitude, --

3 MR. MORRIS: Yeah.

4 THE COURT: -- but I'm still unclear --

5 MR. MORRIS: It's about -- it's about three
6 questions.

7 THE COURT: Okay.

8 MR. MORRIS: It's about three questions.

9 THE COURT: You may proceed.

10 BY MR. MORRIS:

11 Q Do you believe you have claims against Highland's
12 employees?

13 A Me personally, no.

14 Q Okay. Do you -- did you authorize your lawyer to call me
15 and to demand \$20 million in exchange for a release and your
16 standing down from filing any objection to this motion?

17 A I'm not aware that that ever happened. Nobody demanded
18 anything of you.

19 Q Really?

20 A Yeah.

21 Q Do you know that your lawyer used the number \$20 million
22 to me?

23 A Oh, I've read the emails back and forth between you.

24 Q So why don't you explain to Judge Jernigan what your
25 understanding is as to what your lawyer meant when used \$20

1 million to me.

2 A I can't say for sure what he meant, but I can tell you
3 from my perspective what I understood.

4 Q What did you understand?

5 A I have another entity that I picked up in the settlement
6 with Highland called the Highland Employee Retention Asset
7 Fund. And again, pursuant to the settlement agreement, I mean
8 -- I guess supposedly, I guess, when I think about it, I do
9 have claims individually, because it's with me, that
10 agreement.

11 But it said that Highland had to turn over all the books
12 and records of the HERA fund. And Mr. Morris was on many of
13 those emails. And they had turned over some of the books and
14 records, but they didn't turn over any of the books and
15 records that implicated Thomas Surgent and David Klos in
16 defrauding HERA in allocating Highland's expenses when they
17 were litigating me, against me, back to HERA.

18 So I do have a settlement agreement with Highland and
19 these employees, but Highland Employee Retention Assets needs
20 their books and records. And we've made it very clear to you
21 on numerous emails where you, you know, kind of muscled up on
22 us and said this is all you're going to get and tough if you
23 don't like it or whatever.

24 And so the deeper we get into this, we did get discovery
25 from others, we found that Highland's been withholding

1 material information.

2 So as it relates to -- I mean, you're doing that little
3 squeaky thing, and I think he's a fantastic lawyer, but the
4 reality is you guys have created some damages to HERA that you
5 may be accountable for. Your clients, not you.

6 Q Okay. In the four years since we signed the settlement
7 agreement, you've never asserted a breach of contract claim,
8 have you?

9 A Well, because we thought you were complying with it. So
10 if you want to go into the details there, in 2022, we were --
11 asked for more information. 2023, we asked for more
12 information. 2024, we asked for more information. And so
13 those are continuing breaches.

14 Again, I -- I don't want to go to war with Highland.
15 You're too damn good of an attorney, you're scaring me a
16 little bit. But --

17 Q I don't want to.

18 A You know, listen. You know I think well of you.

19 Q I appreciate that.

20 A But, you know, I mean, I just wanted the information. I'm
21 not looking to go to war with you guys. I got enough battles
22 that I've got to fight. And so, you know, I guess a number
23 was thrown out or whatever. I don't know the full context of
24 it. But it wasn't -- it wasn't for this IRS compensation
25 issue.

1 Q But what was the -- my last question. What was the \$20
2 million demand for?

3 A Again, it's just a number. Y'all were having settlement
4 negotiations. So, I mean, you work off of it.

5 Q All right.

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

7 THE WITNESS: Yeah.

8 THE COURT: All right. Any redirect?

9 MR. PHILLIPS: I have no questions, Your Honor.

10 THE COURT: All right. Okay.

11 MR. YORK: Apologies. I wanted to make sure.

12 THE COURT: Yes.

13 MR. YORK: No redirect, Your Honor.

14 EXAMINATION BY THE COURT

15 THE COURT: Okay. If you've watched Highland
16 hearings, you know the judge sometimes has questions. I am
17 still trying to understand the 1.4, the 1.2, the 1.475. I
18 understand broadly that, in essence, a cash bonus was
19 negotiated back in early 2009, I think you said.

20 THE WITNESS: Yes.

21 THE COURT: After 2008. And so that's, in essence,
22 what was contractually negotiated. But I understand there was
23 a hook, if you will, we're calling it a contingency, whatever
24 word you want to use, where if one day there was an IRS audit
25 and I guess Highland had extra liability for 2008, that this

1 -- I don't know if I understood it or not.

2 THE WITNESS: Do you want me to try and guess what
3 you're asking, or --

4 THE COURT: Try to guess what I'm asking. Again, I'm
5 --

6 THE WITNESS: The liability -- so, Highland chose to
7 use this tax scheme as a currency to pay us a cash bonus.
8 From our perspective, we weren't stupid. We're like, well,
9 okay, that's great, but if the IRS says --

10 THE COURT: Okay, I just want to know what -- you say
11 you were contractually entitled to \$1.4 million.

12 THE WITNESS: That's what I was supposed to get for
13 that bonus year.

14 THE COURT: Okay. But there was a tax contingency,
15 if you will, where -- that's where I want you to jump in.

16 THE WITNESS: So, Highland had a tax problem. They
17 came up with this mechanism to use whatever they were doing
18 with the IRS to create the cash to pay us a bonus. We looked
19 at it and said, well, this looks fishy -- by the way, every
20 year before that and after that, I've just gotten a cash
21 bonus. But for this one year, when the banks are saying, no,
22 no, no, we get this. And so we looked at this and said, look,
23 this sounds fishy, but if you can't pull it off, we need to be
24 made whole. I can't be in a situation where here I am in 2025
25 and I may have to pay \$5, \$6 million to the IRS for the

1 pleasure of working at Highland.

2 THE COURT: Okay. See, that's where my disconnect
3 is.

4 THE WITNESS: Uh-huh.

5 THE COURT: Because I thought this all turned on a
6 Highland tax return.

7 THE WITNESS: Oh, no, no. So, Highland did the
8 planning and the creation of the scheme, and I guess
9 ultimately it was Highland's tax return, but it flowed through
10 to us as pass-throughs. K-1s, what have you.

11 THE COURT: Right.

12 THE WITNESS: So I guess it's both.

13 THE COURT: Okay. You were a partner.

14 THE WITNESS: Well, that's debatable, too. That's
15 debatable, too, because I had a --

16 THE COURT: Okay. I thought you weren't, but --

17 THE WITNESS: Well, I wasn't --

18 THE COURT: But you got -- okay. Let me just skip
19 to, --

20 THE WITNESS: Yeah.

21 THE COURT: -- I guess, the important part. You did,
22 you got paid? You said \$1.2 million?

23 THE WITNESS: Yeah. I got a refund back from the IRS
24 for around that amount. Slightly under \$1.2 million.

25 THE COURT: So the contingency you are worried about

1 that you think gives you a contingent claim against Highland
2 is, what, the IRS comes back and says --

3 THE WITNESS: And they say, Give us that money back
4 plus interest plus penalties or we're taking your house. And
5 it's a very real threat, because this has gone on, as you've
6 noted, forever. And I went from having a one-point-whatever
7 bonus to possibly having to pay six, seven, eight, I don't
8 know how long this lasts, million dollars back to the IRS for
9 an election that was made by them. As a substitute for paying
10 me a cash bonus the regular way, they did it this way. And
11 that's why we put and negotiated for that term in the
12 compensation agreement that said, if for whatever reason the
13 actual refund is different, we get made whole.

14 THE COURT: Okay. I may be overthinking this, I do
15 do that sometimes, but I'm still, I'm trying to understand why
16 your claim would escalate up to, you know, you said maybe \$5.7
17 million if, in 2029, this all plays out with the IRS.

18 THE WITNESS: That --

19 THE COURT: Because you've gotten the benefit of that
20 money and --

21 THE WITNESS: Well, no, because if the IRS says --

22 THE COURT: -- return on that.

23 THE WITNESS: Sorry. I didn't mean to interrupt.

24 THE COURT: You know what I'm saying? So I'm trying
25 to figure out why it would grow in the way that you're

1 suggesting.

2 THE WITNESS: Can I respond?

3 THE COURT: Yes.

4 THE WITNESS: So I've gotten money that the IRS says
5 is not mine. Right? And the IRS says --

6 THE COURT: And you've had the use of it.

7 THE WITNESS: Oh, yes.

8 THE COURT: You've presumably invested it and --

9 THE WITNESS: Well, no, I mean, you can't --

10 THE COURT: Well, you've had the ability to. Uh-huh.

11 THE WITNESS: But you don't want to take risk with
12 something that's not yours, so you're kind of limited, right?
13 But I have, I have that amount of money. Here's the problem,
14 Your Honor, with that. If the IRS says, Give us back our
15 money, here's the interest, here's the principal. Oh, by the
16 way, if it's \$7, \$8 million, I can't -- I don't have that.
17 I've got to file for bankruptcy in order to give the IRS back
18 money that I'm having to pay them for the pleasure that I had
19 of working for Highland in 2008 when I helped save the company
20 and create a lot of the assets that paid all these people in
21 the room. MGM Studios, Trussway.

22 THE COURT: Okay.

23 THE WITNESS: Okay.

24 THE COURT: Yeah. We are going beyond this.

25 THE WITNESS: Fair enough.

1 THE COURT: I was just, I'm zeroing in on this
2 because I'm trying to figure out, I mean, it matters to me if
3 that reserve is likely fair enough, the reserve I'm told you
4 agreed to is fair enough. And I'm having trouble figuring
5 out, I mean, if you've had the use of this money for 17 years
6 or whatever that is, why you would get this extra interest
7 add-on that you're -- \$5.7 million or whatever it would be.
8 You know, \$3 million more.

9 THE WITNESS: Can I answer that question?

10 THE COURT: Uh-huh.

11 THE WITNESS: Because the IRS didn't look at it as my
12 money. They looked at it as their money. And so if you look
13 at the plain language of the compensation award letter, if the
14 actual amount deviates from the amount that was granted, then
15 Highland was going to give me substitute compensation to make
16 me whole. Making me whole includes the penalties and the
17 interest that I would owe the IRS. Because if you look at it
18 any other way, I had to pay money to work at Highland.

19 THE COURT: Do I have that letter in my evidence?

20 THE WITNESS: You should. Drew?

21 THE COURT: Do I? Maybe I'll just cut this off and
22 look at the letter.

23 MR. YORK: It's at Daugherty 2, and it's at the back
24 of --

25 THE WITNESS: There's multiple letters, but this is

1 one of them.

2 THE COURT: The letter that you say this claim stems
3 from.

4 THE WITNESS: Sure.

5 THE COURT: I'll just cut it off and look at that.

6 THE WITNESS: Yeah, you can tell her where it is.

7 MR. YORK: So I think it's at the back of the
8 statement on PD-2. It's at the last page, Your Honor.

9 THE COURT: Which one?

10 MR. YORK: P -- Daugherty 2.

11 THE COURT: Oh, 2? I've got emails.

12 THE WITNESS: P-2? I don't think so.

13 THE COURT: Okay. We can move on.

14 MR. YORK: That's fine. We'll work this out.

15 THE COURT: Before we're done here today, I want to
16 look at the letter to better understand how the claim could
17 grow substantially to --

18 MR. YORK: Yeah.

19 THE COURT: -- \$5.7 million by 2029. Okay. Thank
20 you.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You're excused.

23 THE WITNESS: Oh, I found -- I just found it and then
24 I closed it.

25 THE COURT: Okay. Well, you can --

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1 THE WITNESS: My bad.

2 THE COURT: -- call my attention to it when you find
3 it.

4 THE WITNESS: All right.

5 (The witness steps down.)

6 THE COURT: All right. Your next witness?

7 MR. YORK: I believe we're calling Mark Patrick.

8 THE COURT: All right, Mr. Patrick. All right.

9 Please raise your right hand.

10 MARK PATRICK, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

11 THE COURT: All right. Please be seated.

12 And, Courtney, you're going to start the clock going. I
13 show 2:12. I don't know if my clock's right.

14 You may proceed.

15 MR. LANG: And, Your Honor, may I hand the witness --
16 this is from Mr. Morris' opening. May I use this as Exhibit
17 3?

18 THE COURT: Oh, okay. You're talking about the back
19 page of his PowerPoint?

20 MR. LANG: Yes. Org chart.

21 THE COURT: Yes. I've got it in front of me. And
22 for the record, I'm going to put this PowerPoint, even though
23 it's not an exhibit *per se*, as a demonstrative aid in the file
24 for this matter. And so it's the last item of the Highland
25 PowerPoint. All right.

Patrick - Direct

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1 MR. LANG: Yes.

2 DIRECT EXAMINATION

3 BY MR. LANG:

4 Q Mr. Patrick, does this Hunter Mountain Investment Trust
5 org chart that I just handed you accurately reflect the
6 structure of the Hunter Mountain Investment Trust ownership
7 today?

8 A Just give me a few moments to review.

9 Q Sure.

10 MR. LEWIS: Your Honor, I had mentioned early on that
11 we object to this whole line of questioning because it's
12 outside the scope of the objection of Dugaboy. And I don't
13 want to interrupt, but I want to make sure that my objection
14 is continuing, because this has nothing to do with the
15 objection presented by Dugaboy.

16 THE COURT: All right.

17 MR. PHILLIPS: So we object to the question.

18 THE COURT: Okay. So the record will reflect
19 basically a running objection from Hunter Mountain?

20 MR. PHILLIPS: We would appreciate that, Your Honor.

21 THE COURT: Okay. In light of the failure of Dugaboy
22 to disclose Mark Patrick as a witness, as well as the failure
23 to challenge in a written objection his authority. Okay. So
24 I recognized that this was quite a persuasive objection, but
25 given the magnitude, I would say, of what is going on here,

Patrick - Direct

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1 potentially a settlement that could come very close to ending
2 this long-running plan implementation process, I'm erring, if
3 it's an error, I'm erring on the side of allowing this. All
4 right. But you have a running objection that the record will
5 reflect if one day there is an appeal.

6 MR. MORRIS: And, Your Honor, the Highland Claimant
7 Trust and the Highland Litigation Subtrust and Highland
8 Capital Management, LP join Mr. Phillips' objection.

9 THE COURT: Okay. Understood.

10 MR. PHILLIPS: Thank you very much, Your Honor.

11 THE COURT: All right.

12 BY MR. LANG:

13 Q Mr. Patrick, have you had time to study this Hunter
14 Mountain Investment Trust org chart?

15 A Yes, I have.

16 Q And does this accurately show the ownership structure for
17 Hunter Mountain Investment Trust today?

18 A I'm not sure, without reviewing the underlying corporate
19 documents on some of these entities that you have listed here.

20 Q Did you help prepare this chart?

21 A No.

22 Q No? Okay. So Hunter Mountain Investment Trust is owned
23 by Beacon Mountain, LLC, correct?

24 A Yes.

25 Q And Beacon Mountain, LLC is owned by CLO Holdco, LLC,

Patrick - Direct

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1 correct?

2 A Correct.

3 Q And CLO Holdco, LLC is owned by CLO Holdco, Limited?

4 A That's correct.

5 Q And CLO Holdco, Limited is owned by Charitable DAF Fund,
6 LP?

7 A Correct.

8 Q And Charitable DAF Fund 1, LP is owned by CDMC FAD, LLC?

9 A The ultimate beneficial owner is DFW Charitable
10 Foundation. To my -- to the best of my recollection, I would
11 say that appears accurate. I'm just not a hundred percent.

12 Q Okay. And --

13 A But I am a hundred percent that DFW Charitable Foundation
14 is the ultimate beneficial owner. And I'm a hundred percent
15 that Dugaboy Investment Trust has no interest in it. And I'm
16 also a hundred percent that The Dallas Foundation or any --

17 MR. LANG: Judge, I haven't asked --

18 THE WITNESS: -- or any other nonprofit has any --

19 MR. LANG: -- any of these questions.

20 THE COURT: Okay. There's an objection,
21 nonresponsive. I sustain.

22 BY MR. LANG:

23 Q Mr. Patrick, before December of 2024, Charitable DAF Fund,
24 LP was owned by Charitable DAF Holdco, correct?

25 A (Pause.) I'm just waiting for a relevancy. I don't

Patrick - Direct

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1 understand how that's relevant to my authority --

2 THE COURT: Okay. You're not allowed to make a
3 relevancy objection. Okay.

4 MR. PHILLIPS: Your Honor, I think the problem is
5 that, if I could, we have made an objection. And our
6 objection, our running objection is founded on relevancy and
7 founded on improper process. So I would like to just tell the
8 Court, and so my client representative can hear it, that the
9 fact that I'm not standing up every time there's a problematic
10 question, --

11 THE COURT: Okay.

12 MR. PHILLIPS: -- because every question is
13 problematic, my objection is being maintained to every
14 question that's being asked.

15 THE COURT: Okay. You understand that, right?

16 THE WITNESS: I --

17 THE COURT: There's a running relevancy objection.
18 You're the witness. You can't make the objection. But it's
19 on the record for whatever use it might have down the road.

20 MR. PHILLIPS: I have objected to every question
21 that's coming in connection with this line of questioning on
22 the basis of relevance.

23 THE COURT: I got it. I think we all have it.

24 MR. PHILLIPS: I'm just --

25 MR. LANG: Understood.

Patrick - Direct

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1 THE COURT: Yes. And you're thinking he's eating
2 into your 30 minutes?

3 MR. LANG: Yes.

4 THE COURT: Okay. We've got it.

5 THE CLERK: I stopped the time.

6 MR. LANG: So -- thank you.

7 THE COURT: Did you stop the time for a minute?

8 THE CLERK: Yes, I did.

9 MR. LANG: Thank you.

10 THE COURT: Okay.

11 BY MR. LANG:

12 Q So, to my question, before December of 2024, Charitable
13 DAF Fund, LP was owned by Charitable DAF Holdco, correct?
14 Charitable DAF Holdco, Limited?

15 A And where is that on the chart?

16 Q I'm asking, before December of 2024, Charitable DAF Fund,
17 LP was owned by Charitable DAF Holdco, Limited.

18 A Can you show me a corporate document so I know the precise
19 corporation you're referring to?

20 Q You're the -- you are the manager of -- or the control
21 person of CDHGP Limited, correct?

22 A Again, I'd have to refresh my recollection, but I am the
23 control person over CDMC.

24 Q Okay. And CDMC --

25 A As well as Charitable DAF Fund. I'll represent that to

Patrick - Direct

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1 you.

2 Q Okay. Was there a transaction in December of 2024 where
3 Charitable DAF Holdco, Limited sold its interest or
4 transferred its interest in Charitable DAF Fund, LP to CDMC
5 FAD, LLC?

6 A I know you're trying to help other litigation and --

7 MR. PHILLIPS: Mark.

8 THE COURT: Okay. Nonresponsive.

9 THE WITNESS: Your Honor, he's using your time to
10 fish for other litigation to support that --

11 THE COURT: Okay. Okay. We have a running objection
12 to relevance. I'm going to say that one more time. Okay.
13 Just answer the question as best you can.

14 THE WITNESS: I'd have to review the corporate
15 documents to refresh my recollection for that time period.

16 BY MR. LANG:

17 Q Up until December of 2024, Charitable DAF Fund, LP was
18 owned 100 percent by Charitable DAF Holdco, Limited, wasn't
19 it?

20 A I don't know what entity you're referring to without a
21 refreshment of corporate documents of that entity. There
22 could be a lot of entities called that.

23 Q You're aware that there is a proceeding in the Caymans
24 investigating the December 2024 transaction that sold -- where
25 Charitable DAF Holdco, Limited sold its interest in -- and or

Patrick - Direct

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1 transferred its interest in Charitable DAF Fund, LP to CDMC
2 FAD, LLC?

3 A There are several parts to that question. So the answer
4 is no.

5 Q Are you aware of a proceeding pending in the Caymans
6 involving Charitable DAF Holdco, Limited?

7 A Again, I don't know what entity you're referring to. Show
8 me a -- show me a corporate document.

9 MR. LANG: Your Honor, this was on the Foundation's
10 exhibit list. We cross-designated any document designated as
11 an exhibit by any other party in this case. And I'd like to
12 hand this to the witness.

13 MR. MORRIS: Which exhibit is it?

14 THE COURT: Which is -- yes.

15 MR. LANG: It was on the -- it was on the DAF -- or,
16 the Foundation's exhibit list.

17 MR. MORRIS: They haven't been admitted into evidence
18 and they've withdrawn their objection. We object, Your Honor.

19 THE COURT: Yes, they've not been admitted.

20 MR. LANG: Okay. Well, can I --

21 MR. PHILLIPS: We object to that, Your Honor. We
22 object to any witness --

23 MR. LANG: We cross-designated every --

24 THE COURT: I already discussed at the beginning what
25 we were admitting and that was not disclosed.

Patrick - Direct

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1 MR. LANG: Okay.

2 THE COURT: As I recall, I said you've only
3 designated the plan and settlement agreement, and the answer
4 was yes.

5 MR. LANG: Okay.

6 BY MR. LANG:

7 Q And we're aware that the Joint Official -- are you aware
8 that there is a Joint Official Liquidator appointed over a
9 Charitable DAF entity in the Cayman Islands?

10 MR. PHILLIPS: Objection to form.

11 THE WITNESS: Again, without more specific --

12 THE COURT: Overruled. Yes.

13 THE WITNESS: -- specificity, there could be a
14 thousand different actions that you're referring to, in my
15 mind.

16 BY MR. LANG:

17 Q Are you aware that the Joint Official Liquidators in the
18 Caymans are investigating transactions involving Charitable
19 DAF Fund, LP and Charitable DAF Holdco, Limited?

20 A Again, again, I don't specifically know what you're
21 referring to.

22 MR. PHILLIPS: Your Honor, may I -- excuse me. I
23 don't know that my running objection includes an objection to
24 form for each of the questions. This objection is to form of
25 the questions about, quote, --

Patrick - Direct

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1 THE COURT: What's wrong with the form?

2 MR. PHILLIPS: -- investigation.

3 THE COURT: What is wrong with the form of that
4 question? I'm not clear.

5 MR. PHILLIPS: My objection to form is that the
6 question is an open-ended question with an undefined term,
7 investigation.

8 THE COURT: Overruled. I don't think that's a vague
9 term. So you may answer.

10 THE WITNESS: If you show me some document, some
11 complaint or something, I'll be very happy to verify whatever
12 questions related to that. But just giving me verbal words of
13 entities and names and actions, I don't know precisely what
14 you are talking about.

15 BY MR. LANG:

16 Q Mr. Patrick, who set up the entities in the Hunter
17 Mountain Investment Trust org chart that is sitting in front
18 of you?

19 A I'm sorry. Repeat the question?

20 Q Who set up the various entities that are in the org chart
21 that is on your -- on the stand?

22 MR. PHILLIPS: Objection to form. Set up. What does
23 that mean?

24 THE WITNESS: It -- yeah, it's very --

25 THE COURT: I think we know what it means. Creating,

Patrick - Direct

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1 perhaps.

2 BY MR. LANG:

3 Q Created?

4 A Who? Are you asking if I created it?

5 Q Did you participate in creating them?

6 A Did I participate? In which ones?

7 Q CDMC FAD, LLC.

8 A What do you mean by participate?

9 Q Were you involved in creating -- did you initiate the
10 creation of CDMC FAD, LLC?

11 A Lawyers were.

12 Q Did you engage in any capacity on behalf of any entity?
13 Were you involved in engaging the lawyers to set up CDMC FAD,
14 LLC?

15 A Yes, I engaged lawyers to set up entities.

16 MR. LANG: Objection. Nonresponsive.

17 THE COURT: Sustained.

18 MR. LANG: Did you --

19 THE COURT: He asked about this one particular
20 entity, I think.

21 BY MR. LANG:

22 Q Did you --

23 A Which entity, again, did you ask?

24 Q CDMC FAD, LLC.

25 A Yes, I believe I hired a lawyer.

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1 Q And when did CDMC FAD, LLC become a hundred percent owner
2 of Charitable DAF Fund, LP?

3 A Around the end of March of 2025. I believe.

4 Q And were you involved in the transaction between -- in
5 which CDMC FAD, LLC obtained a hundred percent interest in
6 Charitable DAF Fund, LP?

7 A What do you mean by involved? How?

8 THE COURT: Okay. I can see what's happening here or
9 I have an impression of what's happening here. I feel like
10 you're slowing down this process where I've given 30 minutes
11 to this lawyer. Okay? And I feel like you're feigning
12 confusion. I don't mean to be insulting, but that's how it
13 comes across. Okay? So I need you to speed up your answers
14 and not be confused about things you shouldn't be confused
15 about. Okay?

16 THE WITNESS: Okay.

17 THE COURT: I feel like it's late 1980s *Dondi*. Does
18 anyone know what I mean by that? Okay. We've been there,
19 done that, in the federal courts, and we don't like the
20 looking at -- you're not looking up at the ceiling. That's
21 what they did in *Dondi*. Confusion. Delay. Okay?

22 So I don't mean to chastise you. I'm just telling you
23 that you're going to make us be here a lot longer, and nobody
24 wants that, because I will give him extra time for this.
25 Okay?

Patrick - Direct

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1 THE WITNESS: Understood.

2 THE COURT: Thank you.

3 BY MR. LANG:

4 Q Okay. So you were involved in the transaction in which
5 CDMC FAD, LLC acquired 100 percent ownership interest in
6 Charitable DAF Fund, LP in or around March of 2025, correct?

7 A Correct.

8 Q Who did CDMC FAD, LLC obtain its interests in Charitable
9 DAF Fund, LP from in March of 2025?

10 A From an -- from an entity called Charitable DAF Holdco,
11 Ltd.

12 Q Charitable DAF Holdco, Ltd., the entity that I asked about
13 earlier, correct?

14 A Of the same name.

15 Q Yes. And Charitable DAF Holdco, Ltd. has had Joint
16 Liquidated -- Liquidators, Joint Official Liquidators
17 appointed over it in the Cayman Islands, correct?

18 A Yes.

19 Q And those Joint Official Liquidators were appointed over
20 Charitable DAF Holdco, Limited in or around May 6th, 2025?

21 A In May is what I recall.

22 MR. LANG: Your Honor, we'll pass the witness.

23 THE COURT: All right. Do we have any questions?

24 MR. YORK: No questions, Your Honor.

25 THE COURT: Okay. Any cross?

Patrick - Cross

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1 MR. MORRIS: Just briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MORRIS:

4 Q Mr. Patrick, do you know who initiated the proceedings to
5 get the appointment of the Joint Official Liquidators in the
6 Cayman Islands?

7 A The director and myself, we initially filed for a
8 voluntary joint liquidation in May.

9 Q And did there come a time when the Cayman court appointed
10 the Joint Official Liquidators?

11 A Yes.

12 Q Do you know who asked the court to appoint the Joint
13 Official Liquidators?

14 A We did, as well as other -- it was an agreement with the
15 participation holders of that entity.

16 Q And who are the participation holders of that entity?

17 A It was the DFW Charitable Foundation as a 51 percent
18 holder as well as the Highland Dallas Foundation, Highland
19 Santa Barbara Foundation, and the Highland Kansas City
20 Foundation.

21 Q And those three foundations that you just mentioned, do
22 you know who controls them?

23 A Jim Dondero.

24 Q Is it your understanding that Mr. Dondero was funding the
25 litigation in the Cayman Islands?

1 A Yes.

2 Q The Joint Official Liquidators, are you aware of any
3 statement that they've ever made that you are not authorized
4 to act on behalf of any of the HMIT entities?

5 A Yeah, they've never made a statement that I'm not
6 authorized to act under any of those entities.

7 Q Okay. Did you receive a letter last night that was
8 purportedly authored by the Joint Official Liquidators?

9 A Yes.

10 Q Did you review that letter?

11 A Yes.

12 Q Did that letter refer to today's hearing?

13 A Yes.

14 Q Are you aware of the Joint Official Liquidators making any
15 appearance in this proceeding?

16 A No, I'm not aware they made any appearance in this
17 proceeding.

18 Q Based on your recollection of the contents of that letter,
19 did the Joint Official Liquidators challenge your authority to
20 enter into the settlement agreement on behalf of the HMIT
21 entities?

22 A No, they did not, because there's no ownership interest.

23 Q Okay. And what do you mean by that?

24 A The entity in liquidation owns nothing. And the DFW
25 Charitable Foundation is the ultimate beneficial owner.

1 Q Are you aware that The Dallas Foundation filed an
2 objection to the settlement agreement on behalf of Empower
3 Dallas Foundation, the Okada Family Foundation, and Crown
4 Global?

5 A Yes.

6 Q Are you aware that that objection was withdrawn?

7 A Yes.

8 Q Was the withdrawal of that objection the product of
9 negotiations that your counsel had with lawyers for The Dallas
10 Foundation and Crown Global?

11 A Yes, it was.

12 Q Did The Dallas Foundation or Crown Global require you to
13 surrender your control position of the HMIT entities as a
14 condition to the withdrawal of their objection?

15 A To give up my control? No.

16 Q They didn't ask you to do that, did they?

17 A No. No.

18 Q You are the control person for each of the HMIT entities
19 that are party to the settlement agreement, correct?

20 A That is correct.

21 Q Are you aware of any requirement in any of the governance
22 documents --

23 MR. CURRY: Your Honor, I'm not questioning, but I'm
24 going to object to the line of questioning here about what was
25 asked and what was not received into negotiations, because,

1 frankly, you're getting an imperfect picture there. And I
2 don't think it should be misrepresented. The communications
3 didn't happen with Mr. Patrick.

4 THE COURT: Okay. I don't know if that objection was
5 a confidential settlement communications.

6 MR. CURRY: It's a combination of foundation and that
7 he's going into confidential settlement discussions.

8 MR. MORRIS: Your Honor, it's a very simple question.
9 I'll ask it again.

10 THE COURT: Okay. We'll let --

11 BY MR. MORRIS:

12 Q To the best of best of your knowledge, Mr. Patrick, did
13 The Dallas Foundation or any of the entities on whose behalf
14 it filed its objection require you to surrender your position
15 as the control person of the HMIT entities in exchange for the
16 withdrawal of their objection?

17 A No, they did not.

18 Q Thank you. Are you aware -- are you familiar with the
19 governance documents for the HMIT entities?

20 A Yes, I am.

21 Q Are you aware of any restriction on your ability to act on
22 behalf of those HMIT entities with respect to -- withdrawn.
23 Are you required to obtain the consent of anyone in order to
24 enter into the settlement agreement on behalf of the HMIT
25 entities?

1 A No, I am not. I'm the sole authority and control person
2 for that entity.

3 Q And do you believe that you're entering into the
4 settlement agreement on behalf of the HMIT entities in good
5 faith?

6 A Yes, I do.

7 Q Have you received legal counsel before entering into the
8 agreement?

9 A Yes, I have.

10 Q Do you believe that you've negotiated the best terms that
11 you could get on behalf of the HMIT entities?

12 A Yes, I do.

13 Q Do you believe that you received the information that you
14 believed you required in order to make an informed decision
15 before you entered into the settlement agreement on behalf of
16 the HMIT entities?

17 A Yes, I did.

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

19 THE COURT: All right. Mr. Phillips, anything from
20 you?

21 MR. PHILLIPS: No questions.

22 THE COURT: Okay. Any redirect?

23 MR. LANG: Briefly.

24 THE COURT: Uh-huh.

25 MR. LANG: Your Honor, because they mentioned the

1 letter of last night from Grant Thornton, the Liquidators, I'm
2 going to offer that into evidence as the letter that we talked
3 about this morning. But Mr. Morris directly asked him if he
4 reviewed it and asked him questions about it.

5 THE COURT: Response?

6 MR. MORRIS: No objection, Your Honor. Go right
7 ahead.

8 THE COURT: I'll admit it.

9 MR. LANG: This is --

10 THE COURT: Do I have it in my notebook?

11 MR. LANG: -- Dugaboy --

12 THE COURT: Okay.

13 REDIRECT EXAMINATION

14 BY MR. LANG:

15 Q Mr. Patrick, I've handed you --

16 THE COURT: We're going to call this Dugaboy 3?

17 MR. LANG: Dugaboy 3.

18 THE COURT: Okay.

19 (Dugaboy Investment Trust's Exhibit 3 is admitted into
20 evidence.)

21 BY MR. LANG:

22 Q Mr. Patrick, I've handed you a letter. It's from Grant
23 Thornton dated June 24th, 2025. Do you see that?

24 A Yes.

25 Q And is this a true and correct copy of the letter that you

1 received or that you reviewed from the Joint Liquidators that
2 you referred to in your answers to Mr. Morris' questions?

3 A Well, it's a PDF. I mean, I'm assuming it's from the
4 Official Liquidators.

5 Q But this is the letter you were referring to in your
6 testimony a few minutes ago?

7 A Yes.

8 Q And do you see on the second paragraph it says that, on
9 May 6th, 2025, the Grand Court of Cayman Islands Financial
10 Services Division appointed Margot MacInnis and Sandipan
11 Bhowmik, each of Grant Thornton Special Services (Cayman)
12 Limited, as the Joint Official Liquidators of the company. Do
13 you see that?

14 A Yes.

15 Q And do you see on the second page, it says: Since our
16 appointment, we have been diligently investigating these
17 transactions, including a corporate transaction that occurred
18 in or around December 2024 where the company transferred a
19 hundred percent of its interest in the Fund to CDMC FAD, LLC,
20 which resulted in the company being the sole member of CDM and
21 subsequent redemptions of the company's interests in CDM.

22 Do you see that?

23 A Yes.

24 Q Is that your understanding of what is happening in the
25 Caymans right now, is investigating these transactions?

1 A Correct.

2 MR. LANG: Pass the witness.

3 MR. MORRIS: May I just have that letter, please?

4 THE COURT: Any recross?

5 MR. MORRIS: Yeah, just real brief.

6 RECROSS-EXAMINATION

7 BY MR. MORRIS:

8 Q None of the transactions that you were just asked about
9 has anything to do with any of the HMIT entities, correct?

10 A That's absolutely correct.

11 Q Okay. And now that we have the letter in the record, if
12 you could look at the third paragraph. Do you see --

13 A Yeah.

14 Q Do you see it refers to the Highland Dallas Foundation,
15 Highland Santa Barbara Foundation, and Highland Kansas City
16 Foundation?

17 A Yes.

18 Q Are those the three entities that you referred to earlier
19 that are, to the best of your understanding, controlled by Mr.
20 Dondero?

21 A Yes.

22 Q Okay. And this is the letter that you said you reviewed
23 and concluded that the Joint Official Liquidators weren't
24 challenging your authority to enter into the agreement on
25 behalf of the HMIT entities; do I have that right?

1 A Yes. Yes, you do.

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

3 THE COURT: Okay. I have a question or two.

4 EXAMINATION BY THE COURT

5 THE COURT: And again, I apologize if I sounded harsh
6 earlier. I recognize different people present different ways
7 when they testify. It just appeared to me that maybe we were
8 slowing things down unnecessarily. All right?

9 THE WITNESS: I apologize, too. I'm just a little
10 emotionally upset they're using this proceeding for a benefit
11 someplace else.

12 THE COURT: Okay. My question, very general
13 question: Do you think this settlement is fair and equitable
14 as far as HMIT is concerned?

15 THE WITNESS: Absolutely.

16 THE COURT: And could you tell me why?

17 THE WITNESS: Yeah. There was no obvious pathway for
18 HMIT to, in my mind, to receive the residual interest of the
19 bankruptcy estate without a settlement with the Debtor.
20 Otherwise, it just seemed to me that it would go on forever.
21 And then I balanced that against the existing litigation and
22 the probability of the outcome weighted against the costs, and
23 determined that it made sense from HMIT's perspective to enter
24 into the settlement agreement.

25 THE COURT: Okay. And you understand that, as part

1 of this, you're giving up some litigation claims that have
2 been waged now for a couple of years or more?

3 THE WITNESS: That is correct, but I'm also receiving
4 the Kirschner Litigation, which I did negotiate to receive.

5 THE COURT: Okay. And there was a note that the
6 estate -- I've heard it called at some point the \$57 million
7 note that HMIT owed Highland, a December 2015 note -- that
8 basically gets credited against the capital account. You
9 understand that?

10 THE WITNESS: Yes, I do.

11 THE COURT: Okay. And then you understand that if I
12 approve this deal, I'm not sure why there's going to be
13 \$500,000 to HMIT and then also another \$10 million to HMIT,
14 but subsequent payments could get held up if there are
15 litigation threats to the Highland Claimant Trust. You
16 understand that, correct?

17 THE WITNESS: Yes, I do.

18 THE COURT: Okay. I just, I have to ask. I'm
19 confused about what's going on here. I thought that -- well,
20 let me just ask this: Would you consider yourself crossways
21 with Mr. Dondero now?

22 THE WITNESS: No, but I'll answer the question. Upon
23 advice of counsel, I quit Skyview Group. And upon advice of
24 counsel, I terminated the back office services that Skyview
25 Group was providing to the DAF.

1 THE COURT: Okay. Well, you said you're getting
2 maybe a little emotional because of other litigation. I'm
3 just trying -- I don't understand what all that other --

4 THE WITNESS: Unrelated -- well, unrelated to that.
5 They're clearly trying to use this forum to benefit their
6 Cayman actions. They hired U.S. counsel called Reed Smith,
7 and they've been begging for an organization chart to issue a
8 variety of frivolous lawsuits against the operating DAF
9 entities. So I do apologize, but that's a little upsetting to
10 me because I know we're going to -- that I've just fed them a
11 list of targets in another unrelated matter.

12 THE COURT: Okay. Reed Smith. Here we go again with
13 -- they've made an appearance for Mr. Seery in this
14 litigation.

15 MR. MORRIS: Exactly. And we have raised that issue.

16 THE COURT: Okay.

17 MR. MORRIS: And I'm surprised to hear that they
18 think they still have the ability to do this. But we will
19 pursue that later.

20 THE COURT: Okay. All right. I had nothing further.
21 Thank you, Mr. Patrick.

22 (The witness steps down.)

23 THE COURT: All right. So where are we now? I said
24 that, again, just trying to balance the playing field, if
25 Dugaboy was given the ability to question Mr. Patrick, then I

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1 would allow I guess you want to call it rebuttal in the form
2 of the Debtor, Reorganized Debtor/Claimant to call Mr.
3 Dondero. Do you choose to call him?

4 MR. MORRIS: I'm not.

5 THE COURT: Oh, and I guess I'll allow you, --

6 MR. MORRIS: Yeah.

7 THE COURT: -- if you want to put on your client
8 representative, Mr. Lang.

9 MR. LANG: We call Jim Dondero.

10 THE COURT: All right. Yes, we are timing.

11 Please raise your right hand, sir, Mr. Dondero.

12 JAMES "JIM" DONDERO, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

13 THE COURT: All right. Thank you. The time is
14 running.

15 THE WITNESS: Thank you for the time.

16 DIRECT EXAMINATION

17 BY MR. LANG:

18 Q Mr. Dondero, do you claim that Mr. Patrick lost authority
19 to enter into the 9019 settlement -- or, the settlement
20 agreement that's the subject of the 9019 motion today?

21 A Yes.

22 Q And when do you claim Mr. Patrick lost authority to enter
23 into that settlement agreement?

24 A I think it's best if I give a timeline. He left Sky --
25 can I give a --

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1 MR. PHILLIPS: Objection, Your Honor. Nonresponsive.

2 THE COURT: Overruled. He can give a timeline.

3 THE WITNESS: He left Skyview in October, November,
4 walked out the door, never talked to anybody again, never
5 talked to the charities again except through counsel. Never
6 collected severance, anything else. Just walked out the door.

7 As part of Skyview's review of what he'd been working on
8 and what was the nature and what might have been happening,
9 they discovered numerous abnormalities. They discovered--

10 THE COURT: Do we have an objection?

11 MR. MORRIS: We do. We're not going to use this
12 opportunity to smear Mr. Patrick. If the notion is that the
13 breach of the ability to act with authority occurred in May,
14 he should start his timeline in May.

15 THE COURT: Well, I assumed he was just giving
16 background to explain.

17 THE WITNESS: Yes.

18 THE COURT: So I'll overrule.

19 THE WITNESS: Thank you. I'm going to just give you
20 a little bit of background. Everything that I'm stating is in
21 the public record. I won't do anything to besmirch Mark
22 Patrick. It's all in the public record. It's all in the
23 Cayman pleadings. But there was affidavits regarding
24 embezzlements by vendors where he would request overbilling
25 and the money sent to his house.

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1 MR. PHILLIPS: Your Honor, we're talking about
2 documents outside the scope, not identified, not listed.
3 Objection.

4 THE WITNESS: It's all --

5 MR. PHILLIPS: This is not a timeline.

6 THE COURT: This --

7 THE WITNESS: It's --

8 THE COURT: Sustained. We don't have anything in the
9 record. This is --

10 THE WITNESS: Okay. It's all in the public arena.
11 And so is the insider trading.

12 MR. PHILLIPS: Objection, Your Honor.

13 THE WITNESS: So, --

14 THE COURT: Okay. I sustain.

15 THE WITNESS: Okay. All right.

16 And then, yeah, and then there was monies missing. There
17 were large amounts of monies missing from the estate. There
18 was unexplained \$16 million of expenses in '23.

19 MR. PHILLIPS: Objection, Your Honor. They're --

20 THE COURT: Okay. Explain the relevance, Mr. Lang.

21 MR. LANG: I thought he was just giving a background.

22 THE COURT: It's getting rather --

23 THE WITNESS: Okay, Your Honor. Well, --

24 THE COURT: -- colorful, shall we say. All right?

25 THE WITNESS: Okay. Without giving specifics

1 regarding the embezzlement or --

2 MR. PHILLIPS: Your Honor?

3 MR. MORRIS: We move to strike, Your Honor.

4 MR. PHILLIPS: We move to strike all of this.

5 MR. MORRIS: We move to strike all of this.

6 THE COURT: Okay. I grant. We don't have any
7 evidence of embezzlement.

8 THE WITNESS: Okay. All right. Without detailing
9 any of the bad acts that we -- that it looked like happened
10 from the investigation, we took all the bad acts and all the
11 investigations and we gave them to the three underlying
12 charities. Let's remember the DAF is a legacy charity I set
13 up 15 years ago, or actually, Mark Patrick did the
14 documentation back when he was a loyal employee. And it was
15 three -- around \$300 million and about \$600 million of
16 liability, I mean, legal claims and other things that were
17 meant to be a family legacy, where the donations would help
18 the community. We've given out more than \$50 million over the
19 years. And the recognition would help our various companies
20 or our families. That's what it was. Okay?

21 Went to the three underlying charities who were the
22 beneficiaries of the DAF as it existed: Santa Barbara, Dallas
23 Foundation, Kansas City. These are large charities that have
24 been around for a hundred years. I don't control them by any
25 form or fashion. As a matter of fact, the Hunts are \$4

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1 billion out of the \$6 billion in Kansas City. I think I'm a
2 hundred million or whatever. The DAF was a hundred million.
3 I think the Hunts would be disturbed to hear that I control
4 it.

5 Anyway, so all those charities were beneficiaries. And so
6 we went to them with all the investigative results. And at
7 first, they tried to verify, they tried to have an audience
8 with Mark Patrick. They wanted details. They wanted what --
9 financials. They wanted to know what was happening. And
10 nothing was forthcoming from Mark Patrick. He didn't think he
11 owed them any fiduciary responsibilities.

12 MR. PHILLIPS: Objection. Hearsay.

13 THE WITNESS: No, that's --

14 THE COURT: What is the out-of-court statement? I'm
15 not sure.

16 MR. MORRIS: Mark Patrick thinks that he doesn't owe
17 any fiduciary duties.

18 MR. PHILLIPS: They did an investigation. They tried
19 to do x. They tried to do y.

20 THE COURT: Oh, okay. Technically not hearsay, but I
21 think we're getting --

22 THE WITNESS: Okay.

23 THE COURT: -- a little far beyond the subject
24 matter. So if we could reign it in, please.

25 THE WITNESS: Okay. In February, they were noted,

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1 they were notified, or, in particular, Dallas Foundation was
2 notified that their Empower subsidiary, which owned a hundred
3 percent of the HMIT interests that we were talking about, was
4 transferred to an undisclosed company for a million dollars.
5 Without any transparency, without any understanding of who the
6 new owner was, they filed for receivership in Cayman. To the
7 best of the charity's knowledge and based on all the
8 documentation --

9 MR. PHILLIPS: Your Honor, objection.

10 THE COURT: Okay. Let me try to understand the
11 relevance. Do you think I opened this up by asking if there
12 was a falling out essentially between you and Patrick? Is
13 that why you're going into this? Or --

14 THE WITNESS: No, no, no. No. The falling-out is
15 much bigger than this. But I'm just saying the day
16 receivership was filed was the day Mark Patrick lost
17 authority. And I think anybody would look at it that way. It
18 was for liquidation in the Cayman --

19 THE COURT: Okay. That's his view and we'll either
20 see the --

21 THE WITNESS: Okay.

22 THE COURT: -- documents that support that or not.

23 THE WITNESS: All right. So, your -- yes. Because
24 the question was when do I think he lost authority. I -- you
25 could make the argument he lost it a lot sooner, because for

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1 months beforehand the charities had written him letters saying
2 they wanted their assets distributed in kind, they lost faith
3 in --

4 THE COURT: Okay.

5 THE WITNESS: Yeah.

6 MR. PHILLIPS: Again, Your Honor, objection.

7 THE COURT: This is hearsay. Okay. I sustain.

8 THE WITNESS: Okay. Well, they did.

9 So, eventually, and it takes a lot to get four little old
10 ladies at different charities to get together and agree to
11 file a charity in liquidation, but they did in the Caymans.
12 Okay? And then lo and behold, the response from Mark Patrick
13 was, ha-ha, there are no assets there anymore, I moved them
14 all to my living room --

15 MR. PHILLIPS: Move to strike, Your Honor.

16 THE WITNESS: -- at DFW.

17 MR. PHILLIPS: There's no evidence in the record of
18 this. There was no evidence of any statement. Move to
19 strike.

20 THE COURT: There's not, right?

21 THE WITNESS: Well, no, there is, because what Mark
22 Patrick --

23 THE COURT: Sustained. I don't have it.

24 MR. PHILLIPS: Your Honor, there is no evidence of
25 any of this.

1 THE WITNESS: Well, Mark Patrick's testimony, he said
2 -- he said that our receivership was right after his
3 receivership. He had liquidated and taken all the assets out
4 from Dallas, Santa Barbara, and whatever, and moved it all to
5 his charity. So when we tried -- when the poor charities in
6 Texas in the U.S. tried to file for liquidation, his response
7 was ha-ha. And there were no assets there, you know, because
8 he had already filed --

9 MR. PHILLIPS: Objection.

10 THE WITNESS: He -- he --

11 THE COURT: Okay, I've sustained the objection to the
12 ha-ha. Okay.

13 THE WITNESS: Okay. But he had, he had filed --

14 MR. PHILLIPS: Your Honor, please, move to strike.

15 THE COURT: Okay. Let's strike everything after that
16 last question. Ask your next question.

17 MR. LANG: I don't remember what the first question
18 was.

19 BY MR. LANG:

20 Q What happened -- or, what's your understanding of the
21 proceedings in the Caymans?

22 MR. PHILLIPS: Your Honor, objection. Form.
23 Understanding of the proceedings in the Caymans?

24 MR. LANG: His understanding is, I mean, his
25 understanding. What's his endgame?

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1 THE COURT: All right. I sustain.

2 MR. LANG: Okay.

3 THE WITNESS: The Cayman Islands --

4 MR. PHILLIPS: Your Honor?

5 MR. LANG: Hold --

6 THE COURT: I sustained, so --

7 THE WITNESS: Oh, sustained. Sorry. Okay.

8 BY MR. LANG:

9 Q What is your endgame with respect to your objection over
10 the authority of Mr. Patrick to enter into the settlement
11 agreement that is subject of the 9019?

12 A The three charities in the U.S. are affected materially.
13 Dallas Foundation can't make payroll as of October. Dallas
14 Foundation --

15 MR. PHILLIPS: Your Honor, I'll object to this
16 testimony. The Dallas Foundation has withdrawn its objection
17 on behalf of -- Dallas Foundation appearing on behalf of
18 Empower, the Okada Family Foundation, and Crown Global. The
19 Dallas Foundation is no longer a party here and did not even
20 object in its -- an individual capacity. Object.

21 THE COURT: I sustain the objection. They had an
22 objection. They withdrew it.

23 Moreover, as I announced early on today, I was really
24 questioning their standing to weigh in.

25 So in light of all of that, I'm not going to allow

1 testimony regarding the impact there has been on Dallas
2 Foundation as a result of something Mark Patrick may have
3 done. Okay?

4 THE WITNESS: Okay. I can answer it differently.

5 THE COURT: Well, wait for your question. Okay.

6 BY MR. LANG:

7 Q Well, what -- what is the --

8 A What is my goal?

9 Q Well, yes, what is your goal?

10 THE COURT: Okay. Yes. Why are you objecting? Why
11 is Dugaboy objecting? How about that?

12 MR. LANG: Safely.

13 THE WITNESS: Safely. Without stating where the
14 assets are or might be, they are not with the three charities
15 they were with a year ago. They have zero. And I would like
16 to get those assets back.

17 (Pause.)

18 THE COURT: Okay. Go ahead. I have a couple of
19 questions, but maybe you'll hit on them.

20 MR. LANG: Oh.

21 BY MR. LANG:

22 Q Mr. Dondero, are you asking the Court to -- are you
23 objecting to the settlement agreement that is the subject of
24 the 9019, asking the Court to allow the Joint Liquidators in
25 the Caymans to weigh in on the settlement agreement?

1 A Yes. Or described a little differently, there's no
2 irreparable harm --

3 MR. PHILLIPS: Objection. Nonresponsive.

4 BY MR. LANG:

5 Q Well, let me ask you this: Are you asking --

6 THE COURT: Let him answer.

7 MR. LANG: Yes.

8 THE COURT: Go ahead and answer.

9 BY MR. LANG:

10 Q Go ahead.

11 A There's no irreparable harm for a bit of delay to get to
12 the bottom of where the assets are and what bad deeds have
13 occurred.

14 Q Is that the reason why you're objecting, is to delay this
15 for 45 days or so?

16 A Well, I believe the HMIT million-dollar transaction in
17 February was a steal. I believe it was a stolen asset that he
18 -- Mark Patrick's trying to monetize. And I don't believe
19 it's monetized at nearly its fair value. And so I believe
20 that it needs to be reviewed.

21 Q Are you asking the Court to -- are you objecting simply to
22 allow the Liquidators in the Caymans time to review this
23 transaction and the settlement agreement?

24 A Yes. There needs to be more time.

25 Q Okay.

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1 MR. LANG: I'll pass the witness.

2 THE COURT: All right. Cross?

3 CROSS-EXAMINATION

4 BY MR. MORRIS:

5 Q Good afternoon, Mr. Dondero.

6 A How's it going?

7 Q Okay. You referred to the three underlying charities as
8 being The Dallas Foundation, The Highland Santa Barbara
9 Foundation, and The Highland Kansas City Foundation. Do I
10 have that right?

11 A The three are The Dallas Foundation, Santa Barbara, Kansas
12 City. There's a holding company or there's an entity below
13 it, below each one that I'm on the board of, but it's separate
14 and distinct from the overall charity.

15 Q Okay. But the ones that are separate and distinct that
16 have the Highland name, --

17 A Yes.

18 Q -- those are the ones that you control, correct?

19 A No. I'm on the board. There's three or four people on
20 the board.

21 Q Okay. But --

22 A But we don't control. Otherwise, you know, we would have
23 not recommended the settlement.

24 Q Does the Hunt family make their contributions to The
25 Dallas Foundation, The Santa Barbara Foundation, and The

1 Kansas City Foundation, or do they make them to The Highland
2 Dallas Foundation, The Highland Santa Barbara Foundation, and
3 The Highland Kansas City Foundation?

4 A Most families do it through DAF, so they probably have
5 their own -- they're just involved with Kansas City, as far as
6 I know. I don't know if they're involved in any of these
7 others. But they probably have a Hunt Kansas City.

8 Q But the ones with the Highland name are the ones who
9 initiated the proceeding in the Cayman Islands to get the
10 Joint Official Liquidators appointed over this entity down
11 there, right?

12 A Yes, I believe so.

13 Q And you personally funded that litigation, correct?

14 A The charities can't make payroll.

15 Q And the charities, did you tell the charities what's
16 happening here?

17 A Yes. They're aware.

18 Q When did you tell the charities what's happening here?

19 A They've known it for weeks.

20 Q And they haven't filed any objection in this court,
21 correct?

22 A They thought it was best for Dallas to file it.

23 Q And Dallas settled; isn't that right?

24 A To the surprise of all the other charities.

25 Q Okay. So today, there's actually no charity who is

1 objecting to the settlement agreement, correct?

2 A Because it was -- she got bludgeoned in depositions over
3 the weekend and it happened last night and nobody was aware of
4 it.

5 Q I didn't bludgeon anybody.

6 A Well, --

7 Q I don't bludgeon people.

8 A She switched course after a Sunday full-day deposition or
9 half-day deposition.

10 Q Okay. So the charities that you speak of aren't
11 objecting, correct?

12 A Well, if we had more time. We only had six hours' notice
13 that Dallas fell away. I think they probably would object.

14 Q And you say -- you began to have concerns about Mark
15 Patrick going all the way back to 2023, right?

16 A 2023? A little bit, yeah.

17 Q And then you had real concerns in 2024, right?

18 A Yeah. I mean, he's an odd duck, but he was really odd
19 towards the end.

20 Q Did you file a declara... is one of those public documents
21 you mentioned in the Cayman Islands, that's your affidavit,
22 right?

23 A I believe so.

24 Q Do you want to grab Binder 3 of 3?

25 A Sure.

1 Q And turn to Exhibit 119?

2 A Yes.

3 Q Okay. And this is the declara... this is the affidavit
4 that you filed in the Cayman Islands?

5 A Yes.

6 Q And if you turn to Page 4, in Paragraph 25 you begin to
7 recite events concerning Mark Patrick that concerned you,
8 correct?

9 A Yes. I'm glad you're bringing this into evidence.

10 Q Yes. And in the two years since you started having
11 concerns, has anybody sued Mark Patrick for breach of
12 fiduciary duty?

13 A No.

14 Q Have you recommended to any of these charities: Mark
15 Patrick is doing wrong, let's go sue him?

16 A We were unaware on 90 percent of it until he left.

17 Q You were aware of everything that's in your declaration.
18 It says in 2023, you have notice of these emails. Right? And
19 you did an investigation in 2024, correct?

20 A Yes. But it took a while to get the affidavits from third
21 parties.

22 Q You had the whole investigation done in 2024 and nobody
23 sued Mark Patrick, right?

24 A We didn't sue him. Correct.

25 Q You're just mad that you lost control. Isn't that right?

1 A No.

2 Q Turn to Paragraph 33, please. You accuse Mr. Patrick of
3 misusing material nonpublic inside information. Is that
4 right?

5 A Yes.

6 Q What material nonpublic inside information did he abuse?

7 A I wasn't involved in the specifics. My understanding is
8 that he had an awareness of a tender or some financial
9 transaction and then was providing inside information to
10 attorneys and then had them do something. But I don't -- I
11 don't know the specifics.

12 Q Sir, under oath, in this affidavit that you submitted to
13 the Cayman Islands, you accuse Mark Patrick of obtaining and
14 abusing material nonpublic inside information. Can you just
15 tell Judge Jernigan what you had in mind?

16 A Whatever it says I have in mind. I'm just saying I didn't
17 remember the specifics. I can read it, though, if you'd like
18 me to read it.

19 Q Well, was it something about a put option?

20 A Yes.

21 Q Did he tell The Dallas Foundation that it had a put
22 option? Does that refresh your recollection?

23 A I don't remember the details.

24 Q Do you remember who the counterparty was to the put
25 option?

1 A Counterparty. One of the mutual funds.

2 Q Does it refresh your recollection that it was the Dugaboy?

3 A No.

4 Q Do you remember, sir?

5 A I don't remember.

6 Q I'm going to try. I'm going to try and refresh your
7 recollection. Do you remember that Mark Patrick suggested to
8 The Dallas Foundation that it could recover millions of
9 dollars if it simply exercised the put option with Dugaboy?

10 A My recollection is it was a mutual fund, and it wasn't
11 millions of dollars, but it would disrupt the transaction that
12 was already in place. That's my recollection.

13 Q Okay.

14 A And I don't see Dugaboy anywhere in here, by the way.

15 Q I know. I was wondering if you could just -- I asked you,
16 but it doesn't sound like you know specifically what the
17 material nonpublic --

18 A Well, --

19 Q -- inside information is that you accused Mr. Patrick of
20 abusing at that time.

21 A I know it's been reported. We can get you the details.

22 Q Okay. You, in fact, acted on behalf of HMIT, didn't you?

23 A Who is HMIT?

24 Q Apologies. You personally -- there's no question in your
25 mind that Mark Patrick is the Administrator at HMIT, correct?

1 A I'm sorry, I'm drawing a blank on HMIT. What is HMIT?

2 Q I apologize. Hunter Mountain Investment Trust.

3 A Oh. Okay.

4 Q I'm calling it HMIT.

5 A Okay. All right. Sorry.

6 Q I probably not saying it clearly. I apologize. H-M-I-T.

7 HMIT, that's what I call it. Is there something better that
8 you prefer?

9 A No, that's fine. Yeah.

10 Q Okay. So HMIT. Mark Patrick is the Administrator at
11 HMIT, right?

12 A I believe his status, his dirty hands, I believe he's
13 trying to monetize a stolen asset.

14 MR. PHILLIPS: Objection, Your Honor. Nonresponsive.

15 THE COURT: Sustained.

16 THE WITNESS: No, I -- I saw it. I don't agree --

17 MR. PHILLIPS: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. PHILLIPS: Move to strike.

20 THE COURT: Granted.

21 THE WITNESS: I do not agree.

22 BY MR. MORRIS:

23 Q Okay. Has he -- he was at one time the Administrator.
24 You would agree with that, right?

25 A Yes.

1 Q And did he stop becoming the Administrator in your mind
2 when the Joint Official Liquidators were appointed?

3 A Yes. I believe.

4 Q Okay. So, in your mind, that's when it happened?

5 Can you describe for the Court the relationship between
6 the entity in the Cayman Islands and HMIT?

7 A The entity in the Cayman Island, as far as we knew, was
8 the org structure that all the assets were either in or
9 controlled by in the organizational structure before all the
10 HGEQ things that you went over earlier with Mark Patrick.

11 Q Okay. I'm not asking -- it's my fault. Do you believe
12 the entity in the Cayman Islands controls HMIT?

13 A HMIT was one of the assets that were owned by the
14 charities until it was moved for a million dollar to who know
15 who.

16 Q And do you know how many layers there are between the
17 Cayman Islands entity and HMIT?

18 A I do not.

19 Q Is it fair to -- in your view, do you believe that the
20 Cayman Islands entity had a direct -- withdrawn. Do you
21 believe that the Cayman Islands entity had an indirect
22 ownership interest in HMIT?

23 A We believed it was direct.

24 Q Direct. So it was the owner?

25 A Well, it was -- it was the direct before it got moved in

1 February.

2 Q Hasn't Beacon always been the owner of -- the beneficial
3 owner of HMIT?

4 A Then it was Beacon that was moved. There was -- charities
5 were notified in February that, for \$1 million, the HMIT was
6 sold to an undisclosed, unknown person.

7 Q Do you believe that the entity in the Cayman Islands ever
8 had the ability to control Hunter Mountain Investment Trust?

9 A Yeah. It was an asset in the portfolio.

10 Q And do you believe that that gives it the right to control
11 HMIT?

12 A Yes. I think the Liquidators will prove that. I think
13 they can go back in time on bad acts and bad behavior and they
14 can regroup assets to their rightful owners.

15 Q So your concern here is not with corporate authority, it's
16 with the bad acts. Is that fair?

17 A Well, no. I think you lose your corporate authority when
18 you're fiducially irresponsible or commit corporate crimes.

19 Q Okay. But you've never -- you've never brought a lawsuit
20 accusing him of that. Fair?

21 A I think you'll see a litany of stuff come out of the
22 Cayman Islands.

23 MR. PHILLIPS: Objection. Nonresponsive.

24 MR. MORRIS: I'm sure we might someday.

25 THE COURT: Sustained.

1 THE WITNESS: Yeah. But, no. But I have not, no.

2 BY MR. MORRIS:

3 Q Yeah. But you personally, have you ever been the
4 Administrator of Hunter Mountain Investment Trust?

5 A Not that I'm aware of.

6 Q Have you ever had any role whatsoever with respect to the
7 Hunter Mountain Investment Trust?

8 A Not that I -- not that I recall.

9 Q Okay. Do you recall last December we were here on some
10 litigation concerning HCLOM's scheduled claim?

11 A You have to give me more of a clue.

12 Q Remember HCLOM had that \$10 million scheduled claim and
13 Highland had filed a bad faith motion and we were all here in
14 court and we wound up settling that matter and HCLOM got a
15 Class 10 interest for \$10 million?

16 A Yes, I vaguely remember that.

17 Q Okay. And you were here and you were representing HCLOM,
18 right?

19 A Okay. I don't remember specifics, but, yes, go ahead.

20 Q Okay. And do you recall that Highland required Hunter
21 Mountain Investment Trust's consent as part of the
22 transaction?

23 A Vaguely.

24 Q And you personally authorized that consent back in
25 December, didn't you?

1 A No.

2 Q Who did?

3 A Whoever would have spoke for HMIT at the time.

4 Q Okay. Let's take a look at Exhibit 68, please.

5 A So, Binder 2?

6 Q Yes, please.

7 A Sorry, this says Pat Daugherty. This is 1 of 3. This
8 one. Okay. Did you say 68?

9 Q Yes.

10 A It's not in here, either. 68.

11 Q So you see that's an order of the Court?

12 A Yes.

13 Q And this resolves HCLOM's claim? Take your time.

14 A I'll leave it in case someone else needs it. Okay.

15 Q And do you see on the last page of the document there's an
16 electronic signature by Deborah Deitsch-Perez at the Stinson
17 firm as counsel for Hunter Mountain Investment Trust and
18 Dugaboy Investment Trust? Do you see that?

19 A I'm sorry. I went to the very last page with Mark and I.
20 Is there another page? Oh, okay. Yes. Okay.

21 Q So you see Stinson has signed both on behalf of you
22 personally and HCLOM, and at the bottom, Stinson and Ms.
23 Deitsch-Perez has also signed on behalf of Hunter Mountain
24 Investment Trust and the Dugaboy Investment Trust? Do you see
25 that?

1 A Yes. But then it's separate on 69, right?

2 Q Yeah. We're just looking at 68.

3 A Okay.

4 Q Do you know who authorized Ms. Deitsch-Perez to sign her
5 name and tell the Court that the Dugaboy Investment Trust had
6 approved this form of order both as to form and substance?

7 Who acted on behalf of Dugaboy?

8 A I have no idea. I hope she keeps it straight when she's
9 signing stuff.

10 Q Well, on whose behalf are you here today?

11 A Dugaboy's.

12 Q And are you a representative of Dugaboy?

13 A Representative? I'm primary beneficiary until I pass.

14 Q And who's the trustee of Dugaboy?

15 A I believe it's my sister at the moment.

16 Q Does she know you're here today testifying on behalf of
17 Dugaboy?

18 A She knows I'm in court. I didn't -- I wasn't specific.

19 Q Did you talk to her about the Dugaboy -- does she -- does
20 she even know about the Dugaboy objection?

21 A I don't know.

22 Q Okay. So how about Hunter Mountain Investment Trust? Do
23 you know who authorized Ms. Deitsch-Perez to sign this
24 document on behalf of Hunter Mountain Investment Trust?

25 A When was this? In December or January?

1 Q Yeah.

2 A I'm assuming -- I'm assuming Mark Patrick.

3 Q Late December.

4 A I'm assuming Mark Patrick. But I don't know.

5 Q Did you hear about a week later that Mr. Phillips called
6 your lawyer and accused her of signing this document without
7 authority from Hunter Mountain Investment Trust's authorized
8 representative, Mr. Patrick?

9 A In hindsight, he's been in on it for a while, so --

10 Q What do you mean, he's been in on it for a while?

11 A I think he knows the plan Mark Patrick's been putting in
12 place for quite a while.

13 Q But this document was signed without his knowledge or
14 consent; isn't that right?

15 A I don't know.

16 Q And you had to sign a new agreement with Mark Patrick as
17 the authorized representative of HMIT. Didn't you do that,
18 sir?

19 A I don't know.

20 Q Okay. Let's take a look at guess I guess probably Exhibit
21 69. So this is an intercreditor and participation agreement.
22 Do you see that?

23 A Yes.

24 Q And it's dated January 10th, 2025, correct?

25 A Yes.

1 Q And even though you -- even though Skyview had completed
2 this investigation in which it was alleged that Mr. Patrick
3 misused material nonpublic inside information and he had
4 terminated his relationship with Skyview, you still entered
5 into this agreement with him as the authorized representative
6 of HMIT, correct?

7 A Those were different work streams, you know, so they were
8 -- but yes.

9 MR. PHILLIPS: Objection. Nonresponsive.

10 THE COURT: Sustained.

11 BY MR. MORRIS:

12 Q That is -- that is your signature on the last page,
13 correct?

14 A Yeah. I mean, --

15 Q It's a simple question. That's your signature, right?

16 A Yes.

17 Q And you understood that you were signing an agreement with
18 Mark Patrick, correct?

19 A Yes.

20 Q And you signed this agreement in order to avoid Mr.
21 Phillips filing a motion in this court for reconsideration of
22 an order that she signed not knowing that Hunter Mountain had
23 given its consent without authority. Isn't that right?

24 A No, I had no -- none of that --

25 Q So what's your memory? Why do you think you entered into

1 this agreement?

2 A Because the lawyers put it in front of me as a finished
3 product from what had been going on recently.

4 Q And you had no understanding of what it was?

5 A Not with the innuendo and agenda that you were describing.
6 No. I mean, I just -- I knew what it generally involved.
7 That's it.

8 Q But you would agree with me that you entered into an
9 agreement knowing that Mark Patrick was signing on behalf of
10 Hunter Mountain, correct?

11 A Yes.

12 Q I mean, it's right below your name, right?

13 A Yes.

14 Q You couldn't have missed it.

15 A Yes. That part, I'll agree with.

16 Q Okay. And you signed the agreement with Mark acting as
17 the authorized agent and representative of Hunter Mountain,
18 notwithstanding all of the bad acts that you supposedly were
19 aware of at the time. Correct?

20 A Object to aware of at the time. They were all coming
21 together in parallel work paths.

22 THE COURT: Okay.

23 MR. PHILLIPS: Object. Nonresponsive.

24 THE COURT: Sustained. Like I told Mr. Patrick, the
25 witness does not get to object.

1 THE WITNESS: Okay.

2 BY MR. MORRIS:

3 Q And just to close the loop, Mr. Dondero, you fully funded
4 The Dallas Foundation's objection, correct?

5 A And I made additional donations so that they could pursue
6 bad actors and get their money back.

7 Q You funded the litigation so that The Dallas Foundation
8 could pursue their objection, correct?

9 A I made additional donations so that they could get some
10 assets back so that they could be a charity again and make
11 donations.

12 Q Do you get a tax deduction for that donation?

13 A Yes.

14 Q Okay. That's nice.

15 Let's just finish up with the Joint Official Liquidators.
16 Have you spoken to them?

17 A I do not believe so.

18 Q Has anybody acting on your behalf spoken with the Joint
19 Official Liquidators?

20 A I don't know. I think the Joint Official Liquidators are
21 an accounting firm. I think they're Grant Thornton. I think
22 people have spoken to the attorneys down there, but I don't
23 know -- I haven't spoken to Grant Thornton and I don't know if
24 anybody else has.

25 Q Okay. Did you see the letter that your counsel marked as

1 the exhibit, the one that was sent last night?

2 A I've not heard it -- I've not read it, but I've heard you
3 guys read it today.

4 Q Yeah. Are you aware of the Joint Official Liquidators
5 saying at any time that they didn't believe Mark Patrick had
6 the authority to enter into the settlement agreement on behalf
7 of the HMIT entities?

8 A I have not.

9 Q Okay.

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

11 THE COURT: All right. Mr. Phillips?

12 MR. PHILLIPS: Yeah.

13 THE COURT: Wait. What are we at timewise?

14 THE CLERK: So their 30 minutes is over. If you
15 intended to give them 30 minutes for Patrick and --

16 THE COURT: Yes. Yes. They collectively got 30
17 minutes.

18 THE CLERK: For both of those --

19 THE COURT: Yes.

20 THE CLERK: -- witnesses. Okay. Yes, they're out.

21 THE COURT: How much did Mr. Morris use?

22 THE CLERK: Well, I don't know. I just was --

23 THE COURT: No, no, no, no. 30 minutes for each side
24 for each Patrick and Dondero.

25 MR. MORRIS: About eight minutes.

1 THE CLERK: Yes. Mr. Morris -- I think Mr. Phillips
2 may have asked one question, but Mr. Morris mostly -- 30
3 minutes.

4 THE COURT: No. On this witness, Phillips hadn't
5 gone.

6 THE CLERK: No, not this witness.

7 THE COURT: Okay. That's all I care about, this
8 witness.

9 THE CLERK: I don't know this witness.

10 THE COURT: Okay. Do you have a question, Mr.
11 Phillips?

12 THE CLERK: I was doing 30 minutes for the total.

13 THE COURT: No, no, no, no, no.

14 MR. PHILLIPS: Your Honor, I can resolve this. I can
15 resolve this. We have no questions.

16 THE COURT: Okay. Thank you. Where are we? Mr.
17 Lang, any redirect?

18 MR. LANG: I'm not sure.

19 THE COURT: Okay.

20 THE WITNESS: The last one.

21 MR. PHILLIPS: Your Honor, the witness is telling the
22 lawyer what question to ask.

23 THE COURT: Okay.

24 MR. LANG: I believe I've already asked, which is the
25 endgame.

1 THE COURT: Okay. Just let's move on. Anything
2 else? What was the question?

3 REDIRECT EXAMINATION

4 BY MR. LANG:

5 Q Mr. Dondero, what are you looking to accomplish through
6 this objection?

7 MR. PHILLIPS: Asked and answered.

8 THE COURT: Sustained. Sustained. He did. He was
9 asked and answered.

10 BY MR. LANG:

11 Q The endgame in general.

12 MR. PHILLIPS: Asked and answered.

13 THE COURT: Answered and answered. Move on.

14 THE WITNESS: No, no. No, I haven't. No, I --

15 MR. PHILLIPS: Asked and answered. Move to strike.

16 THE COURT: You asked him this on your direct
17 earlier.

18 MR. LANG: I did.

19 THE WITNESS: But, in general, regarding the --

20 MR. PHILLIPS: Your Honor?

21 THE WITNESS: Not just this.

22 THE COURT: Sustained. Ask another question.

23 MR. LANG: I don't have any more questions.

24 THE COURT: Okay. I have a question.

25 EXAMINATION BY THE COURT

1 THE COURT: Here is something that I want to
2 understand. What I have before me is whether a settlement
3 with Hunter Mountain, a settlement between the Highland
4 entities, the Claimant Trust, the Subtrusts, and the Hunter
5 Mountain entities, seven of them, is fair and equitable, is in
6 the best interest of the estate. If you were the director,
7 the manager, the representative of Hunter Mountain estate,
8 what would your answer be?

9 THE WITNESS: It's not in the ZIP Code.

10 THE COURT: It's not in the ZIP Code?

11 THE WITNESS: Of fair. Yes.

12 THE COURT: Okay. Why do you think it's not in the
13 ZIP Code of fair?

14 THE WITNESS: Okay. We filed in Delaware on a \$100
15 million judgment. Pachulski was our counsel. They told us --

16 THE COURT: I know all this.

17 THE WITNESS: It just --

18 THE COURT: I'm talking about the settlement in front
19 of me right now.

20 THE WITNESS: -- we'd be in and out in three months,
21 right? We got liquidated instead. We got liquidated for over
22 \$850 million, which not enough people talk about. Okay? It
23 would've been \$950 million if Seery had done a good job, but
24 it was \$850 million we got liquidated for. Okay? The POCs
25 were pumped up. People who supposedly had no claim, all of a

1 sudden, \$300 million.

2 There's \$700 million missing or misallocated from the
3 estate. Okay? There was -- all the original creditors, all
4 the original creditors sold 99 percent of their interest for
5 \$160 million. The Farallon and Stonehill went to the beach.
6 There was enough money on the balance sheet. Seery could have
7 given them the \$160 million and tossed us the keys. Instead,
8 he had relations, deep relations, undisclosed business
9 relationships with Farallon and Stonehill, --

10 THE COURT: Okay. I do want you to know --

11 THE WITNESS: No, but --

12 THE COURT: -- I've read all this many times.

13 THE WITNESS: Okay. But so -- so these --

14 THE COURT: I promise I read every piece of paper
15 submitted.

16 THE WITNESS: Okay. So, so he sold the POCs to them,
17 and it's been -- they've tripled their money in two and a half
18 years. The professional fees have been \$300-odd million.
19 There's interrelationships between all the professionals --
20 Farallon, Stonehill, Grosvenor, the Hellman & Friedman guys,
21 the Millennium guys who took whatever. All this stuff has to
22 come out.

23 We're on the edge of a giant RICO case eventually. We're
24 -- that's -- we're on the edge of a giant RICO case. And they
25 should not be giving up their rights for \$10, \$20 million.

1 It's crazy for them to give up their rights at Dallas
2 Foundation for 10 or 20 million bucks.

3 There's \$700 million missing. All the original creditors
4 sold for \$160 million. The estate was sold for over \$850
5 million. Where'd all the money go? Where'd all the money go
6 and why? You know.

7 We get updates quarterly, once in a while, well, this much
8 went out to this law firm, this much went out to this,
9 whatever, but no one looks at the gross amount and where'd all
10 the money go? And why? Why did it have to -- why did it have
11 to go down like that? Why do we have to fire --

12 THE COURT: Okay. I know you have an objection.

13 THE WITNESS: -- all the employees?

14 THE COURT: This is narrative.

15 MR. MORRIS: Yeah. And --

16 THE COURT: I understand all --

17 MR. MORRIS: -- I'm not going to cross-examine him,
18 but this is -- this is not accurate.

19 THE COURT: I understand all of these arguments. You
20 know, I --

21 THE WITNESS: But I'm just --

22 THE COURT: Your lawyers at least know, if you don't
23 know, that we wrote a 100-plus-page opinion on the motion of
24 Hunter Mountain to sue for all of this. Okay? So I promise
25 I've heard this and looked at it. But right now, Hunter

1 Mountain, through Mark Patrick, you question his authority,
2 but they are ready to lay down their swords and not pursue
3 that motion for leave to sue based on the claims trading, and
4 --

5 THE WITNESS: Have you seen all the insider trading,
6 Farallon, Stonehill? Have you seen the trading and claims on
7 insider information? Have you seen all that stuff?

8 THE COURT: I've seen the allegations but I --

9 THE WITNESS: Well, why would you release all those
10 people right now before the RICO?

11 THE COURT: So I -- Dugaboy -- you've been asked what
12 is your goal? Dugaboy a .18 limited partnership interest --

13 THE WITNESS: Correct.

14 THE COURT: -- that is subordinated to Hunter
15 Mountain. I'm just trying to understand the scenario where it
16 makes sense to keep fighting for years to come.

17 THE WITNESS: Well, RICO transcends this, right? I
18 mean, RICO brings everybody in. Until we get --

19 THE COURT: Okay. You think it's -- and my question,
20 why is this not fair and equitable and in the best interest of
21 the estate, you think it's better to litigate several more
22 years and maybe have a chance, you know, --

23 THE WITNESS: At \$600 mill. At \$600 million.

24 THE COURT: -- Hunter Mountain would have a chance to
25 --

1 THE WITNESS: \$600 million. Yes.

2 THE COURT: Okay.

3 THE WITNESS: Versus \$20 million now. But you have
4 to remember, it's all part of -- you have to pay attention to
5 this Mark Patrick stuff.

6 MR. PHILLIPS: Your Honor?

7 THE COURT: Okay. Yes. I asked my question. I'm
8 trying to understand why Dugaboy, why its position is this is
9 not fair and equitable and in the best interest and in the
10 range of reasonableness. Those are the buzz words that a
11 judge has to focus on.

12 THE WITNESS: It's not fair to the charities. I
13 still think no one's ever seen --

14 THE COURT: The charities aren't parties here.

15 THE WITNESS: Not yet. Give them a little time.
16 They just heard about the settlement yesterday.

17 THE COURT: Well, isn't that what the Cayman Islands
18 is all about? What I do doesn't necessarily affect what's
19 happening there.

20 THE WITNESS: Well, no, but you're saying they're not
21 here today. If you delayed this three weeks, they'd be here.
22 It's just a couple --

23 THE COURT: They were here and they chose to
24 withdraw.

25 THE WITNESS: One. One. Just one charity. But the

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1 others, if you give them some time, they'll be here.

2 THE COURT: Okay. Okay. I think you've answered my
3 question, your theory of how this should play out and how you
4 want it to play out. Okay. All right.

5 THE WITNESS: Thank you.

6 THE COURT: That's all. Thank you.

7 THE WITNESS: Thank you for the time.

8 THE COURT: Uh-huh.

9 (The witness steps down.)

10 THE COURT: All right. I think that concludes our
11 evidence, correct?

12 MR. YORK: Yes, Your Honor. At least from
13 Daugherty and --

14 THE COURT: Okay. The Objectors rest. Any rebuttal?

15 MR. PHILLIPS: No, Your Honor.

16 THE COURT: Okay.

17 MR. YORK: Your Honor, would it be okay if we took a
18 five-minute comfort break?

19 THE COURT: Yes. We may as well turn it into a 10-
20 minute break because that's what's going to happen. All
21 right. We'll be back at 3:40.

22 THE CLERK: All rise.

23 (A recess ensued from 3:30 p.m. until 3:44 p.m.)

24 THE CLERK: All rise.

25 THE COURT: Please be seated. We're back on the

1 record in Highland Capital. I will hear closing arguments.
2 And I dangled something out there before lunch and I've never
3 heard any follow-up. I guess no agreement with Daugherty
4 could be reached on the reserve?

5 MR. YORK: Haven't had that conversation, Your Honor.

6 THE COURT: You didn't have that conversation? Oh,
7 well. Why didn't you have that conversation?

8 MR. YORK: We were, during the lunch break, working
9 busily to prepare the rebuttal to Mr. Seery's testimony, --

10 MR. MORRIS: Yeah.

11 MR. YORK: -- Your Honor. And so --

12 THE COURT: Okay. You told me you'd talk about it.

13 MR. MORRIS: May I proceed, Your Honor?

14 THE COURT: I guess I don't matter. Do I not matter
15 when I suggest something like that?

16 Okay. Go ahead.

17 CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

18 MR. MORRIS: Good afternoon, Your Honor. John
19 Morris; Pachulski, Stang, Ziehl & Jones; for Highland Capital
20 Management, LP and the Highland Claimant Trust and on behalf
21 of the Highland Litigation Subtrust.

22 I know that we've got Bob Loigman in the courtroom, but I
23 know that -- at least I hope he joins me in this closing
24 argument. I suspect he does.

25 I don't want to be too long here, Your Honor. We don't

1 have a high burden. This is a 9019 motion, for goodness'
2 sakes. I've never been involved in such a contentious 9019
3 motion in my life. We had three depositions on Friday. We
4 had two on Sunday. I think we had two on Monday. For a 9019,
5 I've had one witness sit multiple times.

6 It's been an extraordinary experience. But at the end of
7 the day, nobody's really challenging the settlement agreement.
8 You've got people challenging, you know, the Cayman Islands.
9 You've got people challenging, is it -- you know, can you jam
10 it in under the plan? We're not jamming anything under the
11 plan. We're following the plan provisions.

12 Nobody's challenging the bona fides of the motion. Nobody
13 is challenging whether it's the product of good-faith, arm's-
14 length negotiations.

15 You heard Mr. Seery testify at length about the process.
16 You've got 55 different documents in the record proving that
17 this agreement is the product of arm's-length, good-faith
18 negotiations between parties represented by sophisticated
19 counsel that resulted from an exchange of information, an
20 exchange of proposals, back and forth, and here we are.

21 It's also in the best interests of the estate. Really not
22 challenged by anybody. Nobody is contending that Highland is
23 getting a raw deal here. Nobody. And the proof that Highland
24 is getting fair consideration and that this settlement is in
25 the best interest of the Claimant Trust and its stakeholders,

1 it's obvious we are terminating costly, wasteful, and I dare
2 say frivolous litigation. We are disposing of several
3 illiquid assets. We are getting litigation protections that
4 will inure to the benefit of the released parties, the
5 Highland release parties and it will, we believe, provide the
6 protection that we deserve.

7 It's not just releases. It's covenants not to sue. It's
8 all kinds of bells and whistles in there. Substantial
9 benefits to the estate. And so nobody's really objecting to
10 that.

11 Nobody's really objecting to the fairness of the
12 settlement to the HMIT parties except for Mr. Dondero, and
13 he's just mad that peace is breaking out. He's just mad
14 because he's not going to be able to litigate anymore. It's
15 not relevant to a 9019 motion. But even if it was, it's
16 ridiculous. It's just ridiculous.

17 The settlement is fair and reasonable and in the best
18 interest of the creditors. It's the product of good-faith,
19 arm's-length negotiations. And on that alone, it should be
20 approved.

21 We've had a lot of testimony today about Mark Patrick's
22 authority. The only actual evidence that concerns Mark
23 Patrick's authority are the exhibits in the binder and Jim
24 Seery's testimony about the diligence that he did. And the
25 exhibits in the binder all prove that Mark Patrick has the

1 authority to act and bind the HMIT entities to the settlement
2 agreement. It's Paragraph 7 of the HMIT trust agreement
3 itself.

4 Did the objecting parties point you to one single document
5 to support their speculative argument, because it's not
6 anything more than that, that somehow Mark Patrick isn't
7 authorized to do this? There is not a scintilla of evidence
8 that Mark Patrick is not authorized to do this.

9 And if Your Honor had any concerns about Mr. Patrick, I
10 think he answered them at the end. That he understood exactly
11 what the terms of the agreement are. That he had a reasonable
12 opportunity to consult with counsel and to negotiate. That he
13 knows exactly what he's doing on behalf of these entities.
14 That he believes the best path forward from the HMIT entities
15 is to grab the value today instead of letting it waste.

16 We welcome Mr. Patrick to the table. It makes a lot of
17 sense. We've been trying to get to this point forever.

18 Mr. Daugherty. You know, I have no gripes with Mr.
19 Daugherty. I don't know quite what's motivating him these
20 days, but he admitted and the evidence is clear that when he
21 was a Class 9 claim holder, I forget if it's two or three or
22 four occasions, he accepted \$3.7 million in multiple payments,
23 without any concern at all as to whether or not it violated
24 the plan, even though his Class 8 claim had remained
25 unresolved.

1 He didn't send the money back. He didn't say, Mr. Seery,
2 you can't do this because it violates the plan. He knowingly
3 and willingly accepted the benefits of being a Class 9 claim
4 holder. And now he comes and objects on the basis that
5 somehow it's not fair to him as a Class 8 holder? This is
6 what we call estoppel. Right?

7 I wasn't in a position to really make the argument because
8 I didn't quite understand it until today. Like, how does he
9 come in today and say you can't do this, Your Honor? You
10 can't allow Class 9 and 10 to get a nickel until he's done,
11 when he himself has accepted millions of dollars before his
12 claim is resolved? That doesn't sound right to me. And I
13 don't think the Court should accept that argument.

14 Just quickly, because I don't want to give it any weight,
15 frankly, but this whole business of the Cayman Islands and the
16 JOLs, the only facts Your Honor has to take into account are
17 that they were appointed before this motion was filed.
18 They've never appeared here. They've never objected. And
19 there is no evidence in the record to suggest, let alone to
20 prove, that the JOLs contend that Mark Patrick does not have
21 the authority to enter into the settlement on behalf of the
22 HMIT entities. There's no evidence of any kind.

23 What you need to know and need to remember, though, is
24 that whole proceeding in the Cayman Islands is being brought
25 on behalf of not The Kansas City Foundation or The Dallas

1 Foundation, but The Highland Kansas City Foundation, The
2 Highland Dallas. It's Mr. Dondero, and he's funding it, and
3 it says it in Paragraph I think 47 or 48 of his declaration.
4 He's funding all of that. And he funded The Dallas
5 Foundation's objection here.

6 And that's why he's upset, because they settled last night
7 without telling him because they didn't want any part of this,
8 Your Honor. That's the truth. That's why they're not here.
9 And they, right, they're the people who suggested that maybe
10 something untoward happened and maybe someday -- because this
11 is the way their objection is characterized. Complete
12 speculation.

13 If you go back and look at the objection, it's someday,
14 somebody might do something and might someday set it aside.
15 That wasn't a proper basis at the time, but we know that Mark
16 Patrick remains in control of the HMIT entities today because
17 nobody has told the Court otherwise. And we know that The
18 Dallas Foundation has withdrawn its objection. As I asked Mr.
19 Patrick, have you been, you know, removed or clipped or
20 terminated or in any way restricted in your capacity as the
21 Administrator and control person of the HMIT entities as a
22 result of the settlement, and the answer was no.

23 There's nothing to see here, Your Honor, except the
24 opportunity for the Highland Claimant Trust and its affiliated
25 entities in moving this case forward in an enormously positive

1 and constructive direction.

2 We have the opportunity today to put to rest a lot of
3 pending litigation. We have the opportunity today to put to
4 rest a lot of future potential litigation that undoubtedly
5 would have come to pass had these entities remained under the
6 indirect control of Mr. Dondero, because we know that that was
7 the case.

8 If you remember, Your Honor, we sat here two years ago,
9 June 8th, 2023, on the evidentiary hearing on Hunter
10 Mountain's motion for leave to bring the claims trading case.
11 And if Your Honor will remember, Mr. Patrick at that time was
12 forced to admit that the entirety of that case came in from
13 Mr. Dondero, that he had no knowledge of any facts that
14 related to anything.

15 I would ask Your Honor to go and compare The Dallas
16 Foundation's objection with Mr. Dondero's declaration that he
17 filed in the Cayman Islands. I'm not going to say they're
18 verbatim, but they are largely, largely the same. This is
19 just Jim Dondero being Jim Dondero, and that is not a basis to
20 overrule or deny the motion under Rule 9019.

21 It's a product of good faith negotiations, it is clearly
22 in the best interests of the estate, and we respectfully
23 request that as soon as possible Your Honor grant motion.

24 THE COURT: Okay.

25 MR. MORRIS: Thank you, Your Honor.

1 THE COURT: Any closing from the Movant, Co-Movant?

2 MR. PHILLIPS: Your Honor, thank you very much.

3 Louis M. Phillips on behalf of the --

4 THE COURT: I don't know if you're the Co-Movant.

5 You're a party to the proposed settlement.

6 MR. PHILLIPS: I'm not a Co-Movant.

7 THE COURT: Okay.

8 MR. PHILLIPS: I'm a party to the settlement.

9 THE COURT: Uh-huh.

10 MR. PHILLIPS: I didn't quite make it to that status

11 to be a Co-Movant.

12 CLOSING ARGUMENT ON BEHALF OF THE HUNTER MOUNTAIN ENTITIES

13 MR. PHILLIPS: But anyway, we appreciate the Court's

14 time. We appreciate the Court's attention. This was, as the

15 evidence established, we provided and were provided an immense

16 amount of information.

17 Much of the information, certainly the information about

18 Mr. Patrick's control of the HMIT entities, was provided by

19 us. It was reviewed by Mr. Seery. And Mr. Seery made a very

20 strong case for the amount of diligence he did on our side of

21 the equation. It's not nearly as relevant to Your Honor's

22 decision about whether to approve the settlement whether we

23 got a good deal or not, but the deal we got, we think, is very

24 fair.

25 The deal we got was negotiated with counsel, with

1 businesspeople who are very sophisticated. We have agreed on
2 the methodology and of the calculation of our Class 10 claim.
3 The Debtor and the Debtor estate or the Claimant Trust or
4 whoever held the HMIT note got full value for the HMIT note.
5 Any additional value from the HMIT note would come back to
6 HMIT. The Kirschner Litigation would be for the benefit of
7 HMIT. The Dugaboy Note would be for the benefit of HMIT.

8 All of that is being put into a package and is being
9 resolved, affiliated, administered in a very effective and
10 efficient manner. We are getting some money. We appreciate.
11 We tried to get more. We couldn't. They tried to pay less.
12 We made a deal.

13 So, Your Honor, I echo and thank Mr. Morris for all of his
14 comments. I appreciate counsel being involved here today. We
15 think this is a fair and equitable settlement. There is no
16 question under 9019 that this settlement should be approved.
17 And the suggestion that this Court should allow itself to just
18 be a vehicle for continued litigation, when we have analyzed
19 it, perhaps from a different perspective, and made the
20 decision that it is time to make our deal now, it is time to
21 take HMIT out of the litigation picture and into the fold of a
22 party in interest of a fixed claim with fixed treatment that's
23 different from the plan, authorized by the plan. And we
24 appreciate it.

25 Thank you, Your Honor.

1 THE COURT: Thank you. All right. Mr. Loigman, we
2 didn't mean to ignore you.

3 CLOSING ARGUMENT ON BEHALF OF MARC S. KIRSCHNER, LITIGATION
4 TRUSTEE

5 MR. LOIGMAN: Thank you, Your Honor. Robert Loigman,
6 Quinn Emanuel. You didn't ignore me. Louis was just quicker
7 to jump up than I was.

8 And I step up solely because you asked whether the Co-
9 Movant had anything to add. And we have nothing further to
10 add to what Mr. Morris said. We agree with it wholly. We
11 think this is a fair and complete settlement, and we would ask
12 that the Court approve the settlement under the 9019 motion.

13 THE COURT: Thank you.

14 MR. LOIGMAN: Thank You, Your Honor.

15 THE COURT: All right. The Objectors?

16 MR. MORRIS: Your Honor?

17 THE COURT: Oh.

18 MR. MORRIS: Just to clarify, the motion was made
19 under 9019 and Section 363. I just don't want that to get
20 lost. That's all.

21 THE COURT: Okay. 363, use of property. Okay.
22 The Objectors?

23 CLOSING ARGUMENT ON BEHALF OF PATRICK DAUGHERTY

24 MR. YORK: Thank you, Your Honor. I'll be very
25 brief.

1 I certainly appreciate that the Court desires to have this
2 bankruptcy wrapped up, given how long it's gone on now, for
3 six -- approximately six years in this court. The fact of the
4 matter is that the settlement agreement that Highland proposes
5 to enter into with Hunter Mountain Investment Trust entities
6 violates the express terms of the plan, the confirmation
7 order, and the Claimant Trust Agreement.

8 And they have not pointed to any language in there or to
9 argue otherwise. Their only argument has been that they've
10 set a reserve aside. And there's no provision in any of those
11 documents that provides that that's an excuse for them to
12 violate the express terms of the confirmation order, the plan,
13 or the Claimant Trust Agreement, including specifically the
14 language that Class 10 claims are not to receive or retain
15 anything under the plan on account of their interest unless
16 and until the Class 8 and Class 9 claims are paid in full plus
17 applicable interest. And --

18 THE COURT: I really want to understand that
19 argument. Mr. Seery correctly testified that, pretty much in
20 every Chapter 11 plan we see, there's a disputed claim
21 reserve. Well, I guess unless we have really unsophisticated
22 creditors who don't insist on that. But we had sophisticated
23 creditors. So why doesn't that mechanism, which I would call
24 tried and true, we see it in most cases, why doesn't that
25 resolve this issue you're raising?

1 MR. YORK: Well, --

2 THE COURT: And I focused in more than maybe I needed
3 to about the nature of Mr. Daugherty's remaining claim, his
4 Class 8 claim. What was the scope? What's the maximum amount
5 it could be? When might it be resolved? Because I think we
6 have a tried-and-true mechanism that addresses his concerns.
7 Tell me why it doesn't.

8 MR. YORK: Well, --

9 THE COURT: Really, I want to understand what you
10 think I'm missing.

11 MR. YORK: Well, so I think twofold, Your Honor. The
12 first is that the dispute reserve that exists normally would
13 be for whatever the amount of the disputed claim is. And here
14 we're dealing with, as both sides have acknowledged, a claim
15 that they at best could estimate, but they don't know for
16 certain, given all of the machinations that could come out of
17 the IRS audit.

18 And secondly, specifically with respect to the
19 confirmation order, if it had said that the net 10 and 11
20 claims could be paid as long as the allowed 8 and 9 claims
21 were paid, then the dispute reserve would provide that
22 protection. But that's not what the language in the
23 confirmation order says. It says claims, not allowed claims.
24 And therefore it's referring to all claims, including disputed
25 claims. And --

1 THE COURT: But we have a disputed claim reserve.

2 Okay. We have a disputed claim reserve.

3 MR. YORK: There is, yes, there is a reserve.

4 THE COURT: So is it your argument that I can't
5 approve a settlement like this until Mr. Daugherty's claim has
6 been resolved with certainty, which might be in 2033 or
7 whatever? I can't keep a bankruptcy estate open, allowing
8 administrative expenses to continue to accrue, because of one
9 contingent unliquidated claim that may never even develop.

10 MR. YORK: Your Honor, I appreciate the Court's
11 frustration with that, but that's the way that the documents
12 are written in terms of the confirmation order. And so it's
13 an --

14 THE COURT: So the disputed claim reserve is
15 meaningless?

16 MR. YORK: No, it is not -- a disputed claim reserve
17 exists, but it does not, under the terms of the confirmation
18 order, in terms of allowing the payment of Class 10 and Class
19 11 claims, those can't be done until the Class 8 claims are
20 resolved.

21 THE COURT: You would have -- just a moment -- you
22 would have me keep this estate open for as long as it takes,
23 2033, whatever, without allowing Class 10 and Class 11
24 theoretically to get anything?

25 MR. YORK: At least under --

1 THE COURT: Let's just let the -- with all respect to
2 Mr. Seery, he's charging a handsome amount. It was agreed to
3 or approved by the Court. Let's just let him continue
4 accruing until 2033 because of Mr. Daugherty's prospect of the
5 IRS saying you owe \$1.4 million plus interest and penalties,
6 when he's gotten the use of that all? Help me. This doesn't
7 make sense to me.

8 MR. YORK: Sure. One way this could be solved is
9 that the payments to -- the cash payments, for example, that
10 are to be made to the HMIT entities, under the proposed
11 settlement could be held in abeyance until the resolution of
12 the Class 8 claim. The Court could modify the proposed
13 settlement based on that. That's one way to deal with the
14 issue, for example.

15 THE COURT: Do what? Hold it in abeyance?

16 MR. YORK: Yes. For -- the payments to be made to
17 the Hunter Mountain Investment Trust under the proposed
18 settlement could be -- could be done in accordance with the
19 terms of the confirmation order. We'll just hold those
20 payments until such time.

21 THE COURT: We who? Put it in the Court Registry?

22 MR. YORK: Or --

23 THE COURT: Where it will earn 0.18 percent?

24 MR. YORK: No. No. It can remain within the
25 Claimant Trust until the time at which the Class 8 claim is

1 finally and fully resolved.

2 THE COURT: Okay. Meanwhile, I've approved the
3 extension of the Trusts for one year, with Dugaboy saying, we
4 don't think this should happen again and again and again. We
5 reserve our rights. That's not a good solution.

6 MR. YORK: Your Honor, I understand the Court's
7 frustration, but this is the terms of the plan and the
8 confirmation order that were entered. Highland needs to
9 follow it.

10 THE COURT: Okay. What about the estoppel argument
11 that I heard Mr. Morris make?

12 MR. YORK: Well, sure. So, the first time they raise
13 it is here today. And the one thing that -- the difference is
14 that allowing this settlement to go forward is an effective
15 liquidation of the estate versus where things are now, in
16 which any payments that were made is not an effective
17 liquidation. It doesn't expose anyone that would have
18 priority to Class 10 with respect to anything that happens in
19 the future from, you know, not having sufficient funds to deal
20 with it. That's all.

21 THE COURT: Okay.

22 MR. YORK: Thank you, Your Honor.

23 THE COURT: Thank you. All right. Mr. Lang?

24 CLOSING ARGUMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

25 MR. LANG: I'll be brief. Your Honor, there are

1 three issues that we've raised. One is the capital account
2 balance being used for the claim for the Class 10 holders.
3 The plan does not specify that the capital account balance is
4 to be used. Allowing the \$336 million claim to Class 10
5 ensures that Class 11 will not ever receive a dime. That's
6 guaranteed.

7 Alternatively, upon the satisfaction of the Class 9, the
8 \$20 million approximately owed to Class 9, the holders of HMIT
9 should receive 99.5 percent of the total residual. We think
10 that would be a more fair outcome to the Class 11 claimants.

11 THE COURT: Wait, say again?

12 MR. LANG: That, so, of total assets, \$70 million
13 approximately, \$20 million is owed to Class 9.

14 THE COURT: Uh-huh.

15 MR. LANG: Of the remainder from that, HMIT should
16 receive 99.5 percent of those assets, whatever they are, the
17 value, rather than a \$336 million claim. That was the
18 objection.

19 THE COURT: But I didn't get any evidence of a
20 separate way of competing -- of doing that. I heard credible
21 testimony from Mr. Seery about why he used the math he used
22 and I didn't hear any countervailing evidence of, wait, this
23 is a more fair, realistic way of computing it. And what I did
24 hear is the .5 percent limited partnership interest of Dugaboy
25 is subordinated in its payment rights under the limited

1 partnership agreement of Highland.

2 MR. LANG: It's subordinated under the plan, but yes,
3 the plan does not say to use --

4 THE COURT: Under the partnership agreement is the
5 reason the plan did it, is what I've been presented.

6 MR. LANG: I believe Mr. Seery -- and I could be
7 wrong -- I think I heard him say that he has used the other
8 method, but I could have misheard him in the testimony.

9 THE COURT: Well, that's not what I heard. I heard
10 him emphasizing the fact that the Class 8 interests, including
11 that of Dugaboy, are subordinated with regard to payment
12 rights under the Highland partnership agreement. And so
13 that's why he didn't think it made sense to just apply
14 percentages.

15 MR. LANG: That's what he testified to.

16 THE COURT: So I'm just -- anyway, I'm just trying to
17 figure out what the countervailing evidence is here to suggest
18 his methodology is wrong.

19 MR. LANG: I believe the partner -- or, the plan says
20 that the Class 10, when the GUC certification is a Class 10,
21 and the Class 11 received pro rata, it doesn't specify the
22 account balance is to be used as the number to determine what
23 they receive.

24 THE COURT: Okay. You want to point out what you are
25 focused on?

1 MR. LANG: I believe it's under Treatment.

2 THE COURT: Okay.

3 MR. LANG: Section --

4 THE COURT: I don't want to hunt. I want you to tell
5 me what the language is that you think is supportive of that.

6 MR. LANG: And the second -- I guess the secondary
7 issue that we probably should just get to is the release. We
8 think it's broad, and just Dugaboy and Dondero are carved out.
9 And Mr. Morris did send me a proposal last -- yesterday
10 evening that I haven't gotten to. But that is an objection
11 that we have, is just to make sure that the -- that nobody can
12 argue that the release covers any claim Dugaboy might have, if
13 any.

14 THE COURT: Okay. I think many hours ago I remember
15 this being mentioned. I guess it was a little bit more broad
16 than just -- I think it was Highland employees. I don't know.

17 What is the agreement, Mr. Morris, if you're awake there,
18 on --

19 MR. MORRIS: I am awake, Your Honor. Apologies.

20 THE COURT: Okay. I didn't mean to be flippant.

21 MR. MORRIS: Yeah.

22 THE COURT: I get punchy and --

23 MR. MORRIS: That's okay. With respect to the
24 release?

25 THE COURT: Right.

1 MR. MORRIS: We don't have an agreement. We have an
2 agreement -- well, I sent a proposal last night, but it didn't
3 get responded to. If they want to accept that proposal,
4 that's terrific.

5 THE COURT: Okay. I don't know what the agreement
6 says. Are you saying you want to accept what they proposed
7 last night?

8 MR. LANG: No, I have edits to it. I just couldn't
9 -- I was tied up on another filing last night. I have not
10 been able to get to it today.

11 THE COURT: Okay. I'm going to make a ruling today.
12 Okay? If it means y'all sit here in the courtroom a while,
13 fine. But just like all of you, I have a mountain of other
14 stuff waiting for me, so I really want to rule today. So, --

15 MR. LANG: Understood.

16 THE COURT: Yeah.

17 MR. LANG: Maybe we can work on it as soon as I'm
18 done and I can get back to 'em --

19 THE COURT: Okay.

20 MR. LANG: -- and get back to you.

21 Your Honor, the -- it's on Page 23 of the plan. It talks
22 about the Class 10 and Class 11, where the partnership
23 interests, that their treatment, they shall receive as pro
24 rata share of the contingent Claimant Trust interests. And
25 all we're asking is that be used or applied as a 99.5/.5

1 distribution.

2 (Pause.)

3 THE COURT: I'm sorry. Go ahead.

4 MR. LANG: Oh, sorry. I thought you were looking for
5 it.

6 And the last issue is authority. The only point of the
7 authority argument, Your Honor, is that the Joint
8 Administrators were appointed down in the Caymans to
9 investigate the transaction that moved basically the entire
10 ownership, because it's owned a hundred percent down to HMIT,
11 out. They're investigating the transactions. They have not
12 stipulated to authority. They're looking at everything.
13 They've requested a 45-day delay on this motion. And that's
14 all that -- not even asking to deny the 9019. They were just
15 asking time to basically bless this transaction so that nobody
16 could come back and make an issue of it. But I understand
17 your desire to rule today.

18 THE COURT: Okay. Any rebuttal?

19 MR. MORRIS: Yeah, briefly, Your Honor.

20 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

21 MR. MORRIS: I just want to point the Court to two
22 provisions of the operative documents that I think --

23 THE COURT: Okay.

24 MR. MORRIS: -- will resolve even further the issues
25 that we've presented today.

1 The Claimant Trust Agreement -- and I apologize, I don't
2 know if the whole document is in evidence, but I will
3 respectfully suggest to the Court that the Claimant Trust
4 Agreement provides in Article 5, Section 5.1(c), --

5 THE COURT: Okay. Let me catch up.

6 MR. MORRIS: Yes.

7 (Counsel confer.)

8 THE COURT: It's not Debtor's Exhibit 5.

9 MR. MORRIS: Yeah.

10 THE COURT: Daugherty's Exhibit 5?

11 MR. MORRIS: It's Daugherty Exhibit 5?

12 MR. YORK: Yes.

13 THE COURT: Okay.

14 MR. YORK: So we have a full copy at Daugherty --

15 THE COURT: I've got it. Daugherty's Exhibit 5.

16 MR. MORRIS: Okay. So if you could just go to Page
17 27, Your Honor. And this is in response to Mr. Lang's
18 argument about the calculation of the allowed claim. You'll
19 see it deals with contingent trust interests. And the very
20 last sentence says the equity trust --

21 THE COURT: Wait. What page again?

22 MR. MORRIS: 27.

23 THE COURT: Okay.

24 MR. MORRIS: Do you see Section C in the middle is
25 Contingent Trust Interests?

1 THE COURT: No.

2 THE CLERK: It's 26 of the Claimant Trust Agreement,
3 27 of the --

4 THE COURT: Ah, it's 26. Yes. On the bottom, it's
5 26; on the top, it's 27 of 38.

6 MR. MORRIS: Okay.

7 THE COURT: Okay.

8 MR. MORRIS: And at the end of Section C, it says
9 explicitly: The equity trust interests distributed to allowed
10 holders of Class A limited partnership interests -- that's
11 Dugaboy --

12 THE COURT: Uh-huh.

13 MR. MORRIS: -- shall be subordinated to the equity
14 interests distributed to the allowed holders of Class B and C.
15 That's Hunter Mountain. Okay?

16 So the trust agreement provides for exactly what we're
17 doing here. Dugaboy is in fact subordinated to HMIT. It
18 doesn't get paid until HMIT gets paid in full. And Mr. Seery
19 I think compellingly testified as to the reasonable
20 calculation that he did based on very objective numbers to
21 determine each respective limited partner's capital account.

22 With respect to Mr. Daugherty, the plan, which is on the
23 docket at 1943, has a definition of Disputed Claim Reserve.
24 And it states, among other things, that the amount of the
25 disputed claim upon which the disputed claim --

1 THE COURT: Give me the page number.

2 MR. MORRIS: I apologize, Your Honor.

3 THE COURT: I've got it right in front of me.

4 MR. MORRIS: It's Page 7 of the plan.

5 THE COURT: Okay. All right. I'm there. The
6 Defined Term.

7 MR. MORRIS: So the Defined Term "Disputed Claim,
8 Claims Reserve Amount" in the middle says: The amount of the
9 disputed claim upon which the disputed claims reserve is
10 calculated shall be -- they've got an A and then a B -- the
11 amount agreed to by the holder of the disputed claim and the
12 Claimant Trustee or Reorganized Debtor, as applicable. And
13 then it says D: Or is otherwise ordered by the Bankruptcy
14 Court, including an estimated -- an order estimating the
15 disputed claim.

16 And that last provision is vital, Your Honor, because that
17 is the hook upon which you can always hang your hat when you
18 decide that we are not going to wait until 2023 [sic] when the
19 IRS audit may be resolved, because you have the ability, as
20 ordered by the Bankruptcy Court, including estimating the
21 amount of the disputed claim. Which is one of the causes of
22 action that we've asserted in the complaint. It's either to
23 subordinate -- actually, it's to disallow, to subordinate, or
24 to estimate. Because this case does have to end, Your Honor.
25 We actually think he should be bound by the definition in B.

1 It is an agreed-upon amount.

2 I've heard the testimony from Mr. Daugherty that there was
3 no negotiation, but he didn't deny that he signed a document
4 that is called an agreement that sets forth the disputed claim
5 amount. And that is an agreement, and I think that satisfies
6 that definition. And even if it didn't, at some point this
7 case has to end.

8 Thank you, Your Honor.

9 THE COURT: Okay. Thank you.

10 All right. Well, it's been a long day and even a longer
11 case. I think a lot of people were on the receiving end of a
12 little bit of my grumpiness at times today, and I apologize
13 for that.

14 I always feel compelled to say to the lawyers and parties
15 when I rule from the bench that I can assure you it's not
16 knee-jerk. I can assure you my law clerk and I have read
17 every piece of paper submitted. And we come in here I think
18 well-prepared and we just want to listen to the evidence to
19 see if it supports -- who it supports. So I am going to rule
20 from the bench.

21 I first want to make clear that with regard to the motion
22 before the Court, the motion which was filed May 19th at
23 Docket Entry 4216, pursuant to Bankruptcy Rule 9019 and
24 Bankruptcy Code Section 363, the Court is being asked to
25 approve a very broad settlement that is between what are

1 defined as the HMIT entities, seven entities in all; Hunter
2 Mountain Investment Trust; as well as Beacon Mountain, LLC;
3 Rand Advisors, LLC; Rand PE Fund 1, LP; Rand PE Fund
4 Management, LLC; Atlas IDF, LP; and Atlas IDF GP, PLLC. So
5 this proposed compromise and settlement is between all of
6 those Hunter Mountain entities as well as the Reorganized
7 Debtor, the Highland Claimant Trust, the Highland Litigation
8 Subtrust, and the Highland Indemnity Trust.

9 I first will note that notice has been fulsome, reasonable
10 under the circumstances, to provide due process to anyone
11 affected by the proposed compromise.

12 The Court would note that the legal standard is a very
13 well-known and established legal standard here. Among other
14 things, the Court is to look at whether the settlement is
15 fair, reasonable, and in the best interest of the estate;
16 whether it would appear reasonable business judgment has been
17 exercised; is the compromise and settlement within the range
18 of reasonableness?

19 And this involves looking at, among other things, the
20 probability of success in the litigation -- that would be all
21 the various litigation involving HMIT, if it were to go
22 forward; the complexity and likely duration of further
23 litigation and attendant expense, inconvenience, and delay;
24 and all other factors bearing on the wisdom of the compromise.
25 We know that's *Cajun Electric*, *Jackson Brewing*, *Foster*

1 *Mortgage*, among other cases. I probably left out *AWECO*.

2 Anyway, applying all of those legal standards here, I do
3 think the evidence was very thorough in showing that the
4 compromise is a product of good faith and arm's-length
5 negotiations. Indeed, it was almost shocking to this Court
6 when I saw the motion, having the history I have with all of
7 the contested issues, adversary proceedings that have
8 transpired over the past few years between Hunter Mountain and
9 the Debtor.

10 I do think the evidence is that it's fair and equitable
11 and in the best interest of the estate and within the range of
12 reasonableness, given due regard for all of the expense,
13 delay, and likelihood of success.

14 I'll just briefly recount that, as noted early today,
15 there was an Exhibit B attached to the 9019 motion that listed
16 nine unresolved pending pieces of litigation that the Highland
17 entities are embroiled in. Two of those are now gone. This
18 was filed May 8th, and as of January 25th, they're gone. So
19 seven pieces of litigation, of which two will go entirely away
20 if I approve this settlement. The Kirschner adversary claims
21 against Hunter Mountain will go away.

22 We have very little, very little, relatively speaking,
23 left in this bankruptcy case to resolve if I approve this
24 settlement. That alone is very, very significant. Again, we
25 have large shall I say issues with Hunter Mountain. Highland

1 says Hunter Mountain owes the Highland entities something like
2 \$57.69 million on a note that Hunter Mountain is payor on
3 dated December 21st, 2015.

4 The flip side of that is that Hunter Mountain was sued by
5 Kirschner in the Kirschner action on various claims, including
6 this \$57 million note. We have had Hunter Mountain file
7 multiple motions for leave to sue Highland, the Claimant
8 Trust, Mr. Seery. And those have been denied, but are in
9 appeal status or remand status or some further litigation
10 status.

11 And again, we have numerous issues. Hunter Mountain
12 having sought valuation. The Court denied that. It's on
13 appeal.

14 So, so much goes away, so much further litigation goes
15 away and we make a monumental step in ending this long-running
16 case if I approve this settlement.

17 Now, on the flip side of this, I know that Dugaboy,
18 through the voice of Mr. Dondero today, expressed that Hunter
19 Mountain is, I forget the words he used, but not -- this isn't
20 close to being fair and equitable as far as he was concerned
21 for Hunter Mountain. That Hunter Mountain, in addition to
22 being through with litigation in this bankruptcy-land, would
23 be paid \$500,000 within five days. They would also be paid
24 separately \$10 million as an initial distribution, with the
25 hope of two more \$6.5 million distributions in '27 and '28.

1 And it would get a note, which I think has \$24 million -- I
2 think it was less than that, \$17 or \$18 million left on it,
3 perhaps, on which Dugaboy is a maker. The debtor is one of
4 the two payees. The Debtor gives up its rights in that note.

5 It looks like Hunter Mountain is getting a lot. And
6 again, the way this estate has been liquidated, there is money
7 that can flow to it as a Class 10 equity here, as the evidence
8 has shown.

9 So I am approving the settlement. I am specifically
10 overruling the remaining objections of both Dugaboy and Mr.
11 Daugherty.

12 As far as Mr. Daugherty's argument that the settlement
13 violates the absolute priority rule or violates the terms of
14 the plan or the confirmation order or the trust agreement by,
15 putting words in his mouth, skipping over the full payment of
16 whatever his Class 8 claim is going to be and allowing a
17 subordinate class, Class 10, to get paid, I have flipped and
18 studied the wording of the plan and the confirmation order and
19 the defined term for Disputed Reserve. And I referred to a
20 disputed reserve as a tried-and-true provision in Chapter 11
21 plans. I think it does what needs to happen for precisely
22 this kind of situation, that as long as an appropriate amount
23 is being held in reserve, and the Court can decide what is an
24 appropriate amount, we don't have to hold up a bankruptcy
25 estate for years and years.

1 So the disputed claim reserve is what allows me to find
2 this is fair and equitable and this isn't some sort of
3 violation of the absolute priority rule. I think this is
4 precisely the reason the disputed claim reserve mechanism is
5 in place, so that we can get on with the business of getting
6 more people paid sooner.

7 And based on the evidence I've heard, it is an appropriate
8 amount, I think. We're doing a lot of crystal-balling, what
9 may or may not ever happen when, but I think, based on all the
10 persuasive evidence I've heard, the Daugherty objection should
11 be overruled.

12 As far as Dugaboy, I, as noted, am overruling that
13 objection. I didn't have any persuasive evidence, solid
14 evidence to show me that Mark Patrick doesn't have appropriate
15 corporate governance authority to enter into this settlement
16 agreement.

17 I realize there's a lot swirling around in the Cayman
18 Islands, and that's going to play out however it plays out.
19 But as of today, I don't have any evidence that he doesn't
20 have authority currently to enter into the settlement. And it
21 speaks volumes that The Foundation backed down. It would seem
22 that they have been convinced that the lack-of-authority
23 argument was not one they wanted to press today. So that is
24 overruled.

25 I feel like we have all seen this movie many times before.

1 I wanted to understand, perhaps I went deeper than I needed
2 to, I know Mr. Phillips thinks I went deeper than I needed in
3 hearing some of the testimony from Mr. Patrick and Mr.
4 Dondero, but I'm just trying to understand what's happening
5 here. Why people who were so lockstep and friendly for years
6 of this case suddenly, when we're right on the brink of maybe
7 the case being put to bed -- I'm optimistic; it's not quite
8 that close -- all of a sudden they're at loggerheads.

9 And so how many times have I seen this over the years,
10 whether it's a breakdown in business and personal
11 relationships, Mr. Daugherty, Mr. Terry, Grant Scott, now Mark
12 Patrick? I'm probably leaving out someone. I don't know. I
13 feel like I'm watching the same movie. Okay, now these two
14 have parted ways. Now these two have parted ways.

15 And then, as I recall, when Grant Scott withdrew his
16 objection to the HarbourVest settlement all these years ago,
17 2020, 2021, which he had been lodging for Charitable DAF, I
18 think it was, --

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: -- then what happens? Well, I think Mark
21 Patrick came in to work or replace Grant Scott, and then a
22 bunch of people ended up getting sued in a different court
23 regarding the settlement I approved, the HarbourVest
24 settlement I approved.

25 So why am I saying this? I just, I'm trying to understand

1 things I'll never understand. I wanted to maybe hear
2 something that would make me better understand what's happened
3 now between Hunter Mountain, Mark Patrick, and Dondero and
4 Dugaboy, because it sure seems like they were on the same team
5 for many years. But it was very likely irrelevant, as Mr.
6 Phillips kept getting up and down and saying. I just was
7 seeing if it would lead to something relevant that would bear
8 on the wisdom of this compromise, since that's one of my other
9 legal standards. I'm supposed to consider all factors that
10 might bear on the wisdom of the compromise. And so I guess
11 that's where I was going in allowing all of that to come in.

12 All right. Well, while everyone is not thrilled with this
13 compromise and settlement, I heartily congratulate the human
14 beings that made it happen, and they know who they are. Maybe
15 I do, maybe I don't. But I think it's rather amazing. And I
16 hope that we are not coming to court for hearings in 2032. I
17 don't know who among us will be alive. I'm not going to be
18 alive by then. Certain people might cheer if that's the case.
19 But I congratulate the human beings who made this happen. And
20 you know who you are. Maybe I do, maybe I don't, but I
21 congratulate you.

22 All right. So I reserve the right to supplement or amend
23 this oral bench ruling in a more fulsome written order. I am
24 asking Mr. Morris and his team to be the scriveners on that
25 order. And obviously, you're going to run it by the other

1 lawyers here who participated today.

2 Is there anything else before we wrap it up?

3 MR. MORRIS: Just one other thing, Your Honor. And I
4 greatly appreciate your comments.

5 When we draft the order, are we authorized to say that
6 this settlement is approved not only pursuant to 9019 but to
7 363? Because there are asset sales that are part of this. We
8 moved under that provision, and I didn't hear Your Honor
9 reference that, --

10 THE COURT: Okay.

11 MR. MORRIS: -- but we would like to include that in
12 the order.

13 THE COURT: You may. And that is precisely why I
14 said I reserve the right to supplement or amend, because many
15 times I get out of here and look at this transcript and, ooh,
16 I forgot to say whatever.

17 MR. MORRIS: Yeah.

18 THE COURT: So I meant to say that and I didn't, so
19 you may add that.

20 MR. MORRIS: And I assume all Your Honor wants is a
21 fairly simple form of order that incorporates --

22 THE COURT: I do not want a 40-page order.

23 MR. MORRIS: Right.

24 THE COURT: Okay?

25 MR. MORRIS: Just an order that incorporates your

1 comments on the record, and to the extent that Your Honor
2 wants to amend that, you'll do so at your leisure?

3 THE COURT: Yes.

4 MR. MORRIS: Perfect.

5 THE COURT: All right.

6 MR. MORRIS: Thank you.

7 THE COURT: Thank you all. We're adjourned.

8 MR. PHILLIPS: Thank you, Your Honor.

9 THE CLERK: All rise.

10 (Proceedings concluded at 4:38 p.m.)

11 --oOo--

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

06/27/2024

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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