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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, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P, et al., Appellees.	Case No. 3:25-cv-02579-B

TO THE EXTENT NECESSARY, APPELLANT THE DUGABOY INVESTMENT TRUST'S MOTION FOR LEAVE TO APPEAL ORDER DENYING FIFTH MOTION TO RECUSE

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Pursuant to the Court's order of September 26, 2025, (Dkt. 2), Appellant The Dugaboy Investment Trust ("Dugaboy") respectfully files this Motion for Leave to Appeal.

INTRODUCTION

To the extent the Court's leave is required for Dugaboy to appeal the order denying the motion to recuse, the Court should grant such leave. Under 28 U.S.C. § 158(a)(3) and Federal Rule of Bankruptcy Procedure 8004(a)(2), a party must seek leave to appeal an interlocutory order prior to final disposition of a case. While Dugaboy did not seek leave before appealing the order denying recusal, it appealed without leave only because, based on its interpretation of current controlling case law, no such leave was required because the appeal is of a final order and as of right. *See* Fed. R. Bankr. P. 8003. The bankruptcy court has issued at least two final orders on matters intertwined with the recusal motion that is the subject of this appeal. The appeal was not deemed by Dugaboy as interlocutory and, therefore, Dugaboy had no intention of violating any procedural rule. But because the Court has specifically instructed Dugaboy to file a Motion for Leave, Dugaboy now so files. And to the extent such leave is required, the Court should grant the motion.

FACTUAL BACKGROUND[1]

This Motion seeks the Court's leave to appeal from the bankruptcy court's September 2, 2025 "*Order Denying Fifth Motion to Recuse Judge*." Bankr. Dkt.[2] 4379. This recusal motion (Bankr. Dkt. 4372) focuses squarely on the uniquely prejudicial circumstances created by Chief Judge Stacey G.C. Jernigan's publication of two fiction novels with numerous similarities to her real cases and litigants, in particular a villain bearing very close similarity to Mr. Dondero. And from being deterred by the ensuing public controversy, Chief Judge Jernigan worked on a forthcoming third book during the same time frame she issued the orders that Dugaboy seeks to appeal.[3] Indeed, in a stunning decision, Chief Judge Jernigan is seeking to use the controversy and the filing of further recusal motions as a key part of her publicity campaign to sell her new book.[4] Not only does her marketing campaign give Chief Judge Jernigan a direct financial interest in further recusal proceedings involving Mr. Dondero, it effectively pressures her to stick to her guns

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[1] Under Fed. R. Bankr. P. 8004(b)(1), a motion for leave to appeal must include "(A) the facts needed to understand the question presented; (B) the question itself; (C) the relief sought; (D) the reasons why leave to appeal should be granted; and (E) a copy of the interlocutory order or decree and any related opinion or memorandum." A copy of the Bankruptcy Court's Order denying the motion to recuse is attached as Exhibit A.

[2] "Bankr. Dkt" refers to the main bankruptcy case, *In re Highland Management, L.P.*, Bankr. N.D. Tex. Case No. 19-34054-sgj-11.

[3] Ex. B (publicity flyer for forthcoming third novel).

[4] *See id.* (quoting extensively from a 2023 Wall Street Journal article that interviewed Mr. Dondero and discussed the controversy at length).

and reject any further recusal requests for fear of disappointing her fan base and losing sales.

Dugaboy's impetus for filing the recent recusal motion stems from the Fifth Circuit's April 16, 2025 decision on rehearing of a mandamus petition from the Bankruptcy Court's denial of a previous recusal motion. *Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466, at *7 (5th Cir. Apr. 16, 2025). In that decision, the Fifth Circuit acknowledged the lack of any precedent for the situation created by Chief Judge Jernigan's novels, stating that "[d]ue to the similarities between the characters in Chief Judge Jernigan's novel and the litigants currently before her court, *a strong argument could be made that [Chief Judge Jernigan] had a duty to recuse*," but ultimately declined to order recusal because it concluded that the extremely high standard for mandamus relief had not been met. *See id*. (emphasis added). In other words, the Fifth Circuit suggested a motion to recuse might have succeeded if brought under the ordinary abuse-of-discretion standard in a regular appeal. *See id.*

Dugaboy took up that challenge, filing a new recusal motion that encouraged Chief Judge Jernigan to "step back" before proceeding with an appeal. Bankr. Dkt. 4372 at 5. Instead, Chief Judge Jernigan denied that motion. Bankr. Dkt. 4379.

Shortly after declining to recuse, Chief Judge Jernigan held a hearing and

issued an Order (Bankr. Dkt. 4401)[5] in which she granted Highland's Motion to Fix the Allowed Amount of Dugaboy's Class 11 Interests (*see* Bankr. Dkt. 4362). The purpose and effect of the Class 11 Order was to "fix" the value of Dugaboy's claims to a ceiling of a specific dollar amount and cut off any avenue for possible further recoveries. In other words, this was a "final order" with respect to Dugaboy's claims. *See, e.g.*, *In re Coastal Plains Inc*., 338 B.R. 703, 713 (N.D. Tex. 2006) (explaining finality for appellate purposes in "the unique procedural posture of bankruptcy cases"). Moreover, Chief Judge Jernigan repeatedly stated on the record that she thought the objections to the motion were extremely close to being sanctionable because the entire issue was final and subject to res judicata. *See, e.g.*, Exhibit C, Sept. 18, 2025 Hearing Transcript at 76:8–16; 13:12–19. Since Chief Judge Jernigan stressed that the matter had either become final weeks earlier or was certainly final by the time of the hearing, the Bankruptcy Court's Class 11 Order again showed that an appeal was appropriate as a matter of course and was not interlocutory. *See id*. 13:12–19; 164:4–13.

Furthermore, the concerns behind the recusal motion came on full display at the September 18, 2025 hearing on the Class 11 Motion, thus closely connecting the appeals on these two matters. In what was perhaps the most extreme display to date

[5] Dugaboy is challenging this Order in another appeal, N.D. Tex. Case No. 3:25-cv-02724-L, currently before Judge Lindsay.

of bias against Mr. Dondero and anyone associated with him, Chief Judge Jernigan threatened Dugaboy's current counsel, Geoffrey Harper, with Rule 11 sanctions if he continued to "recycle" arguments previously made by prior Dugaboy attorneys, while also rebuking him for offering novel arguments that prior counsel never made. *See* Ex. C, Hrg. Tr. 21:23–22:02; 61:9–62:1; 76:4–77:3; 77:17–78:19.

See 76:8–16:

> THE COURT: I really am very perplexed about this hearing we had today. And I'm really—Mr. Morris said this is almost Rule 11-sanctionable, and I don't think that was a farfetched statement.
> MR. HARPER: Understood, Your Honor.
> THE COURT: I think a lot of us who have been involved with this case for a very long time, we're just very weary of the *déjà vu* all over again. And we're almost too weary to move for sanctions, entertain sanctions. Do you hear what I'm saying? I really want you to hear what I'm saying. It's been a merry-go-round of lawyers. I don't know what else term to use for it. How many lawyers do you think have appeared for Dugaboy in five years or however long this has been?

Compare, e.g., 21:23–22:06:

> THE COURT: Why wasn't your client making this argument in February 2021 when the plan was performing?
> MR. HARPER: Your Honor, I can't answer that. I do not know.
> THE COURT: Well, you can't change lawyers and use that as an excuse. So what is your excuse?

Chief Judge Jernigan's threat was clear: Lawyers who represent Dugaboy or Dondero due so at their own peril. Parties who seek to preserve objections as required by law—as even opposing counsel conceded was necessary at that time—

were risking monetary sanctions or worse from Chief Judge Jernigan. And new arguments were also dangerous. So at the same time Chief Judge Jernigan was circulating publicity about her new book and seeking to drum up interest because of the issues raised in this case, Chief Judge Jernigan was making further rulings and arguments. Indeed, had Chief Judge Jernigan ruled otherwise, it would have required significant changes to her publisher's promotional materials[6] and probably depressed her book sales.

The effect (and presumably the purpose) of the Bankruptcy Court's admonition was to create a chilling effect meant to deter Dugaboy's and Mr. Dondero's counsel from performing their ethical duty to zealously advocate on behalf of their clients.

As Chief Judge Jernigan herself has repeatedly stated, the issue is final.[7] Now is the time to resolve the merits of Dugaboy's appeal on the recusal issue. Both the Class 11 ruling and the approval of the Rule 9019 settlement have brought the overall bankruptcy case close to completion, especially on the issues of concern to Dugaboy.[8] By contrast, to the extent Dugaboy participates in further bankruptcy-

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[6] *See* Ex. B., publicity flyer for forthcoming third novel that extensively discusses the long-running controversies between Chief Judge Jernigan and Mr. Dondero.

[7] *See, e.g.*, Ex. C, Sept. 18, 2025 Hrg. Tr. at 73:24–74:2 ("I think the statement is absolutely true that it's time for this case to end.").

[8] This near finality of the overall case, combined with final orders specifically addressing Dugaboy's interests, is what distinguishes the current recusal motion from an earlier recusal appeal that Judge Kinkeade denied in 2022. *See Dondero et al. v. Jernigan (In re Highland Capital*

court proceedings, Chief Judge Jernigan's escalating pattern of bias will cause it further harm. Finally, if Dugaboy is forced to wait years for all remaining claims to be resolved, it may be too late and too difficult to unwind the wrongful transactions that have harmed its interests.

QUESTION PRESENTED

To the extent that this appeal would be interlocutory and leave is needed, the question that would be presented on appeal is whether Chief Judge Jernigan abused her discretion in denying Dugaboy's motion to recuse.[9]

RELIEF SOUGHT

To the extent leave is needed, Dugaboy asks this Court to allow it to appeal the denial of its Fifth Motion for Recusal. If successful, Dugaboy will seek an order requiring Chief Judge Jernigan to recuse herself from this bankruptcy case and any other present or future matters involving James Dondero or others associated with him. Dugaboy will also seek vacatur or reversal of all potentially bias-tainted

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Mgmt., L.P.), Civ. No. 3:21-CV-0879-K, 2022 WL 394760 (N.D. Tex. Feb. 9, 2022) (Kinkeade, J.).

[9] Abuse of discretion is the Fifth Circuit's standard for reviewing a judge's denial of a motion to recuse on direct appeal. *See, e.g.*, *Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003). But other circuits apply a de novo standard of review. *See, e.g.*, *Grove Fresh Distributors, Inc. v. John Labatt, Ltd.*, 299 F.3d 635, 639 (7th Cir. 2002); *Amaro-Borilla v. Barr*, 792 F. App'x. 493, 494 (9th Cir. 2020) (mem. op.). In seeking review of the Fifth Circuit decision discussed above (*Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466 (5th Cir. Apr. 16, 2025)), Dugaboy and Mr. Dondero have filed a petition for certiorari with the United States Supreme Court presenting this question: "Should a judge's order declining to recuse be reviewed de novo or for abuse of discretion?" *See Dondero et al. v. Jernigan et al*, Petition for a Writ of Certiorari, Case No. 25-355 (Sept. 22, 2025).

decisions or actions taken by Chief Judge Jernigan starting from the time she began writing her books, including at minimum the four decisions that are the subject of Dugaboy's appeals.[10]

ARGUMENT AND AUTHORITIES

A. Standard for Final Appeals.

District courts have jurisdiction to hear appeals "from final judgments, orders, and decrees." 28 U.S.C. § 158(a)(1). Because the jurisdictional statute allows appeal from both "cases and proceedings" in bankruptcy court, *see id*. § 158(a), the Supreme Court has held that "proceedings" within a larger bankruptcy case can separately support final appeals if they give final resolution to particular parties or discrete disputes. *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37 (2020). Because a bankruptcy case "embraces an aggregation of individual controversies, orders in bankruptcy cases qualify as 'final' when they definitively dispose of discrete disputes within the overarching bankruptcy case." *Id*.

The Fifth Circuit has likewise held that for purposes of determining the finality of a bankruptcy order, each matter that arises between the filing of the bankruptcy petition and the issuing of a closing order is treated as a separate

[10] This recusal order is one of four decisions by the Bankruptcy Court that Dugaboy is now appealing. These related appeals before other District Courts are of the Order Approving Settlement Between the Highland Entities and the HMIT Entities (Dkt. 4297), the Order Regarding Stay Requests (Dkt. 4333), and the Order Fixing Allowed Amount of Class 11 Interests (Dkt. 4401).

proceeding. *See Smith v. Revie* (*In re Moody*), 817 F.2d 365, 367–68 (5th Cir. 1987). The Fifth Circuit "has long rejected adoption of a rigid rule that a bankruptcy case can only be appealed as a single judicial unit at the end of the entire bankruptcy proceeding." *In re Bartee*, 212 F.3d 277, 282 (5th Cir. 2000) (internal quotation marks omitted). And this Court has previously held that a "final" order in a bankruptcy case includes any order that "ends a discrete judicial unit in the larger case." *Coastal Plains*, 338 B.R. at 713.

The Fifth Circuit has repeatedly recognized that because of the complexity of bankruptcy cases and subsidiary proceedings and the large number of interested parties, what constitutes a "final" judgment or order in the bankruptcy context is more broad and flexible than in other types of proceedings. *See In re ASARCO, LLC*, 650 F.3d 593, 599–600 (5th Cir. 2011). "Our approach to determining whether an order is . . . appealable in a bankruptcy case is flexible," and views "finality in bankruptcy proceedings . . . in a practical, less technical light." *In re Kizzee–Jordan*, 626 F.3d 239, 242 (5th Cir. 2010). Instead, in the Fifth Circuit "[a]n appealed bankruptcy order will be considered final if it constitutes either a final determination of the rights of the parties to secure the relief they seek, or a final disposition of a discrete dispute within the larger bankruptcy case." *Id.* at 242.

B. <u>Standard for Interlocutory Appeals.</u>

District courts also have jurisdiction to hear appeals "from interlocutory

orders and decrees . . . of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title." 28 U.S.C. § 158(a)(3). Whether to grant leave for an interlocutory appeal is within the discretion of the district court. *In re O'Connor*, 258 F.3d 392, 399–400 (5th Cir. 2001). In making this determination, district courts in the Fifth Circuit typically analyze the standards set forth under 28 U.S.C. § 1292(b). *In re Searex Energy Servs*., Civ. No. No. 09–5817, 2009 WL 2868243, at *1 (E.D. La. Sept. 1, 2009). Under this standard, (1) a controlling issue of law must be involved; (2) the question must be one where there is substantial ground for difference of opinion; and (3) an immediate appeal must materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b); *Kelley v. Cypress Fin. Trading Co., L.P*., 518 B.R. 373, 377 (N.D. Tex. 2014).

C. To the Extent Required, the Court Should Grant Leave to Appeal Because the Bankruptcy Court Has Already Issued Final Appealable Orders on Matters Intertwined with Recusal.

1. The Bankruptcy Court's approval of the Rule 9019 Settlement is a final appealable order.

"A bankruptcy case need not be appealed as a single judicial unit at the end of the entire bankruptcy proceeding." *In re Tullius*, 500 F. App'x. 286, 289 (5th Cir. 2012). Instead, an appealable order "will be considered final if it constitutes either a final determination of the rights of the parties to secure the relief they seek, or a final disposition of a discrete dispute within the larger bankruptcy case." *Kizzee–*

Jordan, 626 F.3d at 242. Here, the Bankruptcy Court's approval of the proposed settlement (Bankr. Dkt. 4297) resolves pending litigation claims between two of the biggest players, Highland Capital and Hunter Mountain Investment Trust (HMIT), for amounts putatively valued in the hundreds of millions that dwarf the values of smaller claims belonging to Dugaboy and other creditors.[11] The approval of a settlement between the largest players disposing of the vast majority of the money is a significant step toward ending and winding up most of the core bankruptcy case. Fifth Circuit law is clear that such a settlement is close enough to a final judgment or final order for the whole case, which allows Dugaboy to pursue final appeals on intertwined matters such as the denial of recusal. *See, e.g.*, *In re Reagor-Dykes Motors, L.P.*, 613 B.R. 878, 887 (Bankr. N.D. Tex. 2020) ("An order approving a settlement under Rule 9019 has res judicata effect as a final order.").

The finality of a bankruptcy court's approval of a settlement under Rule 9019 also depends on whether the appellants will have another chance to object to the settlement agreement. *See Ades-Berg Investors v. Breeden (In re Bennett Funding Group)*, 439 F.3d 155, 160 (2d Cir. 2006). In this case, they did not. *See* Bankr. Dkt. 4297 (Bankruptcy Court's order). For these reasons, the Bankruptcy Court's approval of the Rule 9019 settlement creates sufficient finality for the case as a

[11] *See, e.g.*, Highland and HMIT's motion to approve the settlement, Bankr. Dkt. 4216 (May 19, 2025), at 4–5.

whole to allow Dugaboy to pursue the denial of recusal as a final appeal by right.

2. The Class 11 Order is a final order directly related to the recusal issue.

The Bankruptcy Court's Order Fixing the Allowed Amount of Class 11 Interests (Bankr. Dkt. 4401) is also a final appealable order because it "fixed" the purported dollar value of Dugaboy's claims and closed off any avenue for possible further recoveries. In other words, this was effectively a final judgment on the "discrete judicial unit" of Dugaboy's claims. *See Coastal Plains*, 338 B.R. at 713. The Fifth Circuit has held that "as long as an order allowing a claim or priority [in a bankruptcy proceeding] effectively settles the amount due the creditor, the order is 'final.'" *In re Moody*, 849 F.2d 902, 903 (5th Cir. 1988) (citing *In re Saco Local Development Corp*., 711 F.2d 441, 448 (1st Cir.1983)). The Bankruptcy Court's Class 11 Order did precisely that, finding that "Class 11 [Dugaboy] is subordinated to Class 10 [HMIT] such that holders of Allowed Class 11 Interests cannot receive any distributions from the Claimant Trust until the holders of allowed Class 10 Interests are paid in full." Bankr. Dkt. 4401 ¶ 8.

Both the 9019 Order and the Class 11 ruling meet the bankruptcy standard for final judgments, one because it resolved most of the remaining claims for the case as a whole, and the other because it specifically resolved Dugaboy's claims. The recusal order, which is directly intertwined to both those appeals, can be pursued as a final appeal simultaneously with them.

3. Recusal is necessary based on the Court's continuing and escalating displays of bias.

The facts of Chief Judge Jernigan's conduct at the September 18 hearing on the Class 11 motion (as described above) are so egregious as to underscore the need for recusal. Most garden-variety recusal motions do not feature a judge who (1) has written and continues to write novels featuring a villain who is a thinly disguised impersonation of a major litigant in the case before her, (2) seeks publicity and extra sales of those same novels by trading on the controversy over prior recusal motions—where further rulings will no doubt appear in future publicity campaigns; or (3) has threatened counsel with Rule 11 sanctions for preserving objections by repeating colorable and non-frivolous arguments made by prior counsel, in a transparent effort to chill and deter Mr. Dondero's chosen counsel from zealously advocating on his behalf. If this Court denies Dugaboy's Motion for Leave to Appeal, there will be no restraint on and no recourse from Judge Jernigan's continuing and escalating hostility toward Dugaboy and Mr. Dondero, with his counsel effectively muzzled by baseless threats of sanctions.

D. Even Taken As An Interlocutory Appeal, Leave Should Be Granted to Appeal Under 28 U.S.C. §158(a)(3) and 28 U.S.C. §1292(b).[12]

Dugaboy's appeal is final and not interlocutory for the reasons given above. But even if it were interlocutory, the Court should grant leave to appeal the recusal decision as an interlocutory order. As explained below, the issues presented in the underlying appeal meet the three criteria for granting leave to file an interlocutory appeal under 28 U.S.C. §1292(b).

1. The issue of whether Judge Jernigan should have recused herself presents a controlling question of law.

The first prerequisite for allowing an interlocutory appeal is that the primary issue in the underlying appeal presents a controlling question of law. "Whether an issue of law is controlling generally hinges upon its potential to have some impact on the course of the litigation." *Ryan v. Flowserve Corp*., 444 F. Supp. 2d 718, 723 (N.D. Tex. 2006). Courts have reasoned that "[a]lthough the resolution of an issue need not necessarily terminate an action in order to be 'controlling,' it is clear that a question of law is 'controlling' if reversal of the [order] would terminate the action." *Adhikari v. Daoud & Partners*, 2012 WL 718933, at *2 (S.D. Tex. Mar. 5, 2012). Chief Judge Jernigan's decision to deny the recusal motion will have a substantial impact on the remainder of the litigation to the extent that Dugaboy or Mr. Dondero

[12] By arguing that this appeal meets the standards for granting leave to file an interlocutory appeal, Dugaboy does not waive its primary argument that this appeal is a final appeal for which leave is not required.

participate in further proceedings before Chief Judge Jernigan, as they or their counsel will likely face the same biased treatment. Any future rulings are at risk of being similarly tainted (or at least of being perceived as tainted). By contrast, these problems will go away if Chief Judge Jernigan recuses herself and is replaced by a different judge.

Furthermore, if this Court determines at the merits stage that Chief Judge Jernigan should have recused herself from Dugaboy and Dondero-related matters when she began writing her novels, then many of her prior decisions (including the four orders that Dugaboy is appealing) may be vacated or reversed. Thus, regardless of how this Court rules on the Motion for Leave, the issue of recusal remains central to the bankruptcy and its resolution and is therefore "controlling" for purposes of this analysis.

2. A substantial ground for difference of opinion exists as to the issue of recusal.

The second prerequisite for interlocutory appeal requires that the "controlling question of law" be one on which there is a "substantial ground for difference of opinion." *In re Cobalt Int'l Energy, Inc. Securities Litig*., 2016 WL 949065, *4 (S.D. Tex. Mar. 14, 2016). A substantial ground for a difference of opinion exists here because this is a "novel and difficult question of first impression." *Ryan*, 444 F. Supp. 2d at 723–24. The Fifth Circuit specifically noted that the question whether a federal judge writing fiction novels about actual participants in her cases presents

grounds for recusal was without precedent. No. 24-10287, 2025 WL 1122466, at *7 ("To our knowledge, no court . . . has ever analyzed § 455(a) on facts like these."). No court has had to decide on such unique facts before, showing a substantial ground for a difference of opinion.[13]

3. An immediate appeal of the recusal issue will materially advance the ultimate termination of this litigation.

Finally, the third prerequisite is whether allowing an interlocutory appeal will materially advance the ultimate termination of the litigation. This is because the "institutional efficiency of the federal court system is among the chief concerns motivating § 1292(b)," and judicial economy is therefore at the very heart of the analysis. *Ryan*, 444 F. Supp. 2d at 723.

An interlocutory appeal materially advances the ultimate termination of the litigation when it conserves the time and resources of the courts and parties involved. "An appeal materially advances the termination of litigation when it accelerates or simplifies trial proceedings." *Panda Energy Intern., Inc. v. Factory Mut. Ins.,* 2011 WL 610016, at *5 (N.D. Tex. Feb. 14, 2011). "Whether an immediate appeal may

[13] A second possible "substantial ground for difference of opinion" exists because (as discussed above) there is a circuit split on the standard of review for a recusal denial on a direct appeal after final judgment. The Fifth Circuit says the standard is abuse of discretion, while other circuits apply de novo review. *Compare Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003) (abuse of discretion) *with, e.g., Grove Fresh Distributors, Inc. v. John Labatt, Ltd.*, 299 F.3d 635, 639 (7th Cir. 2002) *and Amaro-Borilla v. Barr*, 792 F. App'x. 493, 494 (9th Cir. 2020) (mem. op.) (de novo). As noted above, Dugaboy and Mr. Dondero have petitioned the U.S. Supreme Court for a writ of certiorari to resolve this circuit split. *Dondero et al. v. Jernigan et al.,* No. 25-355 (pet. filed Sept. 22, 2025).

materially advance the ultimate termination of the litigation requires courts to assess whether interlocutory appeal will speed up or slow down the litigation." *Pemex Exploracion y Produccion v. BASF Corp*., 2011 WL 11569219, at *12 (S.D. Tex. Feb 11, 2011).

If the present Motion is denied, the recusal decision will not face meaningful review under an ordinary appellate standard until the final resolution of the bankruptcy for all parties, which could be years away. Waiting until the ultimate conclusion of the underlying bankruptcy for all parties to allow Dugaboy's appeal to move forward would result in needless delay and wasteful expense for everyone involved. By allowing appeal now and proceeding to briefing on the merits, this case can more quickly be put back on track to its final resolution.

E. Leave to Appeal Should Be Granted For Reasons of Practicality and Fairness.

If Dugaboy is not allowed to proceed with a timely appeal, it may lose the recusal issue by default. If Dugaboy must wait years until the ultimate conclusion of the bankruptcy proceeding for all parties before this Court can even consider the merits of its arguments, Dugaboy risks losing its chance for meaningful relief to the encroachment of equitable mootness. Under this doctrine, courts can dismiss appeals of bankruptcy decisions to favor the finality of reorganization plans. *See Matter of Texxon Petrochemicals LLC*, 67 F. 4th 259, 261 (5th Cir. 2023). Equitable mootness allows such dismissals when the debtor's reorganization has progressed to

the point that granting the requested relief would be impractical or inequitable to other parties. *In re CTLI, LLC*, 534 B.R. 895, 910 (Bankr. S.D. Tex. 2015). Even if effective relief could "conceivably be fashioned," courts may deny motions as equitably moot if implementing such relief would disrupt the reorganization process or harm the interests of other parties. *Id.*

As a result of this equitable Catch-22, Dugaboy is told on the one hand to delay its appeal until final judgment in the main bankruptcy proceeding, but once it gets there it risks being told that it is "too late" and equity now demands that it yield what it was owed to those who now have it. *See id*. The Fifth Circuit has already recognized that Dugaboy will be prejudiced if forced to wait for the conclusion of the entire bankruptcy proceeding. *See* No. 24-10287, 2025 WL 1122466, at *3 ("If a party could not challenge bias until appealable final judgment has issued, prejudice will have already worked its evil.").

Accordingly, if this Motion for Leave is not granted, Dugaboy may never get its day in court to appeal Judge Jernigan's denial of recusal under a regular appellate standard of review.

CONCLUSION

For the reasons above, the Court should grant this Motion for Leave to Appeal because final orders have been entered in this bankruptcy as to Dugaboy's interests, and therefore Dugaboy may pursue the present appeal as a final appeal by right.

Alternatively, this Court should treat Dugaboy's Motion for Leave to Appeal as seeking an interlocutory appeal and grant it. An immediate appeal will materially advance the ultimate termination of this litigation and will provide meaningful and necessary guidance on novel and important issues on which substantial grounds for difference of opinion exist. All the requirements for interlocutory review are satisfied here, and Dugaboy's appeal on the recusal issue should be allowed to proceed on its merits.

Dated: October 10, 2025

Respectfully submitted,

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Counsel for Appellant The Dugaboy Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 10, 2025, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Geoffrey S. Harper
Geoffrey S. Harper

CERTIFICATE OF CONFERENCE

Pursuant to Local Civil Rule 7.1(b), the undersigned hereby certifies that on October 10, 2025 he conferred with John Morris, counsel for the Highland Appellees, and was informed that the Appellees are opposed to the relief requested in this Motion.

*/s/ Geoffrey S. Harper*_____
Geoffrey S. Harper

CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. Bankr. P. 8013(f)(3)(A) because, excluding the portions excluded by Fed. R. Bankr. P. 8015(g), this document contains 4,742 words.

2. This document complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word, typeface Times New Roman, 14-point type (12-point type in footnotes).

*/s/ Geoffrey S. Harper*_____
Geoffrey S. Harper

EXHIBIT A

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 2, 2025

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	**CASE NO. 19-34054-SGJ-11**
L.P.,	§	**(Chapter 11)**
Reorganized Debtor.	§	

ORDER DENYING FIFTH MOTION TO RECUSE JUDGE
[DE # 4372]

On August 15, 2025, another motion to recuse the presiding bankruptcy judge ("Presiding Judge") in the main bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor")—now approximately six years since the bankruptcy case's filing in October 2019—was filed by James Dondero, NexPoint Advisors, L.P., NexPoint Asset Management, L.P., NexPoint Real Estate Partners, LLC, The Dugaboy Investment Trust, and the Get Good Trust. These Movants have now filed five motions to recuse in the last four-and-a-half

years.

First Motion to Recuse. *See* DE ## 2060, 2061, & 2062 (this first one was filed approximately 17 months post-petition, and one month after the bankruptcy court confirmed Highland's Chapter 11 plan, and two business days before the bankruptcy court was scheduled to hear a motion of Highland to hold James Dondero in contempt of a TRO). The bankruptcy court denied this first motion, in an Order dated March 23, 2021, DE # 2083. Movants appealed this Order, and that appeal was dismissed by the District Court for lack of jurisdiction on February 9, 2022 (Case No. 3:21-cv-0879-K, 2022 WL 394760).

Second Motion to Recuse. *See* DE ## 3406, 3470, and 3471 (this second one was originally filed on July 20, 2022, approximately five months after the District Court dismissed the appeal of the Order denying the First Motion to Recuse, and six days after the Fifth Circuit ruled on the appeal of the Highland confirmation order, affirming in substantial part the Plan and then amended on August 25, 2022). After a status conference, on September 1, 2022, the bankruptcy court issued an order denying the Second Motion to Recuse for procedural defects. DE # 3479.

Third Motion to Recuse. *See* DE ## 3570 & 3571 (this third one was filed approximately six weeks later, on October 17, 2022; this was 10 days after the Fifth Circuit had issued, on October 7, 2022, a denial of a request for a stay in connection with its ruling on the Highland Plan and confirmation order; there also happened to be a petition for *writ of certiorari* pending at the U.S. Supreme Court regarding the Plan and confirmation order). More than 7,000 pages of material were submitted in connection with this Third Motion to Recuse. The bankruptcy court denied this

Third Motion to Recuse, in a 36-page Memorandum Opinion and Order, entered March 6, 2023. DE ## 3675 and 3676. Movants filed petitions for writ of mandamus at both the District Court and the Fifth Circuit, which were denied, first, in an unpublished decision at the District Court, DE # 25 (Case No. 3:23-cv-0726-S), and then again at the Fifth Circuit, on November 5, 2024 (No. 24-10287, 2024 WL 4678879), and then again on a motion for rehearing at the Fifth Circuit on April 16, 2025 (No. 24-10287, 2025 WL 1122466).

Fourth Motion to Recuse. Meanwhile, a fourth Motion to Recuse was filed on February 27, 2023, in a separate Adversary Proceeding #21-3076, DE ## 309 and 310, by one of the same Movants herein, that happened to be named as a defendant in that adversary proceeding. That adversary proceeding was thereafter abated, when parties represented that there might be enough funds to pay off creditors in full in the Highland bankruptcy case, without pursuing the adversary proceeding. Thus, that fourth Motion to Recuse was never ruled on. However, in ruling on the Third Motion to Recuse, the bankruptcy court addressed arguments made in the Fourth Motion to Recuse.

Fifth Motion to Recuse. The pending Motion to Recuse, DE # 4372, happened to be filed just weeks after the bankruptcy court approved a global settlement, DE # 4297, with Hunter Mountain Investment Trust, the former 99.5% owner of Highland, which one of the Movants (Dugaboy Trust) opposed, DE # 4230, and, with regard to which, Dugaboy unsuccessfully sought a stay pending appeal at the bankruptcy court, DE ## 4311, 4326, and 4334, and at the district court. Apparently, the Movants are now in contentious litigation with Hunter Mountain Investment Trust's manager, Mark Patrick, in numerous fora around the world. DE # 4326.

RULING

Two words: *res judicata*. The matter has been decided. The purpose of the *res judicata* doctrine is to avoid waste of judicial resources by preventing courts from hearing the same disputes multiple times and to protect litigants from being subjected to multiple lawsuits over the same matter. Nothing new has been raised by the latest motion to recuse. The court set forth the history/time table above to make two points: (a) that the matter has been decided; and (b) the series of motions to recuse always seem to be raised when adverse rulings have recently been rendered or perhaps seem imminent. In any event, this fifth Motion to Recuse has failed to present any objective manifestations of bias or prejudice. The court does not believe any of the assertions of the Movants rise to "the threshold standard of raising a doubt in the mind of a reasonable observer" as to the judge's impartiality. This court does not believe that any objective person would find that the Movants are the victims of improper judicial conduct rising to the extraordinary remedy of recusal. Wherefore,

IT IS ORDERED that the newest (fifth) Motion to Recuse, DE # 4372, be, and hereby is, **DENIED**.

END OF ORDER

EXHIBIT B

MYSTIC SPIRES POST-MORTEM

A COLD-CASE LEGAL THRILLER

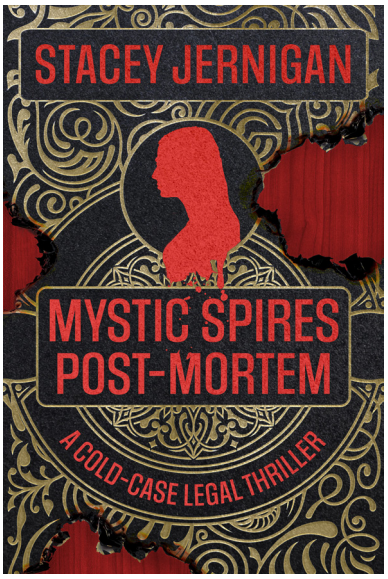
BY STACEY JERNIGAN

Chief Judge Stacey Jernigan Brings AI, Influencers, and Social Media to the Crime-Solving Forefront in Her Latest Novel

Disclaimer: Chief Judge, Stacey Jernigan is recognized as a public figure. As such, she has previously been featured in prominent media sources such as NPR, *The Wall Street Journal*, *The Daily Beast*, *LA Weekly*, and *The Dallas Morning News*, regarding statements on cases as well as in response to an individual who incorrectly asserted that one of her fictional characters was based on them. It must be emphasized here that Jernigan is an author of fiction—and that all characters in this story are also fictional.

That said, Jernigan's history as both Chief Judge and former lawyer lends an authentic voice to the nature of Judge Avery Lassiter's process as she unravels the murder case of wealthy hotel heiress Gigi Mesero.

With a nod to Hulu's *Only Murders in the Building*, this whodunit murder mystery involves podcasters who stir up a lethal social media and influencer sensation amid societal true crime fervor. In ***Mystic Spires Post-Mortem: A Cold-Case Legal Thriller*** by Stacey Jernigan (Brown Books Publishing Group; On sale: October 14, 2025), the sharp and resourceful judge Avery Lassiter is intent on getting to the bottom of a murder case at the Mystic Spires Hotel that has remained unsolved for eight years. When Lassiter hosts a Gigi Mesero–themed murder mystery dinner, each of her law clerks play the role of a murder suspect introducing evidence on themselves. Unable to come to a unanimous decision on the murderer, one of the clerks suggests asking a generative AI platform who it thinks murdered Gigi. This new lead inspires further research, reaching out to a few blogs and podcasts that previously covered the case.



Overnight, a wave of media frenzy ensues. From social media attacks, to leaked confidential information, to a famed podcaster hunting down the new suspect for a livestreamed unsolicited interview—resulting in two more deaths—the case quickly spirals out of control. As the case comes to a head, readers, alongside Lassiter, must ask themselves in what ways AI and social media are helping versus potentially harming the procedure of crime investigation.

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BROWN BOOKS PUBLISHING GROUP

Mystic Spires Post-Mortem | $16.99
FICTION / Mystery & Detective
ISBN: 978-1-61254-725-1 | Stacey Jernigan
www.SJnovels.com

ADVANCE PRAISE FOR *MYSTIC SPIRES POST-MORTEM*

"*Mystic Spires Post-Mortem* is a twisty, time-hopping legal thriller that reads like a prestige mini-series—smart, moody, and addictive. When a hotel heiress is found murdered, the investigation unspools across decades, slowly revealing a web of secrets, ambition, and betrayal. Chief Judge Stacey Jernigan crafts a sharp, propulsive story with vivid Dallas flavor, compelling legal drama, and characters who stay with you long after the last page."

—AMY PEASE, BESTSELLING AUTHOR OF *NORTHWOODS*

"Part murder mystery, part legal thriller, and part social commentary, Jernigan's *Mystic Spires Post-Mortem* is a truly unique take on the genre. It was fascinating to see how the author pieced together the story—and to watch it unfold through the eyes of all the players, both good and bad. I'll be looking for more of her work in the future!"

—TAMARA BERRY, EDGAR-AWARD-WINNING AUTHOR OF *BURIED IN A GOOD BOOK*

"*Mystic Spires* deliciously blends timeless murder-mystery motifs and hyper-modern perspectives on crime-solving—and all in the Great State of Texas!"

—KIM SANDERS, FORMER HOMICIDE DETECTIVE FOR THE DALLAS POLICE DEPARTMENT, AWARD-WINNING AUTHOR OF *HERMIT OF PARADISE: A NOVEL*

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MYSTIC SPIRES POST-MORTEM

ABOUT THE AUTHOR

Stacey Jernigan, a native Texan, has been a judge in Dallas, Texas since 2006. Before that, she was a lawyer and partner at a large international law firm specializing in corporate restructuring matters. She is also an occasional adjunct professor at the SMU Dedman School of Law. Stacey is married to a retired law enforcement officer (Dallas Police Department), with whom she has an adult son and daughter, as well as two Cavalier King Charles Spaniels. She is a frequent speaker at legal conferences around the country and is an avid writer and international traveler. *Mystic Spires Post-Mortem* is her third novel.

"But with technology—with all of these AI tools—are we prone to trust it more than humans in crime-solving and a court of law? Maybe more than we should? And are we at risk of delegating our own thinking—our own reasoning process? Are we going to just, more and more, defer to the machines to sort through a set of facts or legal issues to tell us what to think? That scares me to death. What about cogito ergo sum? 'I think, therefore I am'? We are facing an existential threat here, maybe. If we begin delegating our thinking, we are done."

—FROM *MYSTIC SPIRES POST-MORTEM*

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MYSTIC SPIRES POST-MORTEM

THE WALL STREET JOURNAL.

JUDGE'S FICTIONAL THRILLER SPARKS REAL-LIFE COURTROOM DRAMA

Plot featuring crooked hedge-funder inspires actual financier to try to get jurist booted off case

By Erin Mulvaney
July 29, 2023 9:12 pm ET

When she isn't handling cases as a U.S. bankruptcy judge, Stacey Jernigan writes legal thrillers, most recently "Hedging Death," whose sweeping plot features a troubled biotech company, a crooked financier and Mexican criminal cartels.

In true write-what-you know fashion, her fictional heroine, Avery Lassiter, bears a striking similarity to the author herself. They are both judges in Texas, former corporate lawyers and dog lovers married to police officers.

James Dondero, former chief executive of hedge-fund company Highland Capital Management, sees another similarity in the novel—between one of the villains and himself.

Dondero says he is the inspiration for Cade Graham, a Dallas hedge-fund playboy suspected of insurance fraud and faking his own death in a fiery car crash. And in a plot twist not yanked from the novel, he is pushing for the judge-cum-writer to step aside from a case she is handling that involves none other than the real-life hedge-funder—Dondero.

Like many fictional works, Jernigan's book includes a disclaimer that its characters "are absolutely fictional." Nevertheless, citing "unquestionable parallels" between his life and Graham's, Dondero is arguing that the fictional depiction exposes Jernigan's real-life bias against him in the long-running legal case.

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MYSTIC SPIRES POST-MORTEM

James Dondero cites 'unquestionable parallels' between his life and that of a villain in the novel.

Jernigan has rebuffed his efforts so far, at one point quoting Oscar Wilde: "Life imitates art far more than art imitates life."

Highland Capital, once a pioneer in trading speculative corporate loans, filed for bankruptcy in 2019 after it became embroiled in a series of legal disputes. The case landed in Jernigan's court. Dondero, who was subsequently ousted from Highland, has been fighting with the bankrupt firm and its creditors over its winddown.

Dondero claims Jernigan, who has held him in civil contempt twice, hasn't been fair to him during the bankruptcy proceedings. He has sought her recusal several times—to no avail. Dondero has asked a federal district court to reconsider.

His latest attempt to boot Jernigan cited her fiction writing as evidence of her negative views of the hedge-fund industry. Her first novel, "He Watches All My Paths," revolves around death threats to the fictional Judge Lassiter. Her second follows the manhunt for the criminal. Both are self-published.

Dondero sees parallels between himself and Graham, one of the villains in the second novel. The novel describes Graham as a "well-known wealthy playboy and high-flying Dallas hedge fund manager," and as "a real piece of work…a ton of people hate him, don't trust him, and can't figure out how on earth he manages to make so much money in both good times and bad times." The novel involves Graham in a plot to murder American retirees in Mexico for insurance money.

JORDAN FRAKER

According to Dondero, the fictional hedge fund, called Ranger, handles assets similar to those of his former firm, which he said in a court filing was once called Ranger Asset Management. Jernigan's novels show disdain for hedge-fund managers, he says, citing passages that describe the industry as having "outrageous amounts of hubris" and a "bro culture."

In a written statement to *The Wall Street Journal*, Dondero said: "The impartiality of judges—and the appearance of impartiality—is a critical component of the federal judiciary. We are well past the point that a reasonable person would see bias."

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MYSTIC SPIRES POST-MORTEM

Jernigan, who has been a judge since 2006, has said he has inundated the court with thousands of pages of material related to recusal requests that were untimely and without merit. The judge, who didn't respond to requests for comment, addressed her fiction briefly in one March opinion, saying that even though some of her work is loosely based on real life, no characters were inspired by Dondero. Jernigan's opinion said she had "never once heard" that Ranger was Highland's original name.

In the ruling, Jernigan said she "regrets this sideshow," but added that many sitting judges write books, though usually nonfiction rather than fiction.

In 2013 Senior U.S. District Judge Michael Ponsor published "The Hanging Judge," a novel about a death-penalty trial. The book came about a dozen years after he presided over the first death-penalty trial in Massachusetts in 50 years, though the facts of the case were far different.

Federal Judge Frederic Block wrote a legal thriller called 'Race to Judgment.'

Frederic Block, a senior U.S. district judge in New York, wrote a legal thriller "Race to Judgment," described on Amazon.com as a "reality-fiction" novel, which is loosely based on a number of high-profile cases he handled. Of course judges should be careful about what they write, he says, but they have important stories to share.

In her order declining to step aside, Jernigan said there were countless examples of authors, from Agatha Christie to Ernest Hemingway, who weave fictional plots that are loosely based on real-life events. "The Presiding Judge is somewhat embarrassed to discuss these literary greats in the same paragraph in which she is mentioning her own fiction works—it is merely to make a point," she said in the ruling.

AGATON STROM FOR THE WALL STREET JOURNAL

Dondero's legal team hired law professor Steve Leben of the University of Missouri-Kansas City School of Law to take a look.

"To be sure, the two judges aren't identical, and the book doesn't come across as nonfiction," Leben wrote to the court this month. "But while it's common for fiction authors to draw on their own lives, experiences, and viewpoints to varying degrees, Jernigan has made the similarities numerous and obvious." He concluded the judge ought to recuse herself.

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Dondero's former hedge fund Highland, for its part, has opposed his recusal attempts and called him a "vexatious litigant," petitioning this month to limit his legal maneuvering.

Legal ethics experts said what matters is whether Jernigan's impartiality might be reasonably questioned.

"It is a pretty novel situation—pun vaguely intended," said Indiana University law professor Charles Geyh. While many judges write outside of court, he said, "this is complicated as a work of fiction, and the way we evaluate it is tricky."

At least some readers of "Hedging Death" are fans. It scored 4.9 of five stars on Amazon.com, based on eight reviews.

One of her judicial colleagues lauded it in the American Bankruptcy Institute Journal, calling it a courtroom drama with a "Texas flavor" and a surprise ending. "The book," Judge Harlin Hale wrote, "truly has something for every insolvency professional!"

For the full article, click here:

https://www.wsj.com/arts-culture/books/texas-bankruptcy-judge-stacey-jernigan-novel-hedge-fund-dondero-a5e84c50

MYSTIC SPIRES POST-MORTEM

METADATA

Title	Mystic Spires Post-Mortem
Subtitle	A Cold-Case Legal Thriller
Author	Stacey Jernigan
ISBN	9781612547251
Format	Trade Paperback
Retail price	$17.99
Size	6 x 9
Pages	224
BISAC 1	Fiction / Mystery & Detective
BISAC 2	Fiction / Crime
BISAC 3	Fiction / Legal
Publication Date	October 14, 2025
Distribution	Ingram, Baker, & Taylor
Publisher	Brown Books
Publisher Website	www.BrownBooks.com
Author Website	www.SJnovels.com

SYNOPSIS

Judge Avery Lassiter is determined to find the truth—with unintended consequences.

Gigi Mesero was more than a wealthy heiress and entrepreneur. She was also the victim of a strange murder at the Mystic Spires Hotel in Dallas, Texas, a case that has remained unsolved for eight years. The mysterious circumstances of the crime, however, haven't allowed it to be forgotten. Some believe it was Gigi's own sister, a popular social media influencer. Some believe it was one of her numerous seedy lovers looking to steal her fortune. Others believe it wasn't murder at all. With a whole slew of theories, detectives and online sleuths have exhausted all avenues. However, when Judge Avery Lassiter becomes obsessed with personally investigating the murder, she and her friends and family will stir up new clues, controversies, and cover-ups.

A tale about lies, technology, and the shifting world of criminal investigation, *Mystic Spires Post-Mortem* invites readers to follow a dangerous trail of death and corruption alongside a cast of determined investigators.

EXHIBIT C

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 MANAGEMENT, L.P.,	)	Dallas, Texas
	)	September 18, 2025
	)	2:30 p.m. Docket
Reorganized Debtor.	)	
	)	MOTION FOR ORDER FIXING
	)	ALLOWED AMOUNT OF CLASS 11
	)	INTERESTS FILED BY HIGHLAND
	)	CLAIMANT TRUST (4362)

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

APPEARANCES:

For the Reorganized Debtors:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7760
For Dugaboy Investment Trust:	Geoffrey Scott Harper WINSTON & STRAWN, LLP 2121 N. Pearl Street, Suite 900 Dallas, TX 75201 (214) 453-6500
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - SEPTEMBER 18, 2025 - 2:47 P.M.

THE COURT: All right. Our other matter is Highland Capital, Case No. 19-34054. We have a motion to fix the allowed amount of our Class 11 interests. We'll get our lawyer appearances, please.

MR. HARPER: Your Honor, Geoffrey Harper with Winston & Strawn for Dugaboy Investment Trust.

THE COURT: Okay. Mr. Harper for Dugaboy.

MR. MORRIS: Good afternoon, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for Highland.

THE COURT: Okay. Mr. Morris for Highland.

Do we have any other appearances?

All right. Well, I've got your pleadings and your witness and exhibit list, to the extent you end up putting evidence on. And Mr. Morris, you may begin.

MR. MORRIS: Good afternoon, Your Honor. Nice to be in your courtroom, as always.

OPENING STATEMENT ON BEHALF OF THE REORGANIZED DEBTORS

MR. MORRIS: We're here today because we need to be here today. We're here today because we have the burden of proving our motion to fix, in specific dollar amounts, each of the unvested contingent interests that are in Class 11. And we have to do that because the Plan and the Claimant Trust Agreement require that. Those documents, which are now four-and-a-half years old, require that all disputed claims in

equity interests be resolved before the Claimant Trust can be dissolved itself, a process that we're very interested to begin.

That's why we're here today, to fix those allowed amounts. And how do we do that? We do it the same way we did it in June, basically. We're using the same methodology that we did in June. You just look at the capital account balances as of the petition date, and, you know, that gets us to where we need to be.

I've got a very short PowerPoint --

THE COURT: Okay.

MR. MORRIS: -- to just highlight some of the issues that we believe are relevant today. Mr. Seery, the Claimant Trustee and the CEO of Highland Capital Management, LP, is here today to give what I hope will be brief testimony in order to meet our burden.

I do just, before I get to the PowerPoint, want to briefly address the objection. As the Court knows, I think there are four or five different holders of the unvested contingent Class 11 interests, but only one of which has objected. I don't know what the position is of the rest of them, but they're not here. And the objection itself is meritless. As we say in our papers, you know, the request that all distributions after senior claims are satisfied be distributed on a pro rata between the holders of the Class 10 and 11

claims violates about a half a dozen orders of this Court. You can't reconcile it with the subordination provisions and the creation of separate classes in the Claimant Trust Agreement or in the plan. You can't reconcile it with the fixing of the HMIT Class 10 interests that we did in June. I mean, what does it mean if you're not just going to distribute stuff without regard to that number?

Mr. Dondero signed an agreement on behalf of HCLOM that resolved HCLOM's claim, put it in Class 10. HCLOM has never been a limited partner. It has no -- you can't do what they want. This is really pushing the limits of Rule 11, in our view, because they're asking you to violate probably a half a dozen different court orders.

So I don't want to beat the drum too loudly because it's just not worth it here. I just want to meet my burden of proof. If I may just hand out these small decks.

THE COURT: You may.

(Pause.)

MR. MORRIS: So, Your Honor, the first slide here is just to highlight the provision in the plan, the definition of contingent Claimant Trust interests that applies here. You know, as always I cite to the record. Actually, before I get to this, I'd like to just to move into evidence -- I should have done that first; I apologize -- I'd like to move into evidence Exhibits 1 through 10, which can be found on

Highland's amended witness and exhibit list that was filed at Docket 4394.

THE COURT: All right. Any objections to that?

MR. HARPER: No, Your Honor.

MR. MORRIS: Okay.

THE COURT: Those 1 through 10 will be admitted.

MR. MORRIS: Thank you.

(Reorganized Debtors' Exhibits 1 through 10 are admitted.)

MR. MORRIS: So with respect to the first slide, it's just a snapshot of one of the definitions in the plan. The plan definition of Claimant -- Contingent Claimant Trust Interest establishes that the limited partnership interests that were held by the Class A members under the prepetition limited partnership agreement will be subordinated to the class that's being established for the holders or the former holders of the Class B and C interests.

And that's important, and that's important because that is the basis upon which the separate classes were created. And so, you know, this definition is given effect in Article 3 of the plan. Article 3, Section H-10 and 11, that's the provisions of the plan that establish the two different classes. And the creation of the separate classes and the subordination provision weren't adopted by accident, right? Your Honor made a very specific finding in Paragraph 36 of the confirmation order that says the plan properly separately

classifies the equity interests in Class 10 from the equity interests in Class 11 because they represent different types of equity security interests in the Debtor and different payment priorities.

There is a reason why this was done, and everybody knew it. Here we are, four-and-a-half years later, revisiting an order that was entered, at least as to this aspect, without objection. Right? What are they doing?

The concept of subordination, if we go to the next slide, was adopted also in the Claimant Trust Agreement, in Section -- Article 5, Section 5.1-C. Again, I've highlighted two portions. The first portion actually does relate to the notion of pro rata treatment, because that's what Dugaboy says, it's got to be pro rata. It is pro rata within a class. It's not pro rata between classes. You have horizontal pro rata. So if you're in Class 10, it's pro rata. There was only one member of Class 10 until we had the HCLOM agreement, and that was HMIT. But in Class 11, you had a bunch of different. And so, yeah, they have to be treated in their class the same.

But the bottom is really why we're here today, because it says the equity interests distributed to the allowed holders of Class A limited partners -- and that's what we're trying to get to. That's why we have to fix the amount. You fix the amount in order to get it to an allowed claim or an allowed

interest. Because it's not even allowed today, right? You get to allowed because it's fixed and it's no longer disputed. And the holders of the Class A limited partnerships, quote, shall be subordinated.

So I don't, I just don't understand how anybody could come here and suggest that Class 10 and 11 should be treated pro rata. It violates the Plan. It violates the Claimant Trust Agreement.

The next slide is just a calculation of the amounts. Mr. Seery will describe the methodology as to how we got to these numbers. Basically, the December 31st, 20- -- it's not written on the back of a napkin. It's written on the front of a tax return. Okay. We didn't write this, right? This isn't made up. He's going to tell you there's nothing subjective about this.

We took the tax returns that Jim Dondero signed when he controlled Highland. That was the starting point, the end of 2018. That's the first column. The second column, we take it to the petition date, and we use Highland's financial statements to do that. And then just for illustrative purposes we take it out until the end of 2019, to show the fluctuation in the value of the capital accounts in the -- just for illustrative purposes.

But the real point is to determine what the capital accounts were as of the petition date. That's when their

interests are being valued.

And Mr. Dondero and Dugaboy know their objection is baseless. And how do we know that? If you go to the last slide. You'll remember -- I mean, there's so many lawyers who have represented Dugaboy, it's a problem. It's a real problem for them. And it's why you can get a new lawyer here who probably, in fairness, probably doesn't have the historical and institutional knowledge to understand that this makes no sense.

Because last December you had Ms. Deitsch-Perez in here in opposition to the objection to the HCLOM claim, signing a settlement agreement on behalf of not just HCLOM but Dugaboy, if you look at Exhibit 8. She signed it on behalf of Dugaboy, too. And they agree that to resolve the dispute they would put HCLOM in Class 10 in a fixed amount, without anybody saying, oh, my goodness, but what's that going to mean for Dugaboy when we come back and we want to do this pro rata? Nobody thought about it then because it wasn't an issue for them.

They take it further. Apparently, Mark Patrick realized that that agreement was signed without his knowledge or consent on behalf of HMIT, and they have a little fight, and that's what led to where we are, where they are today. And they enter into an agreement to resolve their dispute, and that's at Exhibit 9. And that's an agreement, it's an

intercreditor agreement, they call it a participation agreement, between HCLOM and HMIT.

We had nothing to do with that. We didn't even know it was happening until it happened. But apparently they agreed that, if HMIT got a distribution in Class 10, they would give five percent of it to HCLOM, less HMIT's legal fees, another complication, but it's in Paragraph 1 of this agreement. This is how crazy this is. So they agreed to this. Again, second time, not a word about Dugaboy, not a word about how that's going to play out with some expected pro rata sharing.

But here's the best part, maybe the best part, the funniest part. Just four weeks ago, yet another lawyer for Dugaboy has an email communication with Louis Phillips, Mr. Phillips representing HMIT, and they have a back-and-forth. And I get involved because, as a result of the HMIT settlement, HMIT is going to get some payments from Highland. But now they have an obligation under this agreement to share it.

So there's instructions in there. You can look at Mr. Elms' (phonetic) email, right? So you have Ms. Deitsch-Perez in December, you had Mr. Elms, and he says, hey, you know that payment for HCLOM, send it to Dugaboy. Took the whole thing. Took the whole thing. It's right there. Gave wire instructions to send the money to Dugaboy, without ever saying, we need it because we have to take our piece. It's

five percent. They're getting five percent of what HMIT got. Has nothing to do with the partnership agreement. It has nothing to do with prorated. Has nothing to do with Dugaboy's I think 0.01886 percent. Nothing to do with anything.

And yet when they get this motion now, oh, you know what, we don't like what's happening. They said nothing at confirmation about this. There's no appeal about this. There's no objection about this. The orders have been in place for years. They said nothing in June with HMIT. They said nothing when they got the cash. What are we doing?

So that's all I have, Your Honor. I just wanted to provide some context to make sure the Court understands at least Highland's perspective, both as to the validity of our position, because our position, what we're doing, is consistent with the plan. It's consistent with the Claimant Trust Agreement. It's consistent with the HMIT settlement. It's consistent even with the HCLOM/HMIT settlement that we weren't a party to, because under our proposal, under our methodology, they're going to be able to share the cash just as they agreed. Right? Everything works perfectly.

So at the end I'll put Mr. Seery on, he'll be brief, and we'll ask the Court to enter an order granting the motion.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Thank you. All right. Mr. Harper?

MR. HARPER: Thank you, Your Honor.

Please forgive the knee. They're working on it.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

MR. HARPER: Your Honor, I'll be very quick as well. I don't think there's any point in spending more time on this than need be. We objected to the way that the plan was to set the value of the claim as to Hunter Mountain because of the equity claim and we're objecting to it here.

THE COURT: Wait. Repeat what you just said. I'm sorry. Just start over, --

MR. HARPER: Certainly, Your Honor.

THE COURT: -- if you don't mind.

MR. HARPER: I'm sorry, Your Honor. Dugaboy filed objections earlier, the Court overruled them, when they objected to the amount of the claim that Hunter Mountain was. So, I mean, this -- the statement that we somehow didn't object to this, this is, you know, we objected to it when the Court --

THE COURT: You objected a few weeks ago when we had --

MR. HARPER: Yes.

THE COURT: -- the compromise and settlement motion before the Court --

MR. HARPER: I think this --

THE COURT: -- involving Hunter Mountain and the Claimant Trustee and the Reorganized Debtor. Is that what you're talking about?

MR. HARPER: I believe so, Your Honor. Yes.

THE COURT: Well, I'm asking you.

MR. HARPER: Yes, Your Honor.

THE COURT: Okay.

MR. HARPER: But the point being -- and I think that one of the issues that we've got when we talk about Class 10 and Class 11, we need to recognize that everything in Class 10 and everything in Class 11 aren't the same. The claims of Hunter Mountain in Class 10 are equity claims. The claims of Dugaboy in Class 11 are equity claims. These are the people who owns the shares of the Debtor. And when we are talking about how those claims get valued, they get valued a certain way.

Now, we understand that the whole point of putting them in priorities of Class 1 through 10 is to determine priority of payment.

THE COURT: 11.

MR. HARPER: 11. I'm sorry, Your Honor. Is to determine priority of payment. It doesn't mean that, you know, as we sit around and determine each individual claim, that the way that we value them ends up being the same to determine how much of the claim is allowed. Just like, you

know, some -- each contract gets treated differently, is the situation here.

And our point is the equity claims are unique. Equity is determined, it always has been, right, the answer is in every bankruptcy that I've ever been involved in, right, we pay off the creditors. If there's money left, which there often is not in a liquidation case, then that money gets paid to the equity holders pro rata.

Now, your plan --

THE COURT: Okay. Let me stop you a minute.

MR. HARPER: Sure.

THE COURT: I hope you're going to get to the res judicata, essentially -- my words, not Mr. Morris's, but that's the substance. This has been decided.

MR. HARPER: So which part are you saying, Your Honor. Are you saying you believe it's res judicata because of the plan or are you saying you think it's res judicata because of the 9019 ruling a few weeks ago?

THE COURT: Well, both.

MR. HARPER: Okay. So the plan has very specific statements about what happens to extra money, Your Honor. There's provisions in both of them. Because, candidly, Your Honor, there would be a problem if there wasn't, right? What happens if more money comes into this plan than there are if we have nothing but claims that are set in stone for the

dollar value?

THE COURT: Okay. So you dispute that the plan subordinated Class 11 --

MR. HARPER: No, Your Honor.

THE COURT: -- to Class 10?

MR. HARPER: I do not.

THE COURT: Okay. Then --

MR. HARPER: There's also provisions, however, in there that says, despite that, once you set those claims, there's a provision to deal with money after that. In other words, --

THE COURT: Okay. You'll point out what plan language --

MR. HARPER: Sure.

THE COURT: -- you think supports your argument.

MR. HARPER: Certainly, Your Honor.

THE COURT: Okay.

MR. HARPER: Your plan also states and your order states that, regardless of anything in the plan, that the issues of contractual agreements and the issues of law and equity get involved as well. And there is no possible doubt that the partnership agreement has very specific ways that these are supposed to be valued and the assets are supposed to be paid out. It's in the contract there.

So that becomes critical, because if we go to part two,

which is, all right, if the answer is we're going to come out and determine the cash value here, there's two problems. One, when do we do this? Right? So, as you well know, right, under the bankruptcy law, the answer is we don't determine contingent fee and unliquidated until it's absolutely necessary. If the answer is we believe we've hit that point, that it's absolutely necessary and there is some reason that this will hold things up, then we should discuss that. But since they're asking for this bankruptcy to stay open for several more years, we question whether or not that's really the way to do this.

But secondly, the issue with the --

THE COURT: I want you to address --

MR. HARPER: Sure.

THE COURT: -- res judicata. How many times is it appropriate for this Court to consider the same issue? Isn't that exactly what I'm doing?

MR. HARPER: So --

THE COURT: I considered the plan language, which subordinated Class 11 to Class 10 based on they had different rights under the limited partnership agreement of Highland, which was part of the evidence. Your client didn't object, by the way, to that.

MR. HARPER: They did not.

THE COURT: Although the client objected to the plan

in numerous ways and appealed the confirmation order. So you're going to show me, I guess, why this isn't res judicata, because it looks to me like the plan decided it. Okay?

But then we have the other res judicata issue of, a few weeks ago, when this valuation methodology for Class 10 was proposed by the Debtor and there was testimony from Mr. Seery, and Dugaboy objected, and there was cross-examination, and I had no evidence from a different person about what would be a more appropriate methodology, and so I approved that.

So, from my perspective, you've got at least a double res judicata problem. So I really want you to tell me out of the gate why you don't think you have a double res judicata problem.

MR. HARPER: Your Honor, I don't want to be a smart aleck, so please forgive me, because one thing I was -- I assume you're actually meaning collateral estoppel, not res judicata, since --

THE COURT: Well, I guess it could be either one.

MR. HARPER: And I'm not -- and please don't think that --

THE COURT: I mean, I guess it could be either one.

MR. HARPER: I mean, certainly, --

THE COURT: I guess it could be specific findings I made, and so therefore collateral estoppel might be the doctrine. But I think it's probably the ruling as well.

Maybe it's both. Okay.

MR. HARPER: Your Honor, let me --

THE COURT: We'll have a law school class decide that.

MR. HARPER: Yeah. I'm sorry, Your Honor, I didn't mean to be -- my only point being I didn't want to fail to address the Court's arguments directly, right? Obviously, there was not a ruling on the merits as to the value of Dugaboy's claim two weeks ago. Therefore, since there was not a ruling on the merits on that, there can't be res judicata on that issue.

What I think the Court is trying to say, I mean, I think, is that it believes or it thinks there's -- well, you said you do believe -- you believe there is an issue in that, by valuing the equity in Hunter Mountain, you believe that that has issue-preclusion and equitable estoppel, you know, collateral estoppel claims, meaning you now have determined that's what the equity is.

Your Honor, if that's the case, we lose. Right? I mean, I -- there you go.

THE COURT: Okay. It's a couple of things. It's a subordination issue that I think the plan and the confirmation order has created an estoppel effect, right?

MR. HARPER: Your Honor -- pardon me.

THE COURT: Subordination. Subordination is Class 11

is subordinated to Class 10. We're doing that because the limited partnership agreement clearly showed distinctions in these types of equity interests and we think that is probably the appropriate way to go in the plan, and no one objected, and I approved that.

MR. HARPER: So, Your Honor, obviously, we're going to go over the partnership agreement. If the Court would like, we'll do it right now.

THE COURT: No.

MR. HARPER: I mean, we can do it without a witness, but --

THE COURT: I'm just saying I'm trying to figure out why this hasn't been precluded by prior orders. I'll just say precluded since we don't know which estoppel doctrine is most germane, okay?

MR. HARPER: Yeah. I'm sorry, Your Honor. Just, again, I feel like I'm being -- just in terms of what legal argument I make in response, because, you know, the answer is different each way. So, but, so, again, I'm sorry if I'm acting like a gunner in law school. That's not the intent here.

My point just is I hear what the Court is saying. You know, truthfully, Your Honor, I think that the answer -- you know, happy to address that, feel like I am addressing that, because we can talk about it in more detail if you would like.

If you'd like to do that now, or if you want them to put on their witness first, or we're happy to go through the documents if you want.

THE COURT: I didn't know it was a complicated question I was asking.

MR. HARPER: So, Your Honor, the contingent fee -- so let me start with one interesting hypothetical. So you set these values today. Let's say that, you know, theirs stays at -- I'm just going to round up -- $350 million and ours comes in at $700,000. The issue still remains, what happens if one of the claims that are out there nets money in excess of that? Where does the excess money go?

This plan, the way it is currently being suggested and the way that the Court is suggesting if there is res judicata, has a fatal flaw in that the plan doesn't account for excess cash. There's -- it goes to nobody. That can't be the case, right? It has to go to somebody.

THE COURT: I guess if there's more than three hundred --

MR. HARPER: Fifty million?

THE COURT: -- thirty-six million, --

MR. HARPER: Sure. Where does it go?

THE COURT: -- then Class 11 would get it. I mean, --

MR. HARPER: They would get the $700,000 only by

their -- so what happens if there's more than that? What happens if there's an extra $10 million?

THE COURT: I think we're happy to have another court hearing and decide that.

MR. HARPER: Well, Your Honor, the point is you would have a -- you would have a plan which is per se flawed because it didn't take into account the residual cash issue. But our point is, the plan does.

Now, I agree with you that the problem that we have with this plan is there are provisions in there that are difficult to read together, meaning --

THE COURT: Okay. We've had an appeal up through the Fifth Circuit twice. Okay?

MR. HARPER: Your Honor, not on this issue.

THE COURT: Well, then it's barred. It's barred.

MR. HARPER: Well, no, Your Honor, because the answer is, you know, what we're now talking about is how one interprets the plan, not whether the plan itself is wrong. Because there is no doubt there is a provision in the plan that says once -- it's in the contingent trust agreement -- it says once the allowed claims are paid, including that, then the rest goes to the equity holders. And that's after we've dealt with the Class 10 and 11. Right? So there's your excess out there.

Well, how is that done? The answer is we have claims

beyond the allowed claims. Now, the partnership agreement has a very specific subordination clause as far as what portions of the claims are subordinated and what are not.

Now, I agree, this is a very strange situation. How does one set the value of equity? Because there's a specific way to value the equity in the partnership agreement which they're not using. Instead, they said, let's just take a look, let's take a look at the capital account. And therefore, because the capital account on this date said *x*, let's determine that that must be it.

Now, we all know that has nothing to do with the actual value. It's a tax number. It's not there. But the partnership agreement has very specific language about what to do in a situation of liquidation. And it specifically says, and there is no possible ambiguity here, you pay all the claims. When those claims are done being paid, you then take the amount that's left over and you divide it proportionally among the parties.

Two caveats. On Page 12 of the partnership agreement, there is specific language about the portions of the Class B/C that need to get paid first. They have certain rights where they get paid first.

THE COURT: Why wasn't your client making this argument in February 2021 when the plan was performing?

MR. HARPER: Your Honor, I can't answer that. I do

not know.

THE COURT: Well, you can't change lawyers and use that as an excuse. So what is your excuse?

MR. HARPER: Your Honor, my point is I think the plan takes this into account. I think we're just fighting about how one interprets it.

THE COURT: Okay.

MR. HARPER: What I understood you saying is you think --

THE COURT: Well, I guess you can point out the language that you think the Court would be interpreting before we're done here today.

MR. HARPER: Sure, Your Honor. So if the Court -- would you like me to do it now? Or I don't understand what the Court's asking for.

THE COURT: You know what, you can do it as part of your presentation of evidence --

MR. HARPER: Sure.

THE COURT: -- if you want to do that. Okay?

MR. HARPER: Thank you, Your Honor.

THE COURT: Okay. Thank you.

All right. Mr. Morris?

THE COURT: Your Honor, I just, before I call Mr. Seery, I just want to make a couple of points.

The partnership agreement today is irrelevant. It's been

irrelevant since August 11, 2021 when the plan became effective and it was rejected. It was replaced by the Claimant Trust Agreement.

So I don't really care what the limited partnership agreement says. Nobody has abided by it for years.

Number two, nobody owns the equity today. Right? His client owns an interest, a contingent unvested interest in Class 11. It doesn't own equity in anything. Equity, according to the plan, was extinguished long ago. Okay?

With that, I'd like to call Mr. Seery.

THE COURT: All right. Thank you.

Mr. Seery, welcome back.

MR. SEERY: Good afternoon, Your Honor.

THE COURT: Please raise your right hand.

JAMES P. SEERY, REORGANIZED DEBTORS' WITNESS, SWORN

THE COURT: All right. Please be seated.

MR. MORRIS: May I hand out the witness binders?

THE COURT: You may.

MR. MORRIS: I'll try and keep this brief, Your Honor.

Mr. Seery -- I'd like to also -- may I also give the witness the demonstrative?

THE COURT: You may. Thank you.

MR. MORRIS: And I'm just going to open it up to Slide 4, which is the demonstrative citing all of the evidence

that sets forth the confirmation, just to make this easier.

THE COURT: Okay.

THE WITNESS: Thank you.

MR. MORRIS: You're welcome.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Are you ready to go, Mr. Seery?

A I am.

Q Okay. And are you familiar with the motion that we're here discussing today?

A Yes, I am.

Q Did you authorize Highland to file that motion?

A I did.

Q And why did you authorize Highland to file this motion?

A Because the plan, the confirmation order, and the Claimant Trust Agreement require that we fix all claims in order -- and interests in order to close this case. We have a final deadline to close this case on August 11th. We expect to be dissolved and, frankly, cancelled by that date. The indemnity trust may live on, unfortunately, because litigation may live on, but the case, we expect to be closed.

Q Okay. And are you familiar -- and as part of the process, are you personally familiar with the methodology that Highland used to determine the amount of each unvested contingent Class 11 interest?

A Yes, I am.
Q Can you describe for the Court the methodology that Highland adopted?
A Yes. Similar to the discussion we had at the end of June, the Debtor was a limited partnership. There are no shares. The equity as it's divided in a limited partnership is owned by partners who have limited partnership interests. Those limited partnership interests, in accordance with the partnership agreement, receive allocations of profits and losses that are maintained and required to be maintained in what is called a capital account.

Each partner's interest in the partnership, their stake, their share, whatever word you want to use, is reflected in the partnership capital account that each partner has. So, unlike a corporation, each partner knows exactly what their capital account is at all times.

Q Can we turn in the binder to Exhibit 5? And I guess my first question is, do you know what this document is?
A I do, yes.
Q And what is this document?
A So Exhibit 5 is a bit of a combination of things, but it is the first page of the 2018 Highland Capital Management Limited Partnership tax return. And this is the return for the partnership that -- which became the Debtor. It was signed on 9/15/19, about one month before the filing, by Mr.

Dondero, under penalty of perjury that it's true, correct, and complete. And what it does is it reflects the partnership's income, losses, deductions, tax payments, for year 2018, ending 12/31/18.

What it also contains in the pages behind are what are referred to as Schedule K-1. In a partnership, when the partnership files a tax return, because it is a pass-through entity, profits and losses pass through to the partners pursuant to the terms of the partnership agreement. Those -- that allocation of profits and losses, minus any distributions, is reflected in their capital account.

So each partner in a limited partnership gets a K-1 that's also reported to the IRS and that they use for their own individual partnership -- their own individual income tax returns, the partnership income or losses being part of what their tax makeup might be, depending on their other tax attributes. The K-1 contains the individual partner's specific partner capital account.

Q Can you show us where --

A Form 1065 -- excuse me.

Q Yeah.

A On Page 5, which we don't have here, has the gross amount of the partnership capital for 12/31/2018. So the individual accounts, the partner capital accounts, are reflected -- I apologize for my reading -- the individual capital accounts

are reflected in Section L of each of the K-1s. So you'll see a few pages in, there's Strand with an ending capital account, which would be the 12/31 capital account, of $932,000. There is Mark Okada individually, $181,000. There's Mark Okada Trust I, $36,000. There's Mark Okada Trust II, $15,000. And there's Dugaboy at $693,900. It also reflects Hunter Mountain, which we dealt with in June at $370 million.

Q So those are the capital accounts for each of Highland's limited partners as of December 31st, 2018. Do I have that right?

A That's correct.

Q And that's -- is it your understanding that those are the numbers that were reported by Mr. Dondero on behalf of Highland at the time?

A That's correct.

Q Is it your understanding that each of the taxpayers who received a K-1 relied on those numbers and paid taxes in accordance with the amounts set forth in the K-1?

A To be fair, I don't know exactly what each one did. I know that when I --

Q I appreciate that.

A -- receive a K-1, that's what I do on my individual taxes because that's what's required.

Q Okay. So how -- did you adjust the capital accounts that were reflected in the K-1s at year-end 2018? How do you bring

that up to the petition date of October 16, 2019?
A The partnership agreement requires that, as I said, partnership profits and losses and distributions are reflected in each partner's capital account. Highland studiously maintained that every month. Why did it do that? Well, it's required to do that under the partnership agreement. It was. It's also required -- and the partnership agreement contains that requirement because that's required by the Internal Revenue Service regulations. And those numbers and the distribution and allocation of income, losses, and distributions has to have what is referred to as substantial economic effect in order to give the partnership the ability to pass through losses and income on different bases.
Q And can you turn to Exhibit 7? Is that the document that you relied upon to bring the year-end 2018 capital accounts current as of the petition date?
A Well, this is a -- this is a snapshot from the monthly operating report. These were filed every month during the case. This one you can see is filed, it should be sometime in December. I can't see the filing date. But it does reflect the 11/30/19 capital accounts as well as the 10/31/19 capital account and then the 10/15 filing date capital account.
Now, this is the gross amount. So each individual partner -- because Highland keeps it for itself and then it allocates to each partner that's ultimately reflected on the K-1. The

attachment is some of the output from our Oracle system. This was our accounting system. And this reflects the changes that would be running through the P&L that would hit the balance sheet.

And you'll see at the very last page of Exhibit 7 the 370 -- I can't -- I'm having trouble reading -- the partner capital account of 396,613, and that's the 10/15 number. It's off by a thousand dollars. And it does reflect some of the larger changes during the first half of the year.

So that number went up. If you'll recall the 12/31/18 number that we saw before, it went up during the first 10 months of the year. And that's reflected in a number of the lines above, but right on that page you can see the two biggest drivers. There's something called the Highland Select Equity Fund. This is a $109 million credit. That is the write-up of Trussway, which was an asset that was owned. That took a big write-up during that first 10 months of the year from a very low basis, and that's reflected in the P&L, then reflected through the balance sheet and into the capital accounts.

Ten lines above that you'll see a $74 million debit. That's the reserve taken for the Redeemer -- the initial Redeemer award in April.

So these are the entries that roughly reflect what's going on in the Highland accounts that then roll through to the

capital accounts for each partner.
Q And just to make this really clear, this document that we're looking at, Exhibit 7, was a monthly operating report that was filed in the bankruptcy case; is that your understanding?
A Yes.
Q And that was prepared while Mr. Dondero was still in control of Highland; is that right?
A This one was, yes. But we did it every month --
Q Yeah. Just -- just --
A -- all the way.
MR. MORRIS: And it's the very last page, Your Honor, where it has the total partner capital, $396 million -- $613,941. That's the number that you see in the middle column on our demonstrative, okay?
THE WITNESS: That's --
MR. MORRIS: And that's where it comes from.
THE WITNESS: That's correct.
BY MR. MORRIS:
Q Okay. And then am I correct that what you did is you took that number and multiplied it by the limited partnership interest that each of the limited partnership partners had? Former limited partners?
A Roughly. But if they had gotten distributions that were outsized, then they could have been non pro rata. The general

partner was allowed to do that. Then they would have been -- it would have led to different adjustments. But in this instance, I think that they would have reflected on a straight basis without any changes through the partnership accounting for those first 10 months of the year.

Q Okay. So, to summarize, can we say that Exhibit 7 shows the economic activity at Highland from year-end 2018 through the date of this document, and that that's why there's a difference in the capital accounts, and the bottom line is the 396 number that we see here?

A At a high level. So this is a trial balance out of Oracle, so they are subject to adjustments.

Q Okay. Did you make any adjustment?

A Not up to the petition date, no.

Q Okay. Is there any subjectivity at all in any of the analysis that you've prepared?

A No.

Q Did you rely on anything other than the tax returns and Highland's books and records that were prepared prior to the time you became an independent director?

A The books and records also include the audited financials, which contain the same numbers. So those audited financials which were signed off by the same people, --

Q Great.

A -- they're also -- and the partners' capital is the same.

Q Thank you for your completeness.

Highland contends that once the Class 11 interests are fixed, they will receive no distributions from the Claimant Trust until the Class 10 interests are paid in full. Do I have that right?

A Yeah. The 10s need to get paid in full before the 11s can get paid.

Q And what's the basis for that position?

A That's the plan, the confirmation order, and the Claimant Trust Agreement setting up a hard waterfall on how distributions run through the various classes of 1 to 11.

Q Okay. Are you aware that in -- at least in their objection, Dugaboy took the position that any distributions after Class 9 and all senior obligations are paid in full had to be made pro rata among all of the former limited partners?

A I'm aware that that's what they said.

Q Does that make any sense to you?

A No, it doesn't, not at all.

Q Why not?

A That is simply not the plan, it's not the confirmation order, and it's not the Claimant Trust Agreement. The plan set up a specific priority, and delineated between Class 10 and Class 11, and made Class 10 senior to Class 11. That respected the old partnership agreements, which no longer exist and was rejected. That waterfall is a hard waterfall.

So the idea that it would be pro rata would be anathema to the way -- the structure of the plan.

Q Okay. And we were here in June, and Class 11 -- Class 10 was fixed on a net basis of somewhere at around $330 million. Do you recall that?

A That's correct. That -- Class 11 wasn't -- Class 10 wasn't set there. HMIT's claim in Class 10 was set at that amount, which was their capital account, less the amount of the -- potentially the amount of the note that they owed to Highland.

Q Is there any conceivable chance that HMIT will ever be paid in full?

A No. It's simply not -- it's metaphysically certain that it won't be paid in full.

Q And --

A We have a limited amount of cash to cover expenses. We have $10 to $15 million more in assets. We owe the Class 9s, provided all the senior expenses are paid and all the indemnification obligations are paid and there are no more statute of limitations that we have to worry about and all litigation risks are gone, we owe the Class 9 $10 million. Provided all those things are true, we owe the Class 10, including HCLOM, about three hundred and -- now, after application of the note, about $330 million. There is no world, no universe, that we will ever have a penny more than

is required -- than we could pay through Class 10.

Q Okay.

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

THE COURT: All right. Mr. Harper, cross?

MR. HARPER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HARPER:

Q Good afternoon, Mr. Seery.

A Good afternoon.

Q My name is Geoffrey Harper. I don't think you and I have ever met before; is that right?

A That's correct.

Q So listen, I'm going to try to go quick and just run by a couple things with you real quick, some of which I'm going to try to make speedier by just trying to make sure your testimony that you gave earlier you still agree with today as we sit here.

But when we take a look at the equity between Dugaboy and Hunter Mountain, or the Class A and the Class B and C interests, forgetting for a moment the plan and just asking you, I mean, you would agree with me that under the partnership agreement they get paid pro rata based on profits, correct?

A No, I disagree.

Q Okay. Let's take a look, if you will, at Exhibit 1. Do

you have that with you in that notebook?
A The rejected partnership agreement? Yeah.
Q Sure. So let's take a look at -- as we look at the partnership agreement, let's take a look at Section 3.2, allocations of profits and losses. It indicates that profits are to be done -- so 3.2-A says, you know, we're going to do ones from prior ones and cumulative profits again for prior periods, and then Section 3 says it will be done to all partners in proportion to their respective percentage interests, correct?
A 3 point -- I'm just trying to see where you are reading from.
Q So I'm on Page 8.
A Yes.
Q 3.2.
A Yes.
Q A.
A Yes.
Q Little iii.
A It says, then to all partners in proportion to their respective percentage interests.
Q All right. So, subject to A and B, which has to do with payments for prior periods, then profits are to be assigned based on the proportional interest, correct?
A Allocation of profits, yes.

Q Correct.
A That's what it --
Q Now, --
A That's what it says.
Q Now, your point is there's a difference between allocation and payment, and you're right. So let's take a look at Section 3.9. This is on Page 12. The -- there is a certain -- if I look at 3.9-B, there are priority distributions that are to be provided to the Class B/C interests, correct?
A That's correct.
Q And those are fairly minor in the grand scheme, is -- with the dollars we're talking about, correct?
A I'd disagree with that, but --
Q Okay. So in light of that we're talking 300-and-some-odd -- $360 million for what you're valuing the total equity at for Dugaboy -- I mean, for, excuse me, Hunter Mountain, what we're actually looking at for priority distributions are every calendar year they get $1.6 million -- they're guaranteed to get at least $1.6 million, correct?
A Just the premise of your question, I'm not valuing the equity at anything.
Q Okay.
A We're fixing the amount of a class interest under a plan. So I'm not -- I'm not valuing anything.
Q Okay. I want to make sure that --

A I think the value of Class 11 is zero.
Q Sir, I want to make sure that we say this clearly. So when you're saying you're -- you are not offering testimony as to what you think it's actually worth, are you estimating as to what it was worth at any given point in time?
A We're fixing the amount of a claim. Just like a claim --
Q Right.
A -- doesn't always get a hundred cents, a fixed amount of the interest under this plan doesn't always get a hundred cents.
Q Oh, I understand that. But you're fixing the amount of the claim and you're choosing a figure based on the value of that equity interest as of a date certain, correct?
A I'm picking a figure or fixing a figure based on the capital accounts that were maintained by the partnership as of the petition date.
Q Okay.
A What their actual value might be, I don't know.
Q Okay. I'm sorry. I wanted to make sure I wrote that down specifically.
All right. Now, other than the priority distributions that are provided here in Section 3.9 -- and by the way, even the ones that are provided here don't give -- that just says they get paid first in certain circumstances; it doesn't say that they get paid more, correct?

A I don't know it. I'm not an expert on the entire partnership agreement.
Q Fair enough. Have you looked at Section 5.3?
A I have, yes.
Q Now, 5.3 talks about how it would be handled under a dissolution and a liquidation, correct?
A That's what it says, dissolution and winding up, yes.
Q And if I -- the portion of Section 5.3 on Page 23 indicates that the liquidation will take place, and then the way the cash will be put out is on the second page, Page 24. We have A, B, and C. A would be payment of, you know, certain expenses, B would be payment of creditors, and C is to the partners and assignees, to the extent of and proportion to the balance in their capital account, as provided in the Treasury Regulation Code, correct?
A The -- you gave a quick summary of it. You didn't read the whole thing. But some of those words are there, yes.
Q And then D tell us, to the partners in proportion to their respective percentage interests, correct?
A That's what it says, yes.
Q All right. So C tells us it's going to be in proportion to their capital accounts and C -- and D tells us to the partners in proportion to their respective percentage interests, correct?
A That's what this section says, yes.

Q All right. So when you were determining the amount of the claims, other than just looking at the tax returns for what was listed as capital accounts, did you take into account the way that the partnership agreement said that those interests should be valued and paid?

A You didn't read anything about valuing anything here. What I -- what we did take into account when we set the plan and fixed it was the priority that, in the previous provision you read to me, said, notwithstanding any other provision of this agreement, that that priority gave HMIT, the holder of the B/C, priority to the Class A. So when we put it forth, put the plan forth and constructed it, we wanted to make sure that we didn't get an objection from any of the equity holders, particularly HMIT, saying, well, I should be senior. So the plan was structured with Class 10 being senior to Class 11.

Q All right. So, again, let's -- I only want to focus on what you said as it -- I understand the plan, and I'm trying to -- we're going to get to the plan next. But if we're focusing just on the partnership agreement for a second, when you said them being senior pursuant to the partnership agreement, the only way that they are senior in the partnership agreement is a limited amount of priority distributions, correct?

A They were entitled to priority distributions; that's

correct.
Q All right. And those are limited by the specific terms as to what they're entitled to, correct?
A I assume they are. I've not -- I'm not an expert on how the partnership agreement lays out the priority of B/C to A, but it clearly laid out a priority.
Q Do you know, in the history of the Debtor, was there ever a time that the priority distribution provisions were used such that the Class B/C were paid to the exclusion of the As?
A That the B/C were paid? I don't know the answer.
Q Okay. Now, as you noted, you then went to the plan and noted that there were certain parts to which the -- certain claims that were subordinated, right? I mean, the Class -- as we've said, used the exact words, the Class As are subordinated to the equity trust interests distributed to the allowed holders of the Class B/C, correct?
A Yeah. Which section are you reading from? But that's the -- that's the gist of the plan, yes.
Q I was actually reading from -- I'm on the Claimant Trust agreement, --
A That's what I thought.
Q -- Page 26.
A Yeah, that's -- that's different from the plan.
Q You agree that the plan incorporates the Claimant Trust agreement?

MR. MORRIS: Could we --

THE WITNESS: Yes. And the Claimant Trust Agreement reflects the plan.

BY MR. HARPER:

Q Okay.

A But you said you were reading from the plan, so --

Q I apologize. Sir, I truly am, I'm trying -- I'm not trying to mislead you and I'm sorry if it sounds like I am.

A Uh-huh.

Q So if I take a look at the Claimant Trust Agreement, --

A Uh-huh.

Q -- Article 4 of the trust interests, Section C, little c, notes that the Claimant Trust shall issue contingent interests to the holders of allowed Class 10 B/C limited partnership interests and the holders of allowed Class 11 Class A limited partnership interests, correct?

A I believe it says a lot more than that, but yes.

Q I'm sorry. I'm literally just reading the first sentence.

A I don't have it in front of me, so I'll assume you're --

Q I'm sorry.

A -- you're relatively close to a fair reading.

Q Let me hand you a copy.

A Thank you.

Q I did not realize you did not have a copy. My fault. Sir, I'm on Page 26. Now, in the middle of that paragraph,

there's a sentence that reads -- tell me if I'm reading this correctly: Contingent trust interests shall not vest and the equity holders shall not have any rights under this agreement unless and until the Claimant Trustee files with the bankruptcy court a certification that all GUC beneficiaries have been paid indefeasibly in full. And then there's more, but did I read that part correctly?

A I think you were close, yes.

Q Has that been done?

A No.

Q So as of this moment, the GUC certificate has not been filed and there's nothing that has vested or rights to any payments from the equity holders, correct?

A That's correct. They're not vested as interests under this Claimant Trust Agreement. There has been a fixing of the claim of HMIT, and they are entitled to the rights they have under the settlement agreement, and distributions have been made to HMIT on account of that settlement agreement, including the closing of the transfers of the assets as well as cash payment.

Q All right. Understood, sir. Now, we had an earlier question about whether there was any equity holder left or not. I mean, this is not a term that I'm making up. This is a term in the Claimant Trust Agreement, correct?

A I'm -- what term?

Q Equity holders, sir.
A Yes, that's in this -- in this agreement in this paragraph.
Q Okay. Now, what I was reading earlier was the last sentence under Section C, which says, The equity trust interests distributed to allowed holders of Class A limited partnership interests shall be subordinated to the equity trust interests distributed to allowed holders of Class B/C limited partnership interests.
Did I read that correctly?
A That's correct.
Q Now, let's take a look, if we can, real quick now to Section 9.2. This will be on Page 33.
MR. MORRIS: Do you have a copy for me?
MR. HARPER: Oh, I'm sorry. I thought the Claimant Trust was an exhibit. My fault.
MR. MORRIS: Excerpts, yeah.
MR. HARPER: Oh, I'm sorry.
MR. MORRIS: That's the agreement, yeah.
MR. HARPER: My fault.
THE COURT: I have a notebook of the Reorganized Debtors' exhibits. But the Claimant Trust Agreement, as well as the plan, I just have excerpts that they used as exhibits. And some of what you're reading is not in their excerpts.
So if I pulled the Dugaboy witness and exhibit list at

Docket Entry 4395, do you have the full copies of these or what?

MR. HARPER: No, Your Honor. We did not list it as an exhibit, Your Honor, although, you know, obviously, the Court takes judicial notice of its own filings and pleadings.

THE COURT: Okay. Are you asking me to do that, so I can read along, or what?

MR. HARPER: I'm sorry, Your Honor. I truly believed that they -- at this moment, and this is my own fault, --

THE COURT: Well, as you can see on their exhibit list in bold at Number 2 and 3, they have excerpts of the plan, excerpts of the Claimant Trust Agreement. So I realized --

MR. HARPER: I --

THE COURT: -- that you were reading places that are not in their excerpts.

MR. HARPER: I'm sorry, Your Honor. And even worse than that, I only brought three copies. I would hand you mine real quick, but then I can't read this one. But I'm happy to give you mine the second I read 9.2 out loud.

THE COURT: Okay. Are you about to read from the plan or the Claimant Trust Agreement?

MR. HARPER: I'm reading from the Claimant Trust Agreement.

THE COURT: Okay. That's Docket No. 1811 on the main

docket. I'll find it.

MR. HARPER: Yes, Your Honor. 1811-2, filed on January 22nd, 2021.

THE COURT: Okay.

MR. HARPER: At least pursuant to what I'm holding.

THE COURT: Okay.

(Pause.)

THE COURT: This is taking longer than I want it to, since there are -- no.

MR. HARPER: Your Honor, if it'll be easier, I'll hand this, I'll just have him read it out loud --

THE COURT: Okay.

MR. HARPER: -- and I'll trust he's going to get it.

THE COURT: All right. Thank you.

BY MR. HARPER:

Q Would you read Section 9.2 out loud for us real quick?

A "Upon dissolution of the Claimant Trust, any remaining Claimant Trust assets that exceed the amounts required to be paid under the plan will be transferred, in the sole discretion of the Claimant Trustee, in cash or in kind, to the holders of the Claimant Trust interests, as provided in the Claimant Trust Agreement."

Q All right. So if there is money beyond what is allowed, the claimant can -- has the -- or the Trustee has the right, in his own discretion, to decide whether to do it in cash or

in assets, and then it's to be provided to the holders. So my question to you is, who gets it?

A At the dissolution, we would pay the next class in line. So --

Q All right. So let's go -- let's talk about what you said earlier. You said, for example, that there was no way on God's green earth -- and that's my term, not yours; I apologize -- that they would ever get past the Class 10, correct?

A That's correct.

Q Now, you're aware that there are numerous matters that are on appeal, correct?

A There are some matters on appeal, yes.

Q Including whether or not -- there's the gateway provision and how that's going to apply.

A That's not -- that's not on appeal.

Q So it has been sent back and the Court has just made a revision and there may or may not be an appeal from that, correct? Although there is actually -- you say there's no appeal. Is there not something before the United States Supreme Court right now on that issue?

A There is a cert petition.

Q Okay. So it's -- someone is attempting to obtain a further appeal on that, correct?

A I treat a cert petition as different than an appeal, but

okay.
Q I apologize. I see I'm not the only one that wants to do the *Law Review* route. So let me hit on the issue there. There are additional claims, depending on how those appeals, that could very well change the amount of money that would come into the estate, true?
A False.
Q False?
A False.
Q Hmm. And your reason for that is what?
A There are no additional assets that the estate can recover that would go into the estate. Those are -- the order you referred to is actions against the estate or its fiduciaries that would deplete the indemnity trust.
Q That's fair. Let me try it differently. There are additional claims that could be pursued by, for example, Dugaboy?
A Not for the estate.
Q No, not for the estate, but for Dugaboy themselves. Correct?
A I don't believe there are, but what would that have to do with distributions from the estate?
Q Fair. It has to do with the valuation, but I understand your question there. When you sat there and you said, all right, I'm going to decide how much the claim is to be allowed

under -- as I understand, the way that you have set this up, you believe that the equity holder Hunter Mountain will receive some money, correct?

A They may -- they've already received some money. They may receive more money. I don't know whether they will.

Q Okay. But they may receive more. But you believe that there is, if I understood, you said there's no chance that it will be -- filter down to the Class 11, correct?

A Metaphysically certain.

Q Okay. Now, as to the other, besides Hunter Mountain, Class 10 claimant, that entity was what?

A I apologize. I don't understand your question.

Q So there's two different Class 10, correct, claims?

A Correct.

Q One is Hunter Mountain?

A Yes.

Q And I was asking you to just state what the other one was.

A It's called Highland CLO Management Limited. It's -- we refer to it as HCLOM.

Q Right. And HCLOM was not an equity holder, correct?

A It was not.

Q And they are not referred to under either the plan or the contingent trust as an equity holder, correct?

A They weren't an equity holder. I'm not --

Q Right. And their valuation is --

A I don't -- I don't think they're referred to at all.
Q All right. They had a note, correct?
A They had a note that we said was worthless. We brought an action against them for bad faith. They insisted that -- we insisted they get zero and they pay us millions of dollars. We ended up settling it. They insisted on a Class 10 claim with limited rights.
Q And that Class 10 claim, you know, the agreement was that they were going to get five percent of any amount of money that Hunter Mountain got?
A That's incorrect.
Q Sir, are you familiar with the intercreditor and participation agreement signed between HCLOM and HMIT?
A I have seen that, yes.
Q Okay. And you agree that in the intercreditor and participation agreement, HMIT agreed that they would pay five percent of the money that they received to HCLOM. Correct?
A That's between HCLOM and HMIT. We make our distribution to HCLOM. They have a fixed claim for $10-and-change million by order of this Court.
Q Correct. So it started with a -- they wanted a percentage, and then they also got a set amount of money based on a settlement agreement with you under the -- that was fixed, correct?
A Apologies for how this sounds, but you have no -- that's

not even close to what happened or what these agreements say.
Q Sir, I truly apologize. Why don't -- would you please fix that for me?
MR. MORRIS: Objection to the form of the question.
THE COURT: Fix what?
MR. HARPER: Oh, I'm sorry.
THE COURT: What does that mean?
BY MR. HARPER:
Q You said that was inaccurate, so I'm asking you, would you please tell me the accurate -- the valuation for it.
A HCLOM had a claim for --
Q Uh-huh.
A -- $10 million.
Q Okay.
A It was objected to, because we stated that it was frivolous and it came out of the stripping of assets from Josh Terry's Acis -- controlled Acis -- before he controlled it.
We also filed a bad faith motion, which we would have prevailed on, we're quite confident, for damages against HCLOM. At the hearing, HCLOM's counsel, which is also Dugaboy's counsel, and also at that time HMIT's counsel, made a proposal that we settle the claim. We took advice -- I took advice of counsel and agreed to the settlement. And that was a settlement of the claim. We wanted to zero it out and we wanted to put them in Class 11 and they wanted to be in Class

10. So we gave them an allowed or a fixed claim with limited, extremely limited rights, in Class 10 for $10-and-change million.

That stipulation was signed by HCLOM, the Debtor, HMIT, and Dugaboy approving it.

Q Okay.

A And that was entered by the Court.

Q I'm sorry that you thought my explanation was dramatically different than that. I think the answer is I must not have heard what I said. Let me just make sure that we're on the same page, though. The way that that claim was valued had nothing to do with equity, correct?

A It --

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

THE WITNESS: It -- it --

THE COURT: Sustained.

THE WITNESS: We weren't valued -- the claim --

THE COURT: You don't have to answer.

THE WITNESS: Okay. Sorry.

BY MR. HARPER:

Q That claim was valued via the terms of a settlement, correct?

A The amount was fixed. We didn't value what their claim was worth.

Q I'm sorry.

A Their claim --
Q The amount of the claim that you --
A Their claim is --
Q -- allowed --
A I would value their claim at zero.
Q Okay. The amount of the claim that was allowed was a negotiated settlement. Fair?
A Their classification was -- was negotiated. The amount, because it was subordinated and because it was sitting in a class that was unlikely to get much of a distribution, we didn't really negotiate the amount.
Q Okay.

MR. HARPER: Your Honor, that's it.

THE COURT: Redirect?

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

THE COURT: Okay. Thank you. We appreciate your testimony, Mr. Seery.

THE WITNESS: Thank you, Your Honor.

(The witness steps down.)

THE COURT: Any other evidence from the Reorganized Debtor?

MR. MORRIS: No, Your Honor.

THE COURT: All right. Any evidence from Dugaboy?

MR. HARPER: No, Your Honor.

THE COURT: All right. I'll hear closing argument.

CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

MR. MORRIS: As usual, Your Honor, I feel like I'm trying to hit a moving target, because I think the argument that I heard today has nothing to do with the objection that was filed.

As I understood the objection that was filed, Dugaboy was saying that, once Class 9 and senior obligations were paid in full, that somehow Class 10 and 11 should share any further recoveries on a prorated basis because they were the former limited partners. That's what we came here to debate. And on a bait-and-switch, as far as I'm concerned, we're now here on some absurd hypothetical about what happens to a dollar after $330-some-odd million gets distributed in the future.

It's never going to happen. I think the Court knows it's never going to happen. And I think the only evidence in the case that you just heard from Mr. Seery is that, in response to counsel's questions and his hypotheticals about what happens if Dugaboy brings a claim in the future, it would have nothing to do with distributions from the estate. Right? Just a completely irrelevant issue.

At the end of the day, if Dugaboy thinks the partnership agreement should have been interpreted and applied in a different way, they should have raised that issue in their objection in January 2021. I think Your Honor has it exactly right. I don't know whether it's res judicata, collateral

estoppel. It's probably both. But it does border on Rule 11 in my mind because I don't think there's a good faith basis in law or in fact to suggest either that distributions should be made pro rata to Class 10 and Class 11 when senior obligations are satisfied or that there's some hypothetical world that exists that's going to -- there's no evidence, right?

The funny thing is, we were here in June, and one of the things Your Honor said to Mr. Lang was, I don't know what you want me to do here. Highland put on a case. They put on a witness. They put in documents. They had evidence. They proved that this methodology was reasonable. You've given me nothing.

They're still giving you nothing. Right? They don't have a witness, they don't have documents, they don't -- they're relying on a partnership agreement that was rejected that hasn't been an effective -- in effect for years. They know what's happening. And they can continue to fight forever, if that's what they choose to do, and it's why creditors are not getting paid yet. It's unfortunate. But if that's the threat, that someday there's going to be more lawsuits, we'll just continue to husband our resources. But we are going to dissolve this estate. Make no mistake about it. That's the goal, that's our obligation, and we're going to fulfill that obligation.

They know what's happening. Mr. Lang stood here in June

and told Your Honor that if you fix Hunter Mountain's claim at the $300-some-odd million, Dugaboy will never get a dime. And he guaranteed it. If you just go to the transcript and just do a search for dime, you'll find his quote. They knew then what's happening. They know now what's happening.

And that's not some evil plan of Mr. Seery. It's not because Judge Jernigan is biased or anything. It's because we followed a judicial procedure that got us to this point. We had trials. We had evidence. We put in documents. We made arguments. We had a plan. We have a Claimant Trust Agreement. That's what we're doing. There's no reason to upset the applecart.

We ask the Court to grant the order and let's move on. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Harper?

MR. HARPER: Thank you, Your Honor.

CLOSING ARGUMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

MR. HARPER: Your Honor, I'm the first one to say, just like you did, that there's issues based on what's already happened here. Okay? So I get that.

THE COURT: Maybe I should say *déjà vu* all over again. Maybe that's a more legally term.

MR. HARPER: Your Honor, --

THE COURT: That's what it feels like to the Court,

okay?

MR. HARPER: I apologize. Because I've got to tell you, I thought I went out of my -- I attempted to, apparently wrongly, go out of my way to not do that as much. And you'll note that, for example, in our response, we noted other places that we objected to that we were not trying to re-argue with you. We were preserving our right to object so it didn't look like we were waiving anything, but we were not going to re-argue that point.

And I'm trying not to do that again today. I hear the Court saying they think otherwise. I mean, you know, obviously, we think that this concept of how the Hunter Mountain interest was valued is horrific, bizarre, and has no basis. Happy to -- and I think, candidly, we heard that for the first time today under oath from Mr. Seery, who said that under no circumstances did he attempt to value this, under no circumstances did he try to determine what the claim would be under the partnership agreement. In other words, how much the person was entitled to, that's something he didn't bother valuing.

Instead, he just said, hey, here's what I'm going to allow, which we negotiated with a settlement, and I'm choosing it based on what a tax return said and what someone said was the value of the capital account and in direct contrast to what the partnership agreement specifically says how those

will be paid out and how those claims will be valued.

Now, Your Honor, I recognize and I'm not here today to say we're going to try to redo what the Court has done, as much as I would like to. That does, however, leave us in a situation of, what do we do about these other claims?

We have put ourselves in a situation, this Court has, where -- and I understand them to say there's just no way in hell it could happen -- but Your Honor, you cannot have a plan that does not take into account additional payments, and this plan does. That's what Section 9.2, which I can provide the Court, says. It says, under the Claimant Trust Agreement, 9.2 says if there's money at the end it's going to get paid back. So it makes assumption that it's there and it goes.

So the question then becomes, how do we value these and when do we value these?

We know that 11 U.S.C. Section 502(b) says we don't sit around and estimate. I mean, we should only be doing the claims and placing a value on them once they have been made certain and liquidated. However, Section 502(b) says the Court can make an estimate if waiting would cause undue delay. And that's the issue.

What we've been trying to say throughout, Your Honor, is, why are we doing this now? The answer is, at some point in time, we will be done. When we are done, we will know how much money is left. When that time comes, the answer is we

need to then say, all right, here's how much money goes to the equity holders. Not to HCLOM, they have a claim which they negotiated, they have their -- but how much money goes to the equity holders. And --

THE COURT: Can I stop you?

MR. HARPER: Certainly.

THE COURT: Didn't Dugaboy, through the Stinson law firm, object to the extension of the Claimant Trust, which we had a hearing on in June, --

MR. HARPER: Yes.

THE COURT: -- same as the Hunter Mountain settlement?

MR. HARPER: Yes.

THE COURT: Okay. I'm just trying to reconcile that with you suggesting we can push off to some later time --

MR. HARPER: Because we lost that, Your Honor.

THE COURT: -- resolution of Classes 10 and 11.

MR. HARPER: Your Honor, we lost that. If the answer is we are now closing the estate and we are saying these claims are done, the trusts are done, we're ready to go, then you're right, it is time to value it. And I agree with that. If all --

THE COURT: That's what we're trying to do now. Well, I mean, --

MR. HARPER: All right. With everything that's on

appeal, with everything that's standing out there, there's more coming. Or not. We'll know soon. They're appealing to the United States Supreme Court right now. Excuse me, they're filing a cert petition to the United States Supreme Court right now, which at least one witness does not consider to be a form of an appeal. But we've got claims out there not only with the district court and otherwise. So the issue is, it makes sense to wait until we actually know how much money there is, and then we do it.

THE COURT: What do you think is out there? I mean, I almost feel like, do you know something I don't know? I've only had one case in 19-1/2 years on the bench where there was this serendipitous, oh my gosh, we've got value for equity beyond our wildest imagination. You know what kind of case it was? It was a bitcoin exchange.

You look like you're in severe pain.

MR. HARPER: I'm sorry, Your Honor. I apologize. Yes.

THE COURT: Okay.

MR. HARPER: But it has nothing to do with the --

THE COURT: Okay. I will tell you my little story. It won't take long.

MR. HARPER: Oh, no. Again, please.

THE COURT: I had a bitcoin exchange. It was a Chapter 15. It was called Mt. Gox. And at the time, it filed

bankruptcy because 800,000 bitcoin went missing. Hacked. Bitcoin was worth between 300 and 400 U.S. dollars for one bitcoin. And guess what happened? I don't know what the cost of bitcoin is right now, but it's a heck of lot higher than that. So there was oodles of money. One time in 19-1/2 years. And I guess I can remember maybe one time in 17 years practicing law before that.

Do you know something the rest of us don't know? Is there a stash of bitcoin somewhere that Mr. Seery just hasn't stumbled upon yet?

MR. HARPER: Your Honor, the -- without getting into privilege, I will tell you my client believes there's more out there, a lot more.

THE COURT: Okay. Well, I'm pretty sure --

MR. HARPER: But --

THE COURT: -- there was an exchange of information in discovery before the Hunter Mountain hearing.

MR. HARPER: Correct.

THE COURT: That's what I was told.

MR. HARPER: Again, Your Honor, I can only -- I'm sorry, Your Honor. I --

THE COURT: Mr. Dondero testified at the last hearing, and that would have been the time to tell me, there's a stack of bitcoin. A stack, whatever. But --

MR. HARPER: Your Honor, I don't know if anybody's

suggesting there is a stack of bitcoin.

THE COURT: Okay.

MR. HARPER: You know, that may --

THE COURT: Well, then what are we doing, is my question? I'm just trying to rationalize the objection.

MR. HARPER: Your Honor, what we're trying to do is actually have the claims valued and the claims set having some basis in reality, which they don't now.

THE COURT: Well, we had a plan confirmation hearing in February 2021 --

MR. HARPER: And I'm not -- right.

THE COURT: -- where, here's Class 10, here's Class 11. Class 11 is subordinated in distribution rights to Class 10. I don't think it was arbitrary. I think it was just trying to give some meaning to different terms in the partnership agreement. But whether it was arbitrary or not, res judicata, collateral estoppel, nobody objected. Okay. No one caused me to focus on the bona fides of doing that.

MR. HARPER: I understand, Your Honor.

THE COURT: And Dugaboy objected like crazy to the plan. Okay? So that's why I started out with my at what point can you stop making an argument.

MR. HARPER: So if I understand what you're saying, can I stop making arguments, while they may be new, but they nonetheless seem to be attacking things that you have concerns

about that have already been decided.

THE COURT: Repeat that?

MR. HARPER: Your Honor, the answer is we know that Section 9.2 must mean something, right? So 9.2 tell us that, if there's money left over, it goes back and it's going to get divided between the equity holders. Right? So the answer is --

THE COURT: If there's money left over, --

MR. HARPER: -- there is an expectation --

THE COURT: -- it's going to be divided among the equity holders? That's not exactly what it says.

MR. HARPER: All right, Your Honor. What it says is that, to the extent that there is money beyond the allowed claims, it will be paid out to the holder -- to the people who have interests in the trust. Based on the way the trust is defined and the different provisions, I would say the way I read that is the only -- the people that are left at the end of the day would be the equity holders, and the reason being the 10 and 11 cannot be paid until all claims above, there's been a certification that they've been paid in full. So they will get no more, right? So that's what we learned from looking at the provision there.

So, therefore, if there is leftover money -- so the answer is we have already made, when we did this, an assumption that there are going to be certain claims of the Hunter Mountain

that are going to be -- have priority, and then there's going to be leftover money that's got to go back. Well, it certainly can't be a case that to the extent there's leftover money ...

And Your Honor, I'm not trying to say it's because I care about the leftover money. My point is it has to mean something, right? We know that the basic rule of contract interpretation and law interpretation is we have to assume every provision means something.

THE COURT: Well, do we have to assume the provisions of the plan setting forth treatment for Class 10 and Class 11 mean something?

MR. HARPER: And the way that --

THE COURT: I think they're pretty clear.

MR. HARPER: Okay. With the exception that they say that they incorporate this. And by the way, the exact same language you're talking about is in here as well. They both say this. It's subordinated. But the question is, are they 100 percent subordinated? Doesn't that mean, by the way, if there is extra money, does it 100 percent go to -- if what the Court is saying is accurate -- and again, I'm not trying to -- I mean, obviously, you wrote it, so you get to say this is how I interpret my --

THE COURT: I didn't write the plan.

MR. HARPER: I'm sorry, Your Honor. You signed --

you had approved it. So you get to say, this is what I meant.

So imagine a world where there's extra money. Does it 100 percent go to Hunter Mountain? Do they -- because it goes to the two equity holders. Because they, under this term, because our claim is subordinated, if there's extra money, does it 100 percent go to them?

And that just can't be. Right? So because of that, we know that subordination ain't to everything. It goes to the allowed amount of a specific claim, which then leads us to the following. How did we decide this?

Now, I understand, Your Honor, and I'm not trying to re-argue what was already there, but what we know and what we just heard testimony on is there was no attempt whatsoever, in deciding what to declare to be an allowed claim, to actually look at how much this was worth or how much it says it will be paid.

I mean, normally, when we determine a contract --

THE COURT: I heard a lot of testimony about the methodology --

MR. HARPER: Uh-huh.

THE COURT: -- and what the reason was for choosing the methodology. And as Mr. Morris alluded to, I turned to Dugaboy at the Hunter Mountain settlement hearing and said, do you have evidence of a more appropriate methodology?

MR. HARPER: And Your Honor, in the record --

THE COURT: And the answer was no. So I had one witness credibly testifying here's the methodology I used, and no countervailing evidence.

MR. HARPER: And that same witness has now told you that the way he did it was, I took a look at these tax returns, I said, hey, here's what this says. I did not bother looking at what would have actually have been owed or paid or valued under the actual partnership agreement and terms. And Your Honor, that's just not how we do things.

THE COURT: Okay. Well, I can take judicial notice of what I heard at the previous hearing.

MR. HARPER: And --

THE COURT: His cross-exam, then, too.

MR. HARPER: Certainly. And you can take judicial --

THE COURT: And I'm not sure I heard anything inconsistent. I think I just got a shorthand version today of what he testified to in a longer version in June.

MR. HARPER: With the exception of he paid no attention to the documents, to which, by the way, those documents are also, if the Court is taking judicial notice of, were exhibits before.

THE COURT: I didn't hear him say he paid no attention to the documents.

MR. HARPER: Okay. Fair enough, Your Honor. He paid no attention to the liquidation provisions or how they say

claims would be paid or how they would be valued, to the extent there is one. And maybe that would be more precise. And again, I appreciate the Court making sure that we are clear in the record.

Your Honor, at the end of the day, let me be -- let me start off with -- let me end with where I started, and so that we don't -- because my whole point was not to find myself in the position I've somehow found myself with the Court. Look, if the Court believes that this was fully resolved before, then there's nothing to do today. I agree. I disagree that it was fully decided, but if the Court believes it was and if the Court believes, hey, you didn't make an objection before so you are stuck with this, then the answer is, Your Honor, we have nothing else to say.

THE COURT: What did I not decide then that you think I should decide today?

MR. HARPER: How to value Dugaboy's interest. If you believe that was decided in the last hearing, I missed that. I certainly don't see it in the order. I see a settlement agreement and a settlement agreement that provided certain claims. Now we've got a decision, to this.

Our point is we don't even think this ought to be done now. But obviously, Your Honor, what was done before is on appeal. We'll hear what the courts up there have to say. But for this point right now, if you believe the answer is, as a

matter of law, based on what was said before, that automatically covers here, Your Honor, I respect the Court and I won't argue with you on it.

I mean, if that's what you are going to say, then, Your Honor, we agree, we lose, if that's your view. And Your Honor, that's what I'm trying to say. I'm not trying to get in an argument with you. If your belief is that was decided before, then --

THE COURT: I'm just asking questions.

MR. HARPER: Yeah. I understand, Your Honor. And I'm just -- but I see frustration here, and I'm trying to avoid that by saying one thing I feel very -- I go out of my way with courts to try to say, is look, if you believe this, we win; if you believe this, we lose.

Your Honor, if you think that this was covered before and that somehow that resolved, then we're done. I've got nothing for you. Because I certainly am not going to try to do that. I don't think it was. I personally -- and I'm doing my best not to reargue the issues that the Court has already decided. But if the Court feels that I have no choice but to do so, then, you know, I'm sorry for doing so, because that was not my intent. I've never seen a judge who appreciates, as you said, *déjà vu* all over again and having the same argument. I'm trying not to do that. But Your Honor, that's all we have.

THE COURT: Okay. Thank you.

MR. HARPER: Thank you.

THE COURT: Movant gets the last word, if any, in rebuttal.

MR. MORRIS: I do have a few comments, Your Honor. I'll try to be brief.

I'm trying to deal with each pellet that's coming out of a shotgun, because this was not the objection. The notion that this isn't the time to value the Class 11 unvested contingent interests is wrong. We're on the clock. Dugaboy knows they're on the clock.

As Your Honor pointed out, they actually objected to the extension of the Claimant Trust Agreement by a year, although withdrew that objection after they got their precious reservation of rights.

The case has to end. I know Mr. Dondero doesn't like that, but it is going to end. The litigation may go on, as Mr. Seery pointed out, but the bankruptcy, right, the Claimant Trust Agreement, the Claimant Trust is going to be dissolved soon. And it can only be dissolved.

And I'll try and finish where I started. I said we're here because the plan requires us requires us to be here. The Claimant Trust Agreement requires us to be here because we have to resolve all of the undisputed claims and interests, and that's what we're doing today.

I'm not a scholar on res judicata and collateral estoppel. I will tell you that the evidence we presented today pertains to the Class 11 interest holders. So to that extent, I think the Court needs to make findings as to what those Class 11 interest holders' claims should be allowed at. It's the same methodology but it's different numbers and it's different interest holders. And I would ask the Court to make specific findings that those unvested contingent interests in Class 11 be allowed in the amount set forth in our motion based on the methodology that Mr. Seery presented to the Court.

I hear a lot of complaints about the methodology, but I want to make this clear for the appellate court. There is not a scintilla of evidence that Dugaboy has ever presented on what the methodology should be, how the Class 11 interests should be calculated, or what their calculations ought to be. We're still left with nothing.

Your Honor asked the question in June, and I think if they had come here with new evidence, right, we wouldn't say res judicata, we wouldn't say collateral estoppel, we would say, oh, the Court has to make a decision on what methodology is appropriate, what methodology is reasonable.

Your Honor is only given one choice today. And so you just have to decide, is the methodology appropriate for the Class 11 stakeholders or the Class 11 interest holders? Because there's no alternative. Again, appellate court, no

evidence. Appellate court, no evidence of value. We have these hypotheticals. Oh, Mr. Dondero is going to bring more lawsuits. Wait 'til you see the next one, because all of the other ones have been so successful.

Why isn't he here to testify? Why isn't he here -- why are they not putting in evidence of value? Why are they not doing anything to rebut Mr. Seery's knowledgeable, informed testimony that there will never be any assets available to satisfy Class 10 and Class 11.

And again, I'll go back to Mr. Lang. He knew it. At least, at least I -- I have a lot of respect for Mr. Lang. At least he was able to stand up here and say, if you do it, Dugaboy gets not a dime. He was right. And that's the way it should be because that's what the plan says because that's what the asset base is. Again, there's nothing evil going on here. We're just doing our job.

The whole issue of what happens in this completely speculative hypothetical situation that there's a nickel left over after the allowed amounts get paid, that whole issue is absolutely irrelevant to what we're doing here today. It's irrelevant because the only issue before the Court is what's the value of the interests in the class; it's not what happens if there's more money left over. That's one reason why it's irrelevant.

It's also irrelevant because we hear time and time again

that Dugaboy believes the plan provides that it will get the residual. If it will get the residual, then why is it crying? And if it doesn't provide for a mechanism of what happens if there's a nickel left over after $330 million is found in some bitcoin account, right, somebody's going to have to come back here and ask for a plan modification and we'll deal with it then. It has nothing to do with the motion before the Court today, and I don't want the Court to go down a path that, in our view, is completely irrelevant. It either provides what Dugaboy thinks, in which case who cares, or it doesn't, and you know what, when somebody finds that bitcoin we'll come back and ask for a plan modification and we'll figure out what to do then.

I have nothing further, Your Honor.

THE COURT: Thank you.

MR. HARPER: Your Honor?

MR. MORRIS: Thank you.

MR. HARPER: I know -- I'm sorry. I have been asked -- my associate reached out to me, he's asked me to say one sentence. If it's okay with the Court, I don't think he'll want to respond, I think he'll just shake his head and --

THE COURT: Usually the movant gets the last word, so this better be important.

MR. HARPER: Your Honor, I have been -- I'm sorry. You may not -- I have been asked to raise one issue with you,

which simply is that, in case it was not clear earlier, that our view as to which claim -- because the point is, you know, again, we said if there's something left over at the end and how to deal with some issues, what's subordinated, what's not, the point that we have been trying to make is that we think that the partnership agreement talks about priority distributions are made. Those are priority, and those are the only ones to which, you know, Dugaboy believes subordinated. Your Honor, that's what my client -- that's it, Your Honor. Thank you.

THE COURT: All right.

MR. HARPER: And again, I'm sorry for doing that out of order. I appreciate you.

THE COURT: Well, I have allowed a lot of discussions and questioning about the limited partnership agreement, and if I erred on that, I erred on the side of allowing our objector, Dugaboy, to fully make its argument. But I do still, at the end of this hearing, believe what I believed or suggested at the beginning, and that is this is really more about the plan and the confirmation order.

The confirmation order approved the plan. The confirmation order approved the Claimant Trust Agreement. And I thought some sort of preclusion doctrine is really the issue here.

And just to tie that all together, again, I allowed

questioning and argument about the Highland December 2015 limited partnership agreement that created three classes -- A, B, and C -- limited partnership interests, but ultimately the arguments about that seem irrelevant at this late stage. I'm trying to pick the right word. Because the time to have argued that the terms of the limited partnership agreement don't support a separation into Class 10, Class 11 of the Class B and C and Class A limited partnership interests, this is just not justified treating Class B and C limited partnership interests, classifying them in Class 10 to get paid ahead of Class 11, that was all very relevant at the plan confirmation hearing. There could have been argument about this just doesn't make sense in light of my reading of the limited partnership agreement, and I could have really drilled down and thought about the merits of those arguments.

But Dugaboy, who vehemently objected to the plan, never made that argument. No one ever made the argument about the inappropriateness of separating out the limited partnership interests the way the plan does. And the way the plan is structured, I do believe is supportive of the Reorganized Debtors' motion here today. I think the settlement with HMIT and the evidence I heard then and the order I entered then is further supportive of the motion that is before me today.

The motion that is before me today I think is not only permissible by Section 502(c) of the Bankruptcy Code, but I

think the statement is absolutely true that it's time for this case to end. As we know very well, a plan was confirmed February 2021, went effective August 2021. Here we sit, more than four years later, and everything that really should have happened by now has happened towards completing the plan, with the exception of a few loose ends that were described at the June Hunter Mountain settlement hearing and have further been addressed to some extent in today's motion.

We have a few appeals, I don't know how many, from time to time people have reported at Highland hearings, but there may be a handful of appeals left. But it is appropriate at this juncture, all these years later, with all that has happened towards completion of the plan, to allow the Highland Claimant Trust to get an order fixing the allowed amount of the Class 7 interests under the plan.

I find that the methodology proposed is reasonable. It is my only evidence of what is reasonable, Dugaboy having chosen not to put on evidence. The methodology amounts to looking at the dollars used by the Debtor multiple times to allocate to the various limited partnership interests values that were signed off on by Mr. Dondero.

So it's hard to understand why we're here, but I do accept as reasonable methodology the methodology suggested by Reorganized Highland and the Claimant Trust. And so therefore I will fix the allowed amount of the Dugaboy Class 11

interests in the amount of $740,081.61; Strand Advisors at $994,707.76; Mark K. Okada's at $192,754.38; Mark and Pamela Okada Family Trust Exempt Trust Number 1 at $38,868.17; and Mark and Pamela Okada Family Trust Exempt Trust Number 2, its Class 11 interests at $16,657.79.

So these are simply the amounts being allocated as to the Class 11 interests. I don't think anything I'm doing shall be deemed to vest the Class 11 interests at this point in time. And the Court reserves the right to supplement and amend the written form of order on this. Mr. Morris, if you would please upload it, and we will get it signed.

Anything else?

MR. MORRIS: No, Your Honor, other than I might not get that to you until tomorrow.

THE COURT: Oh. That's quite all right. I've got plenty to do.

MR. MORRIS: Because I'm hoping to make my way back up north.

THE COURT: Plenty to do before I leave.

MR. MORRIS: Yeah.

THE COURT: Anything further from you, Mr. Harper?

MR. HARPER: No, Your Honor. Thank you so much. I appreciate everything.

THE COURT: Okay.

MR. HARPER: Again, I'm sorry I sort of stuck a --

post-surgery, I could either take painkillers or appear in court, and so I'm sorry if I'm grimacing. It has nothing to do with you.

THE COURT: Well, I just, I don't know if it's worthwhile for me to say this or not, but I really am perplexed, okay? '

MR. HARPER: Understood, Your Honor.

THE COURT: I really am very perplexed about this hearing we had today. And I'm really -- Mr. Morris said this is almost Rule 11-sanctionable, and I don't think that was a farfetched statement.

MR. HARPER: Understood, Your Honor.

THE COURT: I think a lot of us who have been involved with this case for a very long time, we're just very weary of the *déjà vu* all over again. And we're almost too weary to move for sanctions, entertain sanctions.

Do you hear what I'm saying? I really want you to hear what I'm saying. It's been a merry-go-round of lawyers. I don't know what else term to use for it. How many lawyers do you think have appeared for Dugaboy in five years or however long this has been? I guess it's been more than five years.

MR. HARPER: I think there's been more than five. The short answer is, Your Honor, I have no idea. I do understand what the Court is saying. I think --

THE COURT: What do you think it is? Do you think

it's three, six, nine, more?

MR. HARPER: Your Honor, I would have to tell you I honestly have no earthly idea.

THE COURT: Really?

MR. HARPER: I apologize.

THE COURT: Really?

MR. HARPER: Yeah.

THE COURT: Okay. Your firm has been involved representing different clients, by the way.

MR. HARPER: Yes, we have, Your Honor. We were representing -- we have had to wall those people off appropriately.

THE COURT: Okay.

MR. HARPER: But yes, I had spoken with them and we have walled accordingly. We didn't want to raise any issues regarding conflict.

I hear what Your Court is saying. I understand there's a fine line to walk between the objections that need to be preserved. And if the Court feels that -- walk it over, I appreciate it. Message is taken.

THE COURT: No. I'm just --

MR. HARPER: Understood, Your Honor.

THE COURT: Well, I started out with perplexed. I don't understand the recycling. It feels like recycling of arguments --

MR. HARPER: Understood, Your Honor.

THE COURT: -- and thinking it's okay. Thinking it's okay.

MR. HARPER: Your Honor, I understand what you've said and the message has been received.

THE COURT: All right.

MR. HARPER: Your bitcoin case reminded me of my -- our magical-appearing insurance policy case we had with Judge Hale years ago. So, it's --

THE COURT: Okay. I don't know about that. But I'm going to say weary. I'm going to say weary. You said I seemed frustrated. Yes, probably. But more than anything else, I am just weary that we have a revolving door of lawyers.

MR. HARPER: I understand, Your Honor.

THE COURT: That doesn't make it okay to make the same argument --

MR. HARPER: Of course.

THE COURT: -- again and again and again.

MR. HARPER: Absolutely, Your Honor. Could not agree more.

THE COURT: Okay. We're adjourned.

MR. HARPER: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 4:35 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **09/22/2025**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

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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, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P, et al., Appellees.	)	Case No. 3:25-cv-02579-B

[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO APPEAL ORDER DENYING FIFTH MOTION TO RECUSE

Before the Court is Appellant The Dugaboy Investment Trust's ("Dugaboy") Motion for Leave to Appeal the Bankruptcy Court's *Order Denying Fifth Motion to Recuse Judge* (Bankr. Case No. 19-34054-sgj11, Dkt. 4379). After considering the Motion, the parties' arguments, and the applicable law, the Court finds Appellant's Motion for Leave to Appeal should be, and hereby is, GRANTED. Appellant may proceed with its appeal in the above-captioned matter.

It is so ORDERED.

Signed this ___ of _____, 2025.

_____

Hon. Jane J. Boyle
United States District Judge