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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.,

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

**MARK S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST**

Plaintiff,

v.

**JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC
LEVENTON; GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST
AND NANCY DONDERO, AS TRUSTEE OF
DUGABOY INVESTMENT TRUST; GET GOOD
TRUST AND GRANT JAMES SCOTT III, AS
TRUSTEE OF GET GOOD TRUST; HUNTER
MOUNTAIN INVESTMENT TRUST; CLO HOLDCO,
LTD.; CHARITABLE DAF HOLDCO, LTD.;
CHARITABLE DAF FUND, LP; HIGHLAND DALLAS
FOUNDATION; RAND PE FUND I, LP, SERIES 1;
MASSAND CAPITAL, LLC; MASSAND CAPITAL,
INC.; AND SAS ASSET RECOVERY, LTD.**

Adv. Pro. No. 21-03076-sgj



Defendants.	
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PLAINTIFF’S SECOND SUPPLEMENTAL WITNESS AND EXHIBIT LISTS

Plaintiff Hunter Mountain Investment Trust (“HMIT”) submits the following supplemental witness and exhibit lists with respect to HMIT’s *Motion for Temporary Restraining Order* [Doc. 379], which is set for hearing at 9:30 a.m. (Central Time) on Friday, October 17, 2025:¹

A. Witnesses

1. Any witness identified or called by any other party; and
2. Any witness necessary for rebuttal.

B. Exhibits

No.	Exhibit	Offered	Admitted
1.	Special Turnover Petition filed by UBS Securities LLC and UBS London Branch AG in the Supreme Court of New York County, New York [Index No. 650744/2023]		
2.	Exhibit 40 to Special Turnover Petition filed by UBS Securities LLC and UBS London Branch AG in the Supreme Court of New York County, New York [Index No. 650744/2023]		
3.	Exhibit 71 to Special Turnover Petition filed by UBS Securities LLC and UBS London Branch AG in the Supreme Court of New York County, New York [Index No. 650744/2023]		
4.	Index No. 650744/2023 Docket Sheet		
5.	2024 Texas Franchise Tax Public Information Report for Skyview Group, Inc.		
6.	Funding Agreement of Joint Official Liquidators dated 11 July 2025		
7.	Certificate of Formation for Crossvine Holdings, LLC		
8.	Certificate of Formation for Crossvine Foundation		
9.	Plaintiff Hunter Mountain Investment Trust’s Emergency Verified Motion for Temporary Restraining Order [Doc. 379]		

¹ These witness and exhibit lists are being filed only with respect to the request for temporary restraining order in HMIT’s Emergency Verified Motion for Temporary Restraining Order, Preliminary Injunction, and Appointment of Receiver [Doc. 379]. HMIT reserves the right to submit additional witness and exhibit lists in connection with its requests for preliminary injunction and appointment of receiver(s). HMIT further reserves the right to amend or supplement these lists in advance of the hearing, or to withdraw exhibits, as necessary. By disclosing exhibits containing statements or testimony of third-parties or adverse parties, HMIT makes no representations as to the accuracy of such statements or testimony.

No.	Exhibit	Offered	Admitted
10.	Plaintiff Hunter Mountain Investment Trust’s Memorandum of Law in Support of its Emergency Verified Motion for Temporary Restraining Order [Doc. 379-1]		
11.	Proposed Order Granting Temporary Restraining Order and Setting Hearing on Plaintiff’s Motion for Temporary Injunction and Appointment of Receiver [Doc. 379-3]		
12.	Report and Recommendation to the District Court Proposing that it: (A) Grant Defendants’ Motions to Withdraw the Reference at such time as the Bankruptcy Court Certifies that Action is Trial Ready; but (B) Defer Pre-Trial matters to the Bankruptcy Court [Doc. 151]		
13.	Stipulation and Proposed Fourth Amended Scheduling Order [Doc. 337]		
14.	Transcript of June 25, 2025 Hearing on Motion to Approve HMIT Settlement		
15.	February 12, 2025 email from Andrew Johnstone to Paul Murphy		
16.	July 1, 2025 Declaration of James David Dondero		
17.	June 4, 2025 Affidavit of Mark Patrick		
18.	August 19, 2025 Summons for Removal of Joint Official Liquidators		
19.	August 19, 2025 Affidavit of Mark Patrick		
20.	Any document exchanged during discovery.		
21.	Any document entered or filed in this adversary proceeding.		
22.	Any document entered or filed in the main bankruptcy case.		
23.	All exhibits identified or offered by any other party at the Hearing.		

Respectfully submitted,

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**ATTORNEYS FOR HUNTER MOUNTAIN
 INVESTMENT TRUST**

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2025, a true and correct copy of the foregoing document was served on all parties of record via the Court's ECF system.

/s/ Ian B. Salzer
Ian B. Salzer

3207642

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

UBS SECURITIES LLC and UBS AG LONDON
BRANCH,

Petitioners,

- against -

JAMES DONDERO, SCOTT ELLINGTON,
HIGHLAND CDO HOLDING COMPANY,
HIGHLAND CDO OPPORTUNITY MASTER FUND,
L.P., HIGHLAND FINANCIAL PARTNERS, L.P.,
HIGHLAND SPECIAL OPPORTUNITIES HOLDING
COMPANY, CLO HOLDCO, LTD., MAINSPRING,
LTD., and MONTAGE HOLDINGS, LTD.,

Respondents.

Index No. _____

SPECIAL TURNOVER PETITION

ORAL ARGUMENT REQUESTED

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* Motion for admission *pro hac vice* forthcoming.

TABLE OF CONTENTS

	Page
INTRODUCTION	1
THE PARTIES.....	2
JURISDICTION AND VENUE	4
LEGAL AUTHORITY FOR RELIEF	6
FACTS	7
I. Dondero, Ellington, And The Byzantine Structure Of The Highland Capital Management “Complex”	7
II. The Underlying Action	14
III. Anticipating Liability, Dondero And Ellington Shuffle Assets To Put Them Beyond UBS’s Reach	17
A. The 2010 Fraudulent Conveyance From CDO Holding To CLO HoldCo	17
B. The 2017 Fraudulent Conveyances To Sentinel	22
1. Dondero And Ellington Manufacture The ATE Policy As A Way To Transfer Assets	23
2. Dondero And Ellington Set And Carry Out The Terms Of The ATE Policy.....	25
3. At All Times, Dondero And Ellington Controlled Sentinel	29
4. Dondero And Ellington Try To Conceal The 2017 Sentinel Transfers	30
C. The 2019 Fraudulent Conveyance To Sebastian Clarke.....	35
IV. Dondero And Ellington Use The 2017 Transferred Assets As A Piggy Bank	37
A. The 2019-2021 Voidable Transfers To Dondero And Ellington	37
1. The 2019-2020 Fraudulent Ellington Reimbursements.....	38
2. The 2020-2021 Fraudulent “Dividends” To Mainspring And Montage	42
B. The 2020 Voidable Transfer To Pay Bonuses In Violation Of The Bankruptcy Court Order	44
1. Dondero And Ellington Make Bonus Payments Blocked By The Bankruptcy Court.....	44
2. Ellington And Others Defraud The Bankruptcy Court By Filing Claims Seeking Bonuses Already Procured By Fraud	47
CLAIMS FOR RELIEF	49

I. CLAIM I: TURNOVER PREDICATED ON FRAUDULENT AND VOIDABLE CONVEYANCES AGAINST CLO HOLDCO, ELLINGTON, MAINSPRING, AND MONTAGE (CPLR 5225(b)).....49

A. New York’s Former Fraudulent Conveyance Law (Effective Through April 3, 2020).....49

B. The 2010 Fraudulent Conveyance To CLO HoldCo50

C. The Ellington Reimbursements Were Fraudulent Conveyances52

D. New York’s Current Voidable Transactions Law (Effective April 4, 2020).....53

E. The April 2020 And January 2021 “Dividends” To Mainspring And Montage Were Voidable Conveyances.....54

II. CLAIM II: TURNOVER PREDICATED ON ALTER EGO LIABILITY AGAINST DONDERO, ELLINGTON, AND CDO HOLDING (CPLR 5225(b))55

A. Dondero And Ellington Were Each Alter Egos Of The Judgment Debtors56

1. Dondero And Ellington Dominated The Judgment Debtors.....57

2. Dondero And Ellington Used Their Domination Over The Judgment Debtors To Defraud And Harm UBS61

B. Dondero And Ellington Were The Alter Egos Of Mainspring And Montage, Respectively.....62

1. Dondero And Ellington Dominated Mainspring And Montage, Respectively62

2. Dondero And Ellington Used Their Control Of Mainspring And Montage To Defraud UBS63

C. CDO Holding Is An Alter Ego Of HFP64

1. HFP Dominated Its “Asset Repository” CDO Holding.....64

2. HFP Used Its Domination Over CDO Holding To Defraud UBS66

II. CLAIM III: VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (“RICO”) BY DONDERO AND ELLINGTON (18 U.S.C. § 1962(c)).....66

A. The RICO Enterprise68

B. The Pattern Of Racketeering Activity.....71

C. The Predicate Acts75

1. Wire Fraud In Violation Of 18 U.S.C. § 1343.....75

2. Money Laundering In Violation Of 18 U.S.C. § 195680

D. Summary Of Allegations To Each RICO Defendant.....81

E. The Harm To UBS.....83

III. CLAIM IV: CONSPIRACY TO VIOLATE RICO BY ELLINGTON (18 U.S.C. § 1962(d)).....84

REQUESTS FOR RELIEF85

INTRODUCTION

1. Petitioners UBS Securities LLC and UBS AG London Branch (together, “UBS”) bring this proceeding under CPLR Article 52 to enforce more than a billion dollars in related judgments that UBS obtained after a decade of hard-fought litigation against Highland Capital Management, L.P. (“HCM”) and its affiliates. *See UBS Secs. LLC v. Highland Cap. Mgmt., L.P.*, Index No. 650097/2009 (Sup. Ct. N.Y. Cnty.) (the “Underlying Action”). The court bifurcated the Underlying Action into two phases (“Phase I” and “Phase II”) and entered judgment for UBS in each phase (“Phase I Judgment,” “Phase II Judgment,” and collectively, the “Judgment”).

2. In the Phase I Judgment, the court awarded UBS \$1,042,391,031.79 against Highland Special Opportunities Holding Company (“SOHC”) and CDO Opportunity Master Fund, L.P. (“CDO Fund”) collectively,¹ including prejudgment interest and another \$257,027.92 accruing daily in post-judgment interest. *See Ex. 11, Phase I Judgment*, at 2-3 (Feb. 10, 2020). In the Phase II Judgment, the court awarded UBS \$67,222.00 against CDO Fund; adjudged defendant Highland Financial Partners, L.P. (“HFP” and with CDO Fund and SOHC, the “Judgment Debtors”) the alter ego of SOHC and liable for SOHC’s portion of the Judgment; and awarded UBS \$16,283,331.00 in attorney’s fees. *See Ex. 24, Phase II Judgment*, at 9-10 (Nov. 21, 2022).

3. After UBS obtained the Phase I Judgment, it discovered that HCM’s two former principals—James Dondero (former President and Chief Executive Officer) and Scott Ellington (former Chief Legal Officer and General Counsel)—conspired for over a decade to frustrate UBS’s ultimate recovery by systematically draining the Judgment Debtors’ assets. Dondero and Ellington exercised unfettered control over HCM and numerous other entities—including the Judgment

¹ The Phase I Judgment ordered CDO Fund to pay \$531,619,426.24 and SOHC to pay \$510,771,605.55. *Ex. 11, Phase I Judgment*, at 2-3.

Debtors—to fraudulently transfer assets away from the Judgment Debtors and other potentially liable entities to enrich themselves at UBS’s expense. UBS brings this petition (the “Turnover Petition” or “Petition”) to collect on its Judgment and hold accountable Dondero, Ellington, and certain entities they controlled and used as part of their scheme to defraud UBS.

THE PARTIES

4. Petitioner UBS Securities LLC is a Delaware limited liability company with its headquarters and principal place of business at 1285 Avenue of the Americas in New York, New York 10019.

5. Petitioner UBS AG London Branch is a Swiss banking corporation with its principal place of business at 5 Broadgate, London EC2M 2QS, United Kingdom.

6. Respondent Dondero is an individual who resides at 3807 Miramar Ave, Dallas, TX 75205. Dondero co-founded HCM in 1993 and served as its President and Chief Executive Officer until his removal in 2020.

7. Respondent Ellington is an individual who resides at 3825 Potomac Ave, Dallas, TX 75205. Ellington was HCM’s Chief Legal Officer and General Counsel until his removal in 2021.

8. Respondent SOHC is a Cayman Islands corporation with its principal office at Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands. UBS has a Judgment against SOHC in the amount of \$527,054,936.55, on which \$137,839,662.28 of gross post-judgment interest has accrued and \$33,366,517.87 of post-judgment interest only has been satisfied. *See* Ex. 11, Phase I Judgment, at 3; Ex. 24, Phase II Judgment, at 9.

9. Respondent HFP is a Delaware limited partnership with its principal office at 100 Crescent Street, Suite 1850, Dallas, Texas 75201. The Supreme Court of New York has declared HFP to be an alter ego of SOHC and adjudged HFP liable for UBS’s judgment against SOHC,

presently totaling \$631,528,081.35, including post-judgment interest. Ex. 24, Phase II Judgment, at 9.

10. Respondent CDO Fund is a Bermuda limited partnership with its principal office at 52 Reid Street, Hamilton, Bermuda. UBS has a Judgment against CDO Fund in the amount of \$547,969,979.24, on which \$143,454,428.88 of gross post-judgment interest has accrued and \$52,420,980.58 of post-judgment interest only has been satisfied. Ex. 11, Phase I Judgment, at 2; Ex. 24, Phase II Judgment, at 9. Although an independently managed HCM now controls CDO Fund, Dondero and Ellington controlled CDO Fund at all times relevant to allegations involving CDO Fund in this Turnover Petition.²

11. Respondent Highland CDO Holding Company (“CDO Holding”) is a Cayman Islands company with its registered office at Intertrust Corporate Services (Cayman) Limited, One Nexus Way, Camana Bay, Grand Cayman, KY1-9005, Cayman Islands. CDO Holding is a wholly owned subsidiary of HFP.

12. Respondent CLO HoldCo, Ltd. (“CLO HoldCo”), is a Cayman Islands company with its registered office at Intertrust Corporate Services (Cayman) Limited, One Nexus Way, Camana Bay, Grand Cayman, KY1-9005, Cayman Islands. CLO HoldCo is a wholly owned subsidiary of Charitable DAF Fund, L.P. (the “DAF”), which Dondero indirectly controls and has funded from his personal assets, his family trusts, and HCM.

² This Turnover Petition names the Judgment Debtors from the Underlying Action as Respondents because it seeks to pierce the corporate veil against the Judgment Debtors’ alter egos. In an action to impose alter ego liability, each alter ego is a necessary party. *Intelligent Prod. Sols., Inc. v. Morstan Gen. Agency, Inc.*, 45 Misc.3d 1225(A), 2014 WL 6883125, at *2 (Sup. Ct. Suffolk Cnty. Dec. 4, 2014) (citing *Mannucci v. Missionary Sisters of Sacred Heart of Jesus*, 94 A.D.3d 471 (1st Dep’t 2012)).

13. Respondent Mainspring, Ltd. (“Mainspring”), is a Cayman Islands company with a registered office at P.O. Box 10008 (c/o Services Cayman Limited), Willow House, Cricket Square, Grand Cayman KY1-1001, Cayman Islands. Dondero is the ultimate beneficial owner of Mainspring.

14. Respondent Montage Holdings, Ltd. (“Montage”), is a Cayman Islands company which shares Mainspring’s registered office address: P.O. Box 10008 (c/o Services Cayman Limited), Willow House, Cricket Square, Grand Cayman KY1-1001, Cayman Islands. Ellington is the ultimate beneficial owner of Montage.

JURISDICTION AND VENUE

15. As a court of general jurisdiction, this Court has subject-matter jurisdiction over this case. *See* N.Y. Const. art. VI, § 7; Judiciary Law § 140-b.

16. Venue is proper under CPLR 5221(a)(4) because this is a special proceeding to enforce a judgment entered by the Commercial Division of the Supreme Court of the State of New York, New York County, and there is no county in this state in which any respondent “resides or is regularly employed or has a place for the regular transaction of business in person.” *See* Ex. 24, Phase II Judgment. CPLR 5221(a)(4) instructs that “if there is no such county,” a judgment creditor may bring a judgment-enforcement proceeding in the supreme court in “the county in which the judgment was entered.” That makes this Court the proper forum.

17. This Court also has personal jurisdiction over all Respondents.

18. The Court has personal jurisdiction over CDO Fund and SOHC under General Obligations Law § 5-1402 based on the forum-selection clauses in the agreements underpinning the claims in the Underlying Action. *See* Ex. 92, Cash Warehouse Agreement ¶ 15 (Mar. 14, 2008) (UBS, CDO Fund, and SOHC agreeing to “submit to the exclusive jurisdiction of the federal and New York state courts located in the county of New York, New York in connection with any

dispute related to this Agreement or any of the matters contemplated hereby”); Ex. 93, Synthetic Warehouse Agreement ¶ 15 (Mar. 14, 2008) (same); Ex. 11, Phase I Decision and Order, at 39 (Nov. 14, 2019) (finding CDO Fund and SOHC liable for breaching these two agreements as part of UBS’s Judgment). These clauses “obviate the need for a separate analysis of the propriety of exercising personal jurisdiction,” *Oak Rock Fin., LLC v. Rodriguez*, 148 A.D.3d 1036, 1038 (2d Dep’t 2017) and remain enforceable and provide personal jurisdiction for “judgment enforcement claims” even after Judgment on the claims, *Cortlandt St. Recovery Corp. v. Bonderman*, 73 Misc. 3d 1217(A), 2021 WL 5272497, at *7 (Sup. Ct. N.Y. Cnty. 2021), *reargument denied*, 75 Misc. 3d 469, 476-78 (Sup. Ct. N.Y. Cnty. 2022).

19. For similar reasons, the Court has personal jurisdiction over HFP. Although not a signatory to the agreements involved in the Underlying Action, HFP is “bound” by the agreements’ forum-selection clause as “an alter ego of a signatory,” SOHC, as the court found in Phase II. *Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.*, 184 A.D.3d 116, 122 (1st Dep’t 2020); Ex. 24, Phase II Judgment, at 5-6.

20. The Court has personal jurisdiction over Dondero and Ellington because, as explained below, they are alter egos of the Judgment Debtors. The Court has personal jurisdiction over CDO Holding because, as also explained below, it is the alter ego of Judgment Debtor HFP.

21. The Court also has personal jurisdiction over all Respondents under CPLR 302(a)(2) and (a)(3) as participants in a conspiracy involving tortious acts in New York to frustrate the judgment of a New York court, which resulted in injury in New York. As demonstrated below, all Respondents participated in a scheme to funnel away assets to frustrate UBS’s efforts to collect on a judgment from a New York action. *See, e.g., Wimbledon Fin. Master Fund, Ltd. v. Bergstein*, 2016 WL 4410881, at *4 (Sup. Ct. N.Y. Cnty. Aug. 19, 2016) (citing cases) (holding that

conspiracy to frustrate New York judgment established personal jurisdiction over participants), *aff'd*, 147 A.D.3d 644, 645 (1st Dep't 2017).

LEGAL AUTHORITY FOR RELIEF

22. UBS brings this special turnover proceeding under CPLR 5225(b) to enforce the Judgment in its favor. *See* Ex. 11, Phase I Judgment, at 2-3; Ex. 24, Phase II Judgment at 10-11. To date, the total amount owed on the Judgment, including statutory post-judgment interest, is \$1,253,939,017.66.

23. A judgment creditor can bring a special proceeding under CPLR 5225(b) against any person or entity that (1) possesses or has custody over assets in which the judgment debtor has an interest; (2) unlawfully received assets from the judgment debtor, or received judgment debtor assets in which the judgment creditor has a superior interest, or (3) owes or will owe a debt to the judgment debtor.

24. The same standards “governing a motion for summary judgment, ‘requiring the court to decide the matter upon the pleadings, papers[,] and admissions to the extent that no triable issues of fact are raised’” govern a special proceeding. *Triadou SPV S.A. v. Chetrit*, 2021 WL 3290834, at *9 (Sup. Ct. N.Y. Cnty. Aug. 2, 2021) (quoting *Matter of Gonzalez v City of New York*, 127 A.D.3d 632, 633 (1st Dep't 2015)).

25. Although a special proceeding, this action remains a plenary action and allows this Court to adjudicate all disputes between the parties. *See, e.g., Cardinal Health 414 LLC v. U.S. Heartcare Mgmt., Inc.*, 2013 WL 563288, at *3 (Sup. Ct. Suffolk Cnty. Feb. 13, 2013) (“Although originally a creditor was required to commence a plenary action to achieve this goal, now it can be accomplished through a special proceeding under CPLR 5225 or 5227.” (citing *Siemens & Halske GmbH v. Gres*, 32 A.D.2d 624, 624 (1st Dep't 1969) (per curiam))); *Matter of WBP Cent. Assocs., LLC v. DeCola*, 50 A.D.3d 693, 694 (2d Dep't 2008) (“[A] claim to set aside an allegedly

fraudulent conveyance of money, assets, or property may be asserted in a special proceeding pursuant to CPLR 5225(b), without first commencing a plenary action . . .”).

FACTS

I. DONDERO, ELLINGTON, AND THE BYZANTINE STRUCTURE OF THE HIGHLAND CAPITAL MANAGEMENT “COMPLEX”

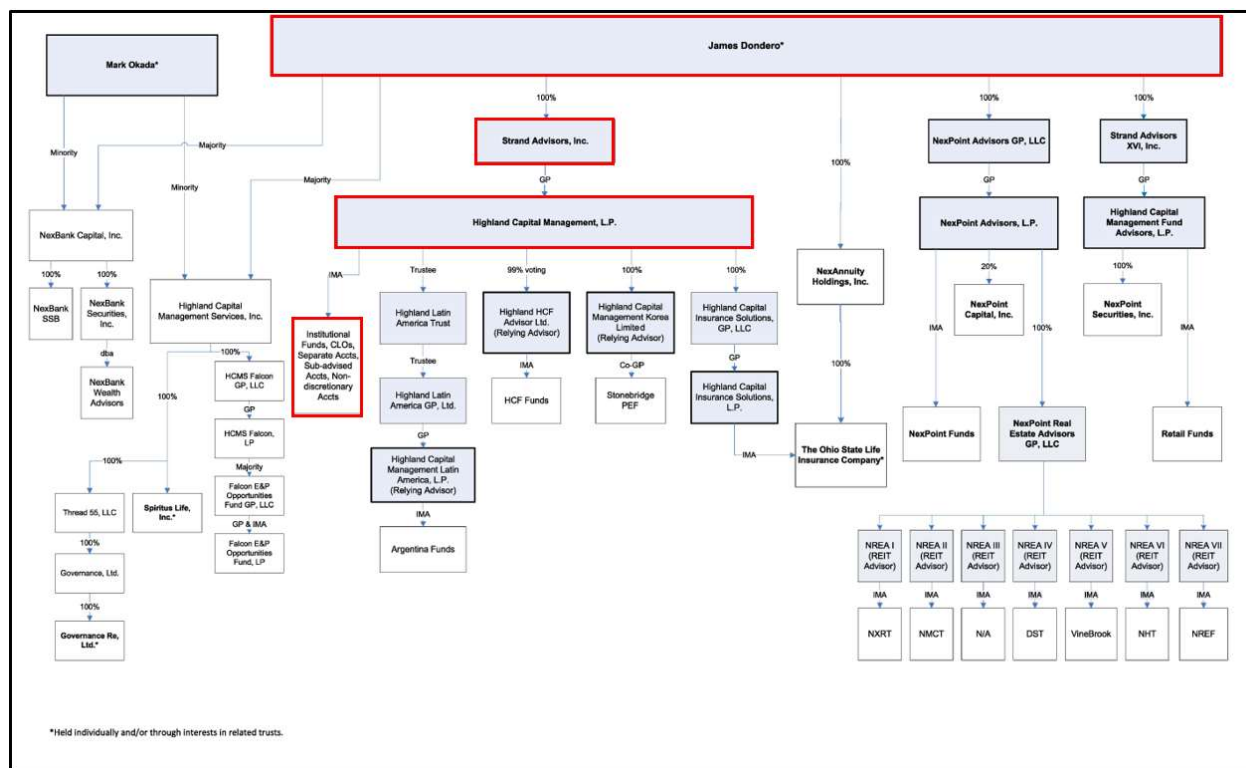
26. Before its bankruptcy, HCM was an investment management firm that managed billions of dollars of assets “through its organizational structure of approximately 2,000 separate business entities.” *In re Acis Cap. Mgmt., L.P.*, 2019 WL 417149, at *5 (Bankr. N.D. Tex. Jan. 31, 2019), *aff’d*, 604 B.R. 484 (N.D. Tex. 2019), *aff’d sub nom. In re Acis Cap. Mgmt., L.P.*, 850 F. App’x 302 (5th Cir. 2021).

27. Dondero co-founded HCM in 1993 and was its majority owner, President, and Chief Executive Officer until his removal in 2020.³ *See* Ex. 36, Email from L. Thedford, at HCMUBS000050 (Mar. 1, 2017) (attaching Highland Affiliate Ownership Chart); *see also In re Highland Cap. Mgmt., L.P.*, 2021 WL 2326350, at *1, *21 (Bankr. N.D. Tex. June 7, 2021). Ellington served as HCM’s Chief Legal Officer and General Counsel from 2010 until his removal in January 2021. *See In re Highland*, 2021 WL 2326350, at *17; Ex. 116, Ellington Dep. at 55:4-13 (July 29, 2021). At all times relevant to this Turnover Petition, Ellington operated as one of Dondero’s top lieutenants and confidants, often handling many aspects of the business himself.

³ Dondero resigned from director positions at the Judgment Debtors in 2021. *See* Ex. 129, Letter from Clay Taylor, at HCMUBS005324 (Apr. 28, 2021) (“[T]his letter shall serve as Mr. Dondero’s immediate resignation of the alleged director position(s) at HFP and SOHC and/or any officer positions at those entities.”); *see also* Ex. 130, Letter from J. Pomerantz, at HCMUBS005322 (May 7, 2021) (requesting that Dondero also confirm his resignation from Highland CDO Opportunity Fund, Ltd. (“CDO Opportunity Fund”), and its subsidiaries, including CDO Fund).

28. Dondero, with Ellington at his side, for years controlled HCM and its vast web of funds and other entities under its management and control with unilateral and unfettered discretion. *See, e.g.*, Ex. 97, HFP 2010 Organizational Chart, at UBSPROD2415709; Ex. 113, Dondero Dep. at 48:8-13 (May 10, 2021) (Dondero was the “decision maker” for HFP and its subsidiaries); Ex. 114, Dondero Dep. at 319:20-325:14 (May 12, 2021) (Dondero had the authority to authorize the sale and assignment of the assets of SOHC, CDO Fund, and related entities); *see also* Ex. 2, Dudney Report, at 40-41 (Apr. 18, 2013) (expert report from the Underlying Action that concludes “HCM and its President and majority owner, Mr. Dondero, sit at the top of [the HCM] organization chart,” and “[f]rom this position, Mr. Dondero controlled” HCM and many related entities—including SOHC, CDO Fund, Highland Financial Corp. (“HFC”), HFP, and CDO Holding); Ex. 2, Dudney Report, at 5 (“Mr. Dondero also served as the sole Director of SOHC and as President of the ultimate general partner of CDO Fund.”); *In re Acis Cap. Mgmt.*, 2019 WL 417149, at *5 (holding that Dondero controlled his many related entities through friends, family members, and directors-for-hire that the Court described as “nominal figureheads who are paid to act like they are in charge, while they are not.”).

29. Dondero exercised his control in part through his status as the sole stockholder and director of Strand Advisors, Inc. (“Strand”), HCM’s general partner. *See* Ex. 117, Ellington Dep. at 12:4-13:17 (Oct. 19, 2022); Ex. 105, HCM Organizational Chart; *see also generally* Ex. 5, Bk. Dkt. No. 281-1 (Dec. 12, 2019). Dondero unilaterally made decisions for HCM, and “through his controlling stake in HCM, and/or his positions within SOHC, CDO Fund and HFP, Mr. Dondero was able to control these entities,” Ex. 2, Dudney Report, at 41-42, as demonstrated in part by the below (attached in larger format as Ex. 100, HCM Affiliates Organizational Chart (July 2019)):



30. Dondero’s dominion over HCM and the related web of entities was so extensive that the bankruptcy court overseeing HCM’s reorganization proceeding (the “Bankruptcy Court”) labeled this web the “Non-Debtor Dondero-Related Entities” as “[m]any of these non-Debtor entities appear to be under the *de facto* control of Mr. Dondero—as he is the president and portfolio manager for many or most of them.” *In re Highland*, 2021 WL 2326350, at *3.

31. Ellington, as an officer of Strand and the Chief Legal Officer of HCM, also exercised control over the HCM complex. *See* Ex. 117, Ellington Dep. at 21:2-23:16 (as an officer of Strand, Ellington performed any task that Dondero instructed him to perform). Dondero “delegated and entrusted” many decisions related to SOHC, CDO Fund, and related entities to Ellington, *see* Ex. 113, Dondero Dep. at 215:19-216:11, including signatory authority and litigation strategy, *see* Ex. 117, Ellington Dep. at 194:22-196:12; *see also* Ex. 50, Email from S. Goldsmith, at UBSPROD2630461, -463 (Aug. 31, 2017) (Ellington signs on behalf of CDO Fund

to transfer assets); Ex. 53, Email from J. Sevilla, at BC SEN0000767181 (Nov. 20, 2017) (Ellington signs on behalf of CDO Fund appointing Beecher as representative).⁴

32. Among their vast web of HCM-linked entities, Dondero and Ellington directed six to initiate the fraudulent activities at issue in this proceeding (the “Transferors”):

- **CDO Fund**, a Judgment Debtor to UBS and an indirect subsidiary of HCM (and, with SOHC, the “Funds”).
- **SOHC**, a Judgment Debtor to UBS and wholly owned subsidiary and alter ego of HFP.
- **HFP**, a Judgment Debtor to UBS as alter ego of SOHC and an indirect subsidiary of HCM.
- **HFC**, a subsidiary of HFP. *See* Ex. 97, HFP 2010 Organizational Chart, at UBSPROD2415709 (reflecting entity organization); *see also* Ex. 26, Email from J. Blumer, at UBSHCDO-160165 (row 665) (attaching Highland Entity Excel Chart and reflecting Dondero as the sole Director/Manager/Trustee of HFC).
- **CDO Holding**, a wholly owned subsidiary of HFP. *See* Ex. 97, HFP 2010 Organizational Chart, at UBSPROD2415709 (reflecting entity organization).⁵
- **CDO Opportunity Fund**, which is also an indirect subsidiary of HCM and serves as the “offshore feeder” fund to CDO Fund. *See* Ex. 104, CDO Opportunity Fund Organizational Chart, at UBSPROD5113036.

33. A testifying expert in the Underlying Action applied New York principles of alter ego relationships and concluded that “HCM and its President and majority owner, Mr. Dondero,

⁴ Indeed, Ellington’s repeated use of the term “we” under oath to describe himself, Dondero, and their web of companies evidences Ellington’s understanding of his control over the HCM complex and his partnership with Dondero at all times during the relevant events. *See* Ex. 117, Ellington Dep. at 119:10-120:15, 140:25-141:12, 192:6-11, 369:8-11.

⁵ Although HFC was listed in the organizational chart as an intermediate parent of CDO Holding just below HFP, *see* Ex. 97, HFP 2010 Organizational Chart, at UBSPROD2415709, Dondero and Ellington similarly ignored this corporate form as evidenced by their own documented plan to directly strip CDO Holding of its assets in 2010 and again in the 2017 Fraudulent Conveyances defined and described *infra* Section III. *See, e.g.*, Ex. 40, Email from I. Leventon, at HCMUBS005260 (Apr. 19, 2017) (internal document ignoring HFC’s intermediate ownership of CDO Holding).

sit at the top of [the HCM] organization chart,” and “[f]rom this position, Mr. Dondero controlled” several HCM-related entities—including the Funds, HFC, HFP, and CDO Holding. Ex. 2, Dudney Report, at 40. In support, the expert relied upon the following facts and findings:

- Dondero “unilaterally ma[d]e decisions on behalf of HCM,” and “through his controlling stake in HCM, and/or his positions within SOHC, CDO Fund and HFP, Mr. Dondero was able to control these entities.” Ex. 2, Dudney Report, at 41-42.
- In 2009, Dondero eliminated the requirement that HFP have independent directors and made himself the sole director of HFP and direct decision maker for HFP and its subsidiaries. Ex. 88, Email from H. Kim, at UBSPROD1854773 (Sept. 11, 2020) (attaching HFP board minutes). HFP and its subsidiaries were financially dependent on HCM for their capital needs; indeed, at one point Dondero committed that HCM “would cover up to \$12 million of margin calls” for HFP. Ex. 2, Dudney Report, at 49. In general, there was a “lack of separateness between HFP and its subsidiaries and HCM.” Ex. 2, Dudney Report, at 49. This alter ego relationship encompassed CDO Holding, which HFP dominated for the benefit of itself and other HCM subsidiaries. Ex. 2, Dudney Report, at 44, 49.
- “Dondero exercised his ability to dominate and control HCM, SOHC, CDO Fund and HFP, amongst other [HCM] [e]ntities,” to his own benefit, including to “authorize loans to himself” and facilitate transfers among these entities—“which were not at arm’s length or executed in accordance with corporate formalities.” Ex. 2, Dudney Report, at 54-56.

34. The expert’s findings track the conduct animating this special proceeding. Dondero and Ellington ensured the entities they controlled routinely failed to observe corporate formalities with respect to their personnel, internal systems, and considerable assets. *See, e.g.*, Ex. 117, Ellington Dep. at 113:5-9 (HCM employees’ salaries reflected “an amalgamation of total efforts” on behalf of all affiliated entities “as directed by Mr. Dondero as the [General Partner]” of HCM); *see also* Ex. 26, Email from J. Blumer, at UBSHCDO-160165 (rows 536, 666) (attaching Highland Entity Excel Chart and reflecting Dondero as CEO and “sole member of ‘Monitoring Committee’”

of HFP).⁶ At all times material to UBS’s claims in this Petition, these entities functioned as extensions of one another and ultimately extensions of Dondero and Ellington.

35. HCM, the Judgment Debtors, and the other Transferors often utilized the same offices, employees, and internal counsel. *See, e.g.*, Ex. 121, Leventon Dep. at 27:25-28:15, 31:6-19 (Oct. 10, 2022) (CDO Fund and SOHC shared the same registered office in the Cayman Islands and also operated out of the same business office as HCM, “co-located” in Delaware); *id.* at 28:21-29:3, 31:20-25 (CDO Fund and SOHC did not have any employees or internal counsel separate from HCM); *see also* Ex. 92, Cash Warehouse Agreement ¶ 9 (Mar. 14, 2008) (listing the same address for all Judgment Debtors: Two Galleria Tower 13455 Noel Road, Suite 800 Dallas, Texas 75240). Many of these entities did not have separate boards of directors or a formal corporate structure. *See* Ex. 111, DiOrio Dep. at 22:10-23:5.

36. Dondero and Ellington exerted their control through high-ranking HCM employees, including Matthew DiOrio (Managing Director), Katie Lucas Irving (Managing Director), Isaac Leventon (Assistant General Counsel), and Jean Paul Sevilla (Assistant General Counsel), who functioned as Dondero and Ellington’s lieutenants in executing their instructions. *See, e.g.*, Ex. 111, DiOrio Dep. at 18:3-21:1 (“[w]hen asked to do something” by Dondero or Ellington, DiOrio “would do it”); Ex. 119, Irving Dep. at 18:11-15 (Sept. 20, 2022) (“I would work on anything that Mr. Ellington needed me to work on.”); Ex. 121, Leventon Dep. at 26:22-29:9 (Leventon provided services to both HFP and its wholly owned subsidiary SOHC, while he was an employee at HCM without separate compensation from either entity); Ex. 121, Leventon Dep.

⁶ *See also, e.g.*, Ex. 116, Ellington Dep. at 61:16-23 (HCM compensated Ellington for his work on behalf of HCM’s affiliates and managed funds); *id.* at 63:20-64:4 (Ellington used an HCM email address in connection with his work on behalf of HCM’s affiliates); Ex. 111, DiOrio Dep. at 20:22-22:9 (Oct. 3, 2022) (Ellington hired DiOrio to work on matters for an HCM affiliate, but he never received separate paychecks).

at 183:8-18 (Leventon did work for SAS without separate compensation); Ex. 125, Sevilla Dep. at 37:15-23 (Oct. 11, 2022) (Sevilla performed work on Dondero's personal matters because he "ha[d] been assigned it, by Mr. Ellington and/or Mr. Dondero" and because he "considered it part of his job" as an HCM employee).

37. HCM employees even performed work for Dondero and Ellington personally as part of their HCM employment, all without separate compensation. As DiOrio testified, "everyone wore multiple hats at Highland, I guess. . . . Highland employees would work on NexPoint issues, *personal business for Dondero*, anything like that." Ex. 111, DiOrio Dep. at 17:23-18:15 (emphasis added); Ex. 111, DiOrio Dep. at 21:25-22:9 (DiOrio only received a paycheck from HCM despite doing work for other entities). Below are a few examples:

- Sevilla and Leventon each worked for years, along with another HCM-employed bookkeeper, on tasks related to Dondero's divorce. Ex. 125, Sevilla Dep. at 30:19-31:10, 31:18-25; Ex. 121, Leventon Dep. at 43:25-44:12.
- Leventon also litigated a lemon law claim for Dondero without separate compensation. Ex. 121, Leventon Dep. at 44:13-25.
- Stephanie Vitiello helped Dondero manage a building leased to a salon. *See* Ex. 128, Vitiello Dep. at 39:7-21 (Sept. 19, 2022).

38. Even Ellington did personal tasks for Dondero, just as he expected of other HCM employees. *See* Ex. 117, Ellington Dep. at 51:2-8 (HCM "employees also performed work for entities connected with Mr. Dondero for which there was no shared services agreement" and "for Mr. Dondero personally"); *see also* Ex. 117, Ellington Dep. at 115:23-116:2 (Ellington's "team sometimes did personal work for" him). Completing personal tasks for Dondero influenced HCM employees' annual compensation. *See* Ex. 117, Ellington Dep. at 113:13-16 ("[I]f it was a personal assignment for Mr. Dondero, it was still seen as value to Mr. Dondero as the GP, and he set these overall compensation numbers.").

39. Sevilla and Irving also worked on personal matters for Ellington, including conducting diligence and analysis for personal investments that Ellington was considering. Ex. 125, Sevilla Dep. at 35:22-36:25; Ex. 119, Irving Dep. at 18:11-22 (Irving would work on “anything that Mr. Ellington needed me to work on,” including personal matters). Likewise, DiOrio conducted diligence for Ellington’s personal investments, paid rent on a warehouse Ellington leased, and helped manage Ellington’s personal trust. Ex. 111, DiOrio Dep. at 15:9-16:8, 18:3-21:1. For these tasks, DiOrio was not paid separately from his HCM salary. Ex. 111, DiOrio Dep. at 15:5-8, 17:4-18:2. And regularly DiOrio did not have an understanding of the entity for which he was performing his work. Ex. 111, DiOrio Dep. at 18:3-19:16, 52:24-53:7.

40. DiOrio was particularly loyal to Ellington. He has known him since 2009. Ex. 111, DiOrio Dep. at 90:22-91:1. Before joining HCM, at an event with Ellington in a bar, DiOrio agreed to become a shareholder of one of the entities Ellington owned without any knowledge of the entity after Ellington assured DiOrio he would not “have any liability.” Ex. 111, DiOrio Dep. at 89:25-92:1. DiOrio never paid for the shares, received any equity or distributions, or attended any meetings; indeed, he could not even remember the entity. Ex. 111, DiOrio Dep. at 89:25-90:6, 95:18-96:24. Indeed, after getting fired from HCM, Ellington hired DiOrio to work at Skyview. Ex. 110, DiOrio Dep. at 12:11-12.

II. THE UNDERLYING ACTION

41. UBS became entangled in Dondero and Ellington’s web back in 2007. In 2007 and 2008, UBS agreed to pursue a complex securitization transaction involving collateralized debt

obligations and collateralized loan obligations with HCM, CDO Fund, and SOHC (the “Knox Transaction”).⁷

42. The Funds stood to earn significant fees in connection with this transaction and in exchange agreed to bear 100% of the risk of loss associated with the transaction. *See* Ex. 11, Phase I Decision and Order, at 12, 17.

43. In late 2008, amid the global economic recession, the assets suffered steep losses and the Funds breached their contractual obligations to bear 100% of those losses. *See* Ex. 11, Phase I Judgment, at 2. UBS thus terminated the agreements in December 2008, at which point the losses on the diminished assets had grown to \$519,374,149. Ex. 11, Phase I Decision and Order, at 26-27.

44. UBS sued HCM, the Funds, and several other affiliated entities (including HFP) in the New York Supreme Court for breach of contract from the Funds and indemnification from HCM. *See* Ex. 11, Decision and Order, at 1.

45. Prior to the court’s entry of the Phase I Judgment and the Phase II trial on UBS’s remaining claims, HCM filed for bankruptcy, staying the Phase II trial.⁸ In January 2020, an independent board of directors (the “Independent Board”) of Strand took over sole authority to oversee HCM’s operations, management of its assets, and its bankruptcy proceeding. *See* Ex. 6, Bk. Dkt. No. 339 (Jan. 9, 2020).

⁷ A collateralized loan obligation (“CLO”) is a financial structure that acquires and manages a pool of loans or other debt. The CLO raises money by issuing its own debt tranches, as well as equity, and uses the proceeds of those issuances to obtain loans. As the borrowers of the underlying loans make payments, the CLO distributes the money to its investors.

⁸ HCM’s bankruptcy case was transferred to the United States Bankruptcy Court for the Northern District of Texas under case number 19-bk-34054.

46. In late 2020, HCM and several of its largest creditors, including UBS, participated in a Bankruptcy Court-ordered mediation. *See* Ex. 10, Bk. Dkt. No. 912, at 2 (Aug. 3, 2020). During this time, Ellington repeated several misrepresentations to UBS that he had made over the years, including that the Funds were “ghost funds.” *See* Ex. 87, Email from I. Leventon, at UBSPROD1738891 (Aug. 21, 2020) (Ellington misrepresenting that (1) “[m]ost of the employees and custodians” of documents related to the Funds’ assets “have not worked for the debtor or related entities in 10+ years,” (2) the Funds are “ghost funds” and noting that “UBS is aware of this situation . . . because I have personally discussed it with [Andy Clubok, UBS’s counsel] several dozen times,” and (3) Ellington and Leventon spent 100+ hours “trying to piece together everything we can” and “all that is available” about the Funds).

47. Despite long discussions with mediators and months of settlement discussions between the parties, it was only after Dondero and Ellington were removed that HCM and UBS were able to reach an agreement in principle to settle UBS’s claims in the bankruptcy. Then, on or about February 10, 2021, on the eve of the parties signing a settlement agreement, HCM disclosed several fraudulent conveyances that HCM entities (at the direction of Dondero and Ellington) had conducted in concert with Sentinel, a Dondero- and Ellington-affiliated insurance entity based in the Cayman Islands. *See* Ex. 90, HCM and UBS Settlement Agreement, at 2 (Mar. 30, 2021) (acknowledging disclosure of ATE Policy); Ex. 16, Bk. Dkt. No. 2389, at Exhibit 1, at 2 (May 27, 2021) (order approving settlement). UBS and HCM renegotiated their settlement, including settlement of UBS’s Phase II claims against HCM and certain related entities.

48. On July 27, 2022, the court issued a Decision and Order on the remaining, unsettled Phase II claims, finding HFP to be an alter ego of SOHC and liable for satisfying the \$510,771,605.55 Phase I Judgment against SOHC, plus all statutory interest. Ex. 23, Phase II

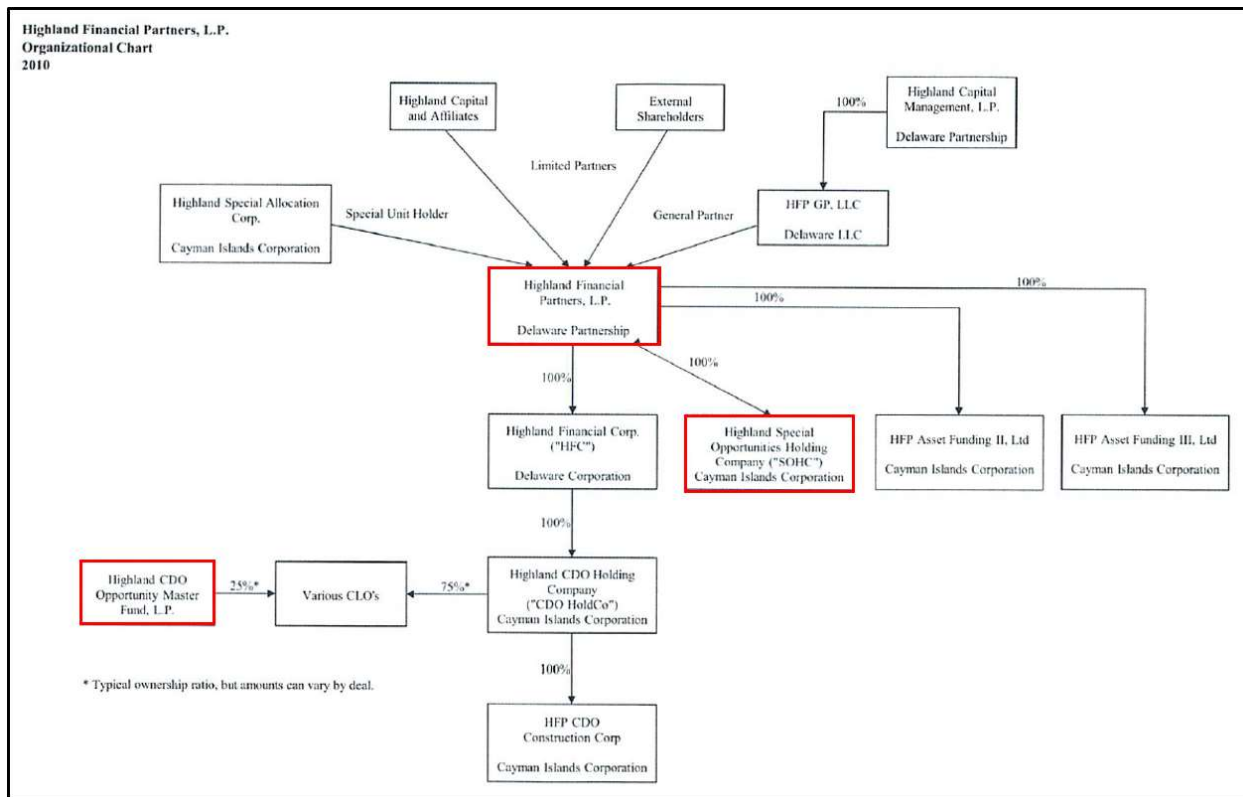
Decision and Order (July 29, 2022). On November 21, 2022, the court issued the Phase II Judgment. Ex. 24, Phase II Judgment.

III. ANTICIPATING LIABILITY, DONDERO AND ELLINGTON SHUFFLE ASSETS TO PUT THEM BEYOND UBS'S REACH

A. The 2010 Fraudulent Conveyance From CDO Holding To CLO HoldCo

49. In late October 2010, the parties to the Underlying Action had fully briefed, and the presiding court held a hearing on, HFP's and the Funds' motion to dismiss UBS's claim against HFP as alter ego of SOHC. *See* Ex. 12, Motion to Dismiss Hearing Transcript, 650097/2009 (Oct. 19, 2011). UBS highlighted the many facts animating UBS's allegations that HFP exercised unfettered control over SOHC and used that control to defraud UBS, all facts the court later determined to be true. Ex. 12, Motion to Dismiss Hearing Transcript at 29:24-30:14 (citing the allegations in UBS's complaint that explained the alter ego relationship between HFP and SOHC). Dondero and Ellington saw the writing on the wall and correctly predicted that the court would hold that HFP is the alter ego of SOHC and thus liable for claims under which UBS would seek hundreds of millions of dollars in damages. *See* Ex. 1, Decision and Order Denying Motion to Dismiss, 650097/2009, at 10 (Nov. 3, 2011) (holding that UBS sufficiently pled an alter ego relationship between SOHC and HFP and denying motion to dismiss); *see also* Ex. 23, Phase II Decision and Order, at 9 (holding that HFP is the alter ego of SOHC and liable for the Judgment).

50. The following figure (attached in larger format as Ex. 97, HFP 2010 Organizational Chart, at UBSPROD2415709), shows the way HCM controlled HFP as the 100% owner of its general partner. It also shows the way HCM was thus able to control HFP's subsidiaries:



51. Shortly after the hearing, Dondero acted to move HFP’s assets out of its structure and therefore ostensibly out of the reach of any future UBS judgment. On December 23, 2010, CDO Holding transferred substantially *all* of its assets in exchange for cash and a promissory note to CLO HoldCo, an entity created just weeks before (the “2010 Fraudulent Conveyance”). *See* Ex. 96, CDO Holding Balance Sheet, at UBSPROD4957189, tab “200.3 CDO BS.”

52. CDO Holding was “one of the primary repositories of assets of HFP.” Ex. 121, Leventon Dep. at 32:5-15. HFP used CDO Holding’s assets for whatever HFP and HFP’s subsidiaries needed. Indeed, HFP’s former President and Chief Executive Officer (an HCM employee), Todd Travers, admitted that HFP and its subsidiaries did not employ any specific limitations or procedures that governed when one HFP subsidiary could cover the debt of HFP or another subsidiary. *See* Ex. 127, Travers Dep. at 192:14-193:8 (Apr. 3, 2012) (decisions to cover debts for HFP or its subsidiaries were “all just sort of done on an ad hoc basis as Mr. Dondero

directed”). Dondero—who controlled HFP and therefore CDO Holding—could not even recall if HFP had any policies or procedures in place to determine whether HFP or its subsidiaries would pay its debts. *See* Ex. 112, Dondero Dep. at 431:2-12 (June 11, 2012). HFP’s former Chief Operating Officer, Philip Braner, similarly testified that transfers between HFP and its subsidiaries were rarely formally documented as HFP did not have any policies requiring documentation of such transfers. *See* Ex. 108, Braner Dep. at 804:3-20 (Dec. 7, 2011).

53. For instance, to cover certain SOHC losses in 2008, HFP withdrew about \$15 million from CDO Holding. *See* Ex. 2, Dudney Report, at 19; *see also* Ex. 107, Braner Dep. at 323:19-326:11 (Dec. 6, 2011) (Braner approved both the \$15 million transfer from CDO Holding to HFP and the later transfer from HFP to SOHC with a one-word email reading “approved”). HFP also used money from CDO Holding to pay legal invoices related to the Underlying Action, even though CDO Holding was not a party. *See* Ex. 121, Leventon Dep. at 32:5-33:7. And as Leventon testified, “if there was any collection against HFP, that collection would then be against its equity holding in CDO [Holding], which would then expose CDO [Holding]’s assets to seizure.” Ex. 121, Leventon Dep. at 32:5-33:7.

54. Assets moved in the other direction as well. CDO Holding routinely “required cash contributions from HFP in order to make various disbursements.” Ex. 2, Dudney Report, at 47. In June 2008, SOHC recorded a dividend of \$10.5 million to HFP, which HFP in turn moved to CDO Holding. *Id.* In reality, the cash transfer went directly from SOHC to CDO Holding (and not through HFP). *See id.* at 43. That month, HFP also raised \$40 million from other HCM entities and transferred the money to CDO Holding to distribute it. *See id.* at 48. In December 2008, “as part of a single set of instructions to Bank of New York Mellon, SOHC transferred \$3.7 million to

HFP, which was then transferred to CDO Hold[ing] and ultimately to James Dondero.” *See id.* at 48.

55. CLO HoldCo, on the other hand, was set up specifically to carry out the 2010 Fraudulent Conveyance. CLO HoldCo was incorporated on December 13, 2010, *ten days* before the 2010 Fraudulent Conveyance, “to hold certain CLO assets” and to “enter[] into an investment transaction [the] next week.” *See* Ex. 28, Email from H. Kim, at UBSHCDO-015354 (Dec. 14, 2010) (attaching CLO HoldCo’s Certificate of Incorporation at UBSHCDO-015356); Ex. 29, Email from A. Alvarez, at UBSHCDO-135396, -98 (Dec. 16, 2010). CDO Holding recorded no sales to any other entity in 2010. *See* Ex. 96, CDO Holding Balance Sheet, at UBSPROD4957189, tab “200.3 CDO BS.”

56. Dondero controlled CLO HoldCo through its parent, Highland Capital Management Partners Charitable Trust #2, and later, the DAF, which Dondero funded with his own assets and assets from HCM and other sources. *See* Ex. 71, Email from H. Kim, at UBSPROD2389234, tab “Dissolved Entities,” row 429; tab “DAF,” row 11 (Sept. 23, 2019) (attaching Legal Entities List); Ex. 18, Bk. Dkt. No. 2660, at 2-3 (Aug. 4, 2021) (CLO HoldCo Contempt Order); Ex. 32, Email from M. Okolita, at UBSHCDO-125280 (Dec. 21, 2010) (“Jim [Dondero] will be contributing ~16% of the value [of] the assets . . .”).

57. To solidify his control, Dondero put an empty suit in charge of CLO HoldCo. On paper, Grant Scott was CLO HoldCo’s director and sole manager. Ex. 28, Email from H. Kim, at UBSHCDO-015354, -55. However, as the Bankruptcy Court recently explained when holding CLO HoldCo in contempt for violating court orders, Grant is “a patent lawyer with no experience in finance or running charitable organizations, who was Mr. Dondero’s long-time friend, college housemate, and best man at his wedding.” *See* Ex. 18, Bk. Dkt. No. 2660, at 2. The documentation

underlying the 2010 Fraudulent Conveyance further underscores Dondero’s control, as Dondero signed as the “[g]atekeeper” for both CDO Holding and CLO HoldCo on an internal compliance report for the transfer. *See* Ex. 35, Email from C. Chism, at UBSHCDO-212473 (Jan. 5, 2011) (attaching Dec. 21, 2010 Compliance Report).

58. The 2010 Fraudulent Conveyance was far from an arm’s-length transaction, with contemporaneous internal HCM documentation evidencing concern over the lack of independent review and evaluation of the terms of the underlying note.⁹

59. The justification for the transfer was similarly suspect. One rushed valuation determined the assets to be worth at least \$39,638,160.00. *See* Ex. 30, Email from M. Khankin, at UBSHCDO-117919 (Dec. 16, 2010) (attaching Dec. 8, 2010 Highland Valuation Results Letter).¹⁰ Dondero justified transferring the asset portfolio to provide “[l]iquidity” to CDO Holding. Ex. 35, Email from C. Chism, at UBSHCDO-212473 (attaching Dec. 21, 2010 Compliance Report). But CDO Holding received just \$6,597,862.00 in cash from the transfer, along with a promissory note for \$32,801,593.00 plus interest that would not be payable for *fifteen* years. *See* Ex. 96, CDO Holding Balance Sheet, at UBSPROD4957189, tab “200.3 CDO BS,” row 19 (reflecting that

⁹ “It appears that the note from the trust to the CDO Holdi[ng] is **not being** independently valued. I expressed sever [sic] concerns about this being at arms length and told him I had spoken to Clint and Frank AND JIM [Dondero] about this and that it was a requirement and I don’t know how you deem a transaction at arms length when you control the terms of the note and no one has reviewed them!!!! He expressed concerns that no one had told him this before to which I reiterated I had told everyone about this, including him and Jim [Dondero] and playing ignorant is not helpful and that I had serious doubts as to how this transaction was fair.” Ex. 32, Email from M. Okolita, at UBSHCDO-125280 (emphasis in original).

¹⁰ A subsequent version of this document indicates that the two largest CLOs in the portfolio made returns in Euros. *See* Ex. 34, Email from M. Khankin, at UBSHCDO-056482 (Jan. 3, 2011) (attaching Dec. 8, 2010 Revised Highland Valuation Results Letter). The dollar figure in this petition calculates the value based on the Euro-to-Dollar spot exchange rate from the valuation date, Dec. 8, 2010. *See* European Central Bank, Euro Foreign Exchange Rates (Dec. 8, 2010), <https://www.ecb.europa.eu/stats/exchange/eurofxref/shared/pdf/2010/12/20101208.pdf> (last accessed Feb. 5, 2023).

between December 31, 2009, and December 31, 2010, CDO Holding added a new intercompany receivable from CLO HoldCo in the amount of \$32,801,593.00); *id.* at tab “200.5 CDO CF,” row 1478 (showing that on December 23, 2010, CDO Holding recorded a “sale” of “CDO Holding Assets” to CLO HoldCo in exchange for \$6,597,862.00).

60. UBS did not discover the 2010 Fraudulent Conveyance until well after Dondero’s and Ellington’s removal from HCM. On February 10, 2021, HCM’s bankruptcy counsel sent UBS a copy of the ATE Policy, which included a schedule listing a promissory note from CLO HoldCo to CDO Holding. And only after that initial disclosure did UBS receive a copy of the actual promissory note and details surrounding the fraudulent nature of the conveyance.

B. The 2017 Fraudulent Conveyances To Sentinel

61. As the Underlying Action progressed, the defendants’ (and, by extension, Dondero’s and Ellington’s) litigation setbacks continued to mount. And after summary judgment losses in March 2017, Dondero and Ellington knew an adverse judgment was inevitable. *See* Ex. 116, Ellington Dep. at 115:13-116:13 (Ellington believed Judgment Debtors would lose, was not surprised by the size of the damages verdict, and had warned Dondero that UBS would likely prevail); Ex. 120, Leventon Dep. at 87:22-88:4 (July 22, 2021) (Leventon advised Dondero and Ellington that Judgment Debtors were likely to be found liable).

62. Dondero and Ellington also knew that the Transferors held substantial assets—all of which were ultimately under HCM’s (and therefore Dondero’s and Ellington’s) control, and all of which could be used to satisfy an award to UBS. And as early as April 2017, HCM’s Legal Department, at Ellington’s direction, prepared an internal document that specifically contemplated the financial and legal risks to HCM, its related entities, and Dondero himself, pending the outcome of the Underlying Action. *See* Ex. 38, Email from I. Leventon, at HCMUBS005289 (Apr. 12, 2017) (attaching an HCM “Settlement Analysis” which identified risks to Dondero and the HCM-

related entities associated with the Underlying Action, including a \$1.2 billion judgment, and analyzed how transferring assets away from the Transferors could obviate these risks).

63. And so Dondero and Ellington devised and implemented a scheme to move *all* the Judgment Debtors' remaining assets (as well as assets of the other Transferors) that could be subject to the impending judgment to Sentinel Reinsurance, Ltd. ("Sentinel"), a Cayman Islands-based reinsurance company that Dondero and Ellington ultimately owned (the "2017 Fraudulent Conveyances"). *See* Ex. 68, Email from C. Price, at DISCEN0008408, -8410 (June 20, 2019) (attaching Sentinel Structure Ownership Chart).

1. Dondero And Ellington Manufacture The ATE Policy As A Way To Transfer Assets

64. As guise for the 2017 Fraudulent Conveyances, Ellington devised that the Funds and the other Transferors would transfer substantially all their assets (the "2017 Transferred Assets") to Sentinel as "premium" on a so-called "After-The-Event" insurance policy (the "ATE Policy") to the Funds and CDO Holding (together, the "Insureds") for liability in the Underlying Action, under an attendant Asset Purchase Agreement (the "APA"). *See* Ex. 117, Ellington Dep. at 119:10-11; *see also* Ex. 37, Email from S. Vitiello, at UBSPROD4837429 (Apr. 11, 2017) (email between Stephanie Vitiello and Leventon attaching draft ATE Policy presentation "[b]ased on our discussion with Scott [Ellington]"); Ex. 38, Email from I. Leventon, at HCMUBS005295 (attached revised ATE Policy presentation including purchase of "\$100m ATE policy from Sentinel" with "ATE premium = all assets in HFP/CDO Fund"). By moving all the 2017 Transferred Assets, Dondero and Ellington could avoid loss of the assets, HCM facing "years of fraudulent transfer claims throughout Highland structure," and "liability to backstop HFP/CDO Fund for up to \$1.2b" if UBS won. Ex. 40, Email from I. Leventon, at HCMUBS005253-54 (Apr.

19, 2017). The moves also avoided \$257 million tax liabilities for HCM, including \$50 million for Dondero personally, if HCM happened to win the case. *Id.*

65. Ellington concocted the idea without input from Sentinel or Beecher Carlson, Sentinel’s insurance manager (“Beecher”).¹¹ *See* Ex. 117, Ellington Dep. at 327:2-14, 328:9-329:1; *id.* at 119:10-11 (the ATE policy was Ellington’s idea); *see also* Ex. 121, Leventon Dep. at 132:3-18 (the presentation “was a document that was being prepared as a presentation to Mr. Dondero to encourage him to settle the UBS litigation”); *see also, e.g.,* Ex. 106, Beecher Dep. at 145:11-19 (Apr. 12, 2022) (that the policy premium would “be satisfied by the transfer of the entire investment portfolios of the [F]unds” was Sevilla’s idea).

66. Sentinel’s prior business and financial status at the time of the ATE Policy further evidences the ATE Policy’s fraudulent nature. Sentinel had never issued an after-the-event legal liability policy before it issued one to the Insureds, nor has it issued one since. *See* Ex. 124, Sevilla Dep. at 138:23-25 (July 21, 2021); Ex. 106, Beecher Dep. at 124:20-125:4. Before the ATE Policy, Sentinel exclusively wrote director and officer liability policies for Dondero- and Ellington-related entities worth fractions of that of the ATE Policy. Ex. 124, Sevilla Dep. at 95:9-23; Ex. 49, Email from K. Irving, at HCMUBS001079 (Aug. 16, 2017). Without the 2017 Transferred Assets, Sentinel would have been unable to pay the full \$100 million coverage of the ATE Policy: as of December 2016, Sentinel had only \$19,193,823.23 in total assets, \$5,886,746.39 of which were cash. *See* Ex. 49, Email from K. Irving, at HCMUBS001079.

¹¹ Beecher “specialized in setting up and helping to manage captive[.]” insurers. Ex. 106, Beecher Dep. at 19:6-11. Beecher “helped set up [Sentinel]” and then provided services “consisting of financial statements, preparation, coordination of board meetings, corresponding with the regulators . . . [and] [i]nteracting with the various service providers that Sentinel would engage for audit [and] actuarial” work. *Id.* at 16:1-18.

2. Dondero And Ellington Set And Carry Out The Terms Of The ATE Policy

67. Dondero, Ellington, and their lieutenants unilaterally dictated the substantive terms of the ATE Policy and associated APA, reinforcing the transfers' fraudulent nature and Dondero and Ellington's control over the Judgment Debtors.

68. *First*, Dondero and Ellington's lieutenants revised the ATE Policy to allow reimbursement of expenses even if the Insureds could not afford to litigate the Underlying Action—a near certainty given that the Insureds transferred substantially all of their assets to purchase the ATE Policy. *See* Ex. 42, Email from P. Kranz, at BC SEN0000745902 (Aug. 8, 2017) (responding to an email chain in which Sevilla directs Solomon Harris to remove an exclusion that would permit Sentinel to deny coverage to an insured that lacked the funds to litigate its case).

69. *Second*, Dondero and Ellington's lieutenants carefully tailored the terms of the ATE Policy to enable the Insureds and other related entities to drain the policy limit through reimbursements unrelated to the Underlying Action. *See* Ex. 42, Email from P. Kranz, at BC SEN0000745902-03 (Sevilla directing Solomon Harris to extend coverage under the Policy to the Insureds' "own costs and expenses," and later broadening that language to the "costs and expenses of the Representative *and other service providers in the normal course*, including related tax, which are incurred during the conduct of the legal action on behalf of the insured" (emphasis added)).

70. *Third*, when Sentinel's actuary analyzed the ATE under the terms Dondero and Ellington's lieutenants provided, including the coverage limit and premium, the actuary noted that "[e]ven under reasonably optimistic assumptions," Sentinel would lose money on the ATE Policy. Ex. 41, Email from T. Adamczak, at BC SEN0000745987 (June 28, 2017). But this did not deter Dondero, Ellington, or their lieutenants.

71. *Finally*, to ensure that they would have the authority to push the transaction through on Sentinel’s behalf, Dondero and Ellington arranged for their own appointment as sole members of the Sentinel Advisory Board of ITA Trust, the entity with ultimate voting control over Sentinel. Although Sentinel had been operating for five years, Dondero and Ellington’s tenure on the Sentinel Advisory Board commenced at the same time Sentinel and the Transferors executed the ATE Policy and APA. *See* Ex. 116, Ellington Dep. at 93:9-10 (Ellington testifying that Sentinel was formed in 2012); Ex. 66, Email from C. Price, at BC SEN0000076075 (Mar. 5, 2019) (attaching Sentinel Board Minutes). As the sole members of the Advisory Board, Dondero and Ellington would “guide the decision making of the Trustee of the ITA Trust in its role as an indirect shareholder in [Sentinel].” *Id.*

72. While developing the ATE Policy and APA, Sentinel’s outside counsel at Solomon Harris questioned the “legal validity” of the contemplated transfer, *articulating the exact theory of fraud animating UBS’s claims here*: that the 2017 Fraudulent Conveyances put the assets “beyond the reach of the plaintiffs in the [Underlying Action] against the [F]unds” and a court could determine “that the ‘premium’ has to be returned or . . . set aside as some unlawful preference or similar.” Ex. 42, Email from P. Kranz, at BC SEN0000745905. This did not dissuade Dondero or Ellington. In August 2017, Dondero executed the ATE Policy and corresponding APA, transferring the 2017 Transferred Assets valued at over \$105,647,679.00 to satisfy a \$25,000,000 “premium.” *See* Ex. 51, Email from I. Leventon (Oct. 26, 2017); Ex. 98, Asset Purchase Agreement (Aug. 7, 2017).¹²

¹² The final APA largely mirrors Appendix 1 that was attached to the settlement analysis presentation prepared by Ellington and his team in April 2017 and presented to Dondero. *See* Ex. 39, Email from I. Leventon, at UBSPROD4837680 (Apr. 13, 2022) (attaching Settlement Analysis presentation).

73. The face value of the transferred cash and promissory notes sent as part of the 2017 Transferred Assets alone were worth nearly twice the ATE Policy premium. *See* Ex. 98, Email from I. Leventon, at BC SEN0000089127-28 (Schedule A to APA).¹³

74. In its time managing “[t]housands” of insurance policies, Beecher had never before seen a premium paid in this fashion. *See* Ex. 106, Beecher Dep. at 180:18-181:5. But as DiOrio observed, “I don’t think there was a consideration of picking and choosing assets to send. It was all or none, and they chose all to pay for the policy.” Ex. 111, DiOrio Dep. at 304:16-305:1.

75. Under the final ATE Policy, Sentinel agreed to indemnify CDO Holding—a non-party to the Underlying Action but alter ego to parties HFP and SOHC—and the Funds for up to a \$100 million limit for any adverse judgment or settlement with UBS. *See* Ex. 51, Email from I. Leventon, at UBSPROD1973056, -70. Though CDO Holding is not a defendant in the Underlying Action, Dondero and Ellington determined it “had liability” in the suit, *see* Ex. 125, Sevilla Dep. at 118:18-120:4, no doubt because it was an “asset repository” for HFP. Ex. 121, Leventon Dep. at 32:5-15.

76. The other three Transferors that contributed their assets—CDO Opportunity Fund, HFC, and HFP—were not insured under the ATE Policy and, as for CDO Opportunity Fund and HFC, were not even party to the Underlying Action. *Compare* Ex. 98, Asset Purchase Agreement,

¹³ The 2017 Fraudulent Conveyances included the assignment of three promissory notes. *See* Ex. 98, Asset Purchase Agreement, at BC SEN0000089127-28. This included the \$32,801,593 CLO HoldCo promissory note, originally issued for the 2010 Fraudulent Conveyance. Ex. 54, Email from L. Thompson (April 6, 2018) (attaching Assignment Agreement Ex. A (CLO HoldCo Promissory Note)). It also included the assignment of a promissory note from the Dugaboy Investment Trust for \$2,399,996, signed by Dondero’s sister, Nancy, and a promissory note from Governance Re Ltd. for \$2,155,144, signed by Dondero, both originally issued to CDO Fund on August 7, 2017, just days before the 2017 Fraudulent Conveyances. *See* Ex. 63, Email from I. Leventon, at UBSPROD2309345-47, 43-44 (Nov. 14, 2018) (attaching Dugaboy and Governance Re promissory notes).

at BC SEN000089127-28, *with* Ex. 51, Email from I. Leventon, at UBSPROD1983071. These three had nothing to gain from the 2017 Fraudulent Conveyances except to safeguard their assets (ultimately under the control of Dondero and Ellington) from an adverse judgment and alter ego liability in the Underlying Action. *See generally* Ex. 122, Raver Dep. at 111:20-112:7 (May 6, 2021) (the Transferors *lost* money in these transfers).

77. Dondero, Ellington, and their lieutenants were intimately involved in effecting the 2017 Fraudulent Conveyances from both sides. Ellington got the transaction approved and completed, *see* Ex. 113, Dondero Dep. at 74:9-17, and Dondero signed the ATE Policy on behalf of all the Insureds and the APA on behalf of all Transferors, *see* Ex. 51, Email from I. Leventon, at UBSPROD1983071; Ex. 98, Asset Purchase Agreement, at BC SEN000089124-25. Dondero even tried to sign a corollary to the APA on behalf of the Transferors *and* Sentinel. *See* Ex. 48, Email from T. Loiben, at HCMUBS000863 (Aug. 14, 2017); Ex. 47, Email from T. Loiben, at HCMUBS000947, (Aug. 14, 2017) (attaching Assignment Agreement signed by Dondero as assignor and assignee). Even when they were not acting directly, Dondero and Ellington directed others at HCM to carry out their plans. *See, e.g.*, Ex. 43, Email from J. Sevilla, at UBSPROD2566503 (Aug. 10, 2017) (replying to an email from H. Kim noting that she had to track down Dondero's signature on behalf of the Judgment Debtors); Ex. 46, Email from D. Willmore, at HCMUBS000563 (Aug. 11, 2017) (confirming to Dondero and Ellington's lieutenants that wires had been initiated "to move all of CDO Fund's cash to Sentinel."). For instance, Vitiello worked with Leventon and Ellington to help design the ATE Policy, Ex. 121, Leventon Dep. at 157:14-158:6, and Irving was instrumental in ensuring that Sentinel received all the assets in satisfaction of the premium payment under the APA, *see* Ex. 118, Irving Dep. at 87:13-18 (Nov. 15, 2021).

78. When asked, Dondero could not be sure who he or Ellington represented in the 2017 Fraudulent Conveyances: Sentinel, the Transferors, or both. *See* Ex. 113, Dondero Dep. at 143:21-144:14 (“And although Scott Ellington coordinated the overall transaction, I don’t know if there was somebody separate representing one side or the other or if he represented both [Sentinel and the Insureds].”).

3. At All Times, Dondero And Ellington Controlled Sentinel

79. Dondero and Ellington happily moved assets out of the various HCM-entities because they fully controlled Sentinel and would still have control over and access to the 2017 Transferred Assets.

80. As noted above, Dondero and Ellington are and have always been the ultimate beneficial owners of Sentinel. Dondero tasked Ellington with setting up and managing Sentinel through HCM’s in-house legal team. *See* Ex. 115, Dondero Dep. at 18:25-22:19 (Oct. 18, 2022); *see also* Ex. 117, Ellington Dep. at 50:1-16 (noting that Dondero had “very wide latitude” to direct HCM employees to work on Sentinel). As a reward, even though Ellington did not contribute any capital, he would receive 30% of the contingent residual interest; Dondero would receive the remaining 70%. Ex. 115, Dondero Dep. at 22:2-12; Ex. 116, Ellington Dep. at 155:17-156:6. Dondero and Ellington “call[ed] the shots” as the ultimate beneficial owners of Sentinel. Ex. 106, Beecher Dep. at 34:16-19.

81. Ellington was “responsible for managing . . . and monitoring [Sentinel],” Ex. 113, Dondero Dep. at 134:1-4, and in turn directed a close circle of trusted HCM employees to perform, in their roles as HCM employees, work in connection with Sentinel. *See* Ex. 125, Sevilla Dep. at 41:22-25 (Ellington “directed [Sevilla’s] work on the Sentinel platform”); Ex. 111, DiOrio Dep. at 33:4-24 (Ellington instructed DiOrio to work on different platforms, including Sentinel); Ex. 119, Irving Dep. at 238:14-23 (Irving did work for Ellington, including work for Sentinel); Ex.

121, Leventon Dep. at 91:13-92:7 (Ellington directed Leventon’s work on Sentinel). Sentinel had no separate employees and instead was, until 2021, run exclusively by HCM employees at Dondero and Ellington’s direction. *See* Ex. 106, Beecher Dep. at 18:10-25; *id.* at 16:22-17:23 (Sevilla, Irving, DiOrio, and Leventon worked on behalf of Sentinel); *see also* Ex. 110, DiOrio Dep. at 88:25-89:23 (July 23, 2021) (same); Ex. 106, Beecher Dep. at 32:9-22 (“[a]nything pertaining to the entities within the Sentinel structure . . . would either be communicated by” Sevilla or select other HCM employees, including DiOrio); Ex. 111, DiOrio Dep. at 115:10-12 (Sevilla “watched” over day-to-day management of Sentinel). In fact, Ellington appointed DiOrio as a Sentinel director, using DiOrio to continue to control Sentinel and to push through various fraudulent dividends and disbursements described below, even going so far as to remove a Sentinel director at whim. *See* Ex. 111, DiOrio Dep. at 212:13-19 (DiOrio worked to remove a fellow Sentinel director because Ellington instructed him to do so).¹⁴

4. Dondero And Ellington Try To Conceal The 2017 Sentinel Transfers

82. Dondero and Ellington went to great lengths to cover up the 2017 Fraudulent Conveyances to Sentinel.

83. To start, Dondero and Ellington concealed their ownership of Sentinel and the true purpose of the ATE Policy from everyone except their trusted lieutenants. *See* Ex. 113, Dondero Dep. at 167:20-25 (Dondero did not “remember” or “recall” telling anyone at HCM that he was the majority beneficial holder of Sentinel); Ex. 123, Ringheimer Dep. at 29:14-18 (Apr. 30, 2021) (HCM employee who helped push through the transfers was aware they were urgent but could not

¹⁴ DiOrio removed the director and pushed forward the dividend in the same breath: “[p]lease see the attached shareholder resolution removing Dilip Massand from the Sentinel board. I think we should be good to get the dividend paid out now.” *See* Ex. 83, Email from J. Neveril, at BC SEN0000770886 (Apr. 24, 2020).

recall an explanation for the urgency); Ex. 126, Stoops Dep. at 16:3-20:16 (Apr. 27, 2021) (HCM employee who helped push through the transfers had “very, very limited knowledge” of the ATE Policy but knew that there was urgency to execute the associated transfers); *see also* Ex. 126, Stoops Dep. at 14:5-17:9 (Sevilla told HCM employee who helped push through the transfers that the transfers were necessary because UBS and HCM were in settlement negotiations and UBS required HCM to remit settlement in cash).

84. Later on in 2018, Sentinel (on behalf of Dondero and Ellington) tried to hide the fraudulent nature of the transfers by ascribing only \$68 million in value to the 2017 Transferred Assets, *assets which HCM confirmed were worth \$105,647,679.00 less than one year after the transfers*. *See* Ex. 69, Email from K. Irving, at UBSPROD2572277 (Aug. 6, 2019) (attaching Sentinel Presentation to CIMA); Ex. 61, Email from R. Swadley, at HCMUBS003792 (Sept. 12, 2018) (attaching Tax Memorandum). But an auditor for Sentinel noted that even under this value, “Sentinel [w]as . . . overpaid by approximately \$15m” for the premium with “no return of overpayment.” Ex. 55, Email from J. Sevilla, at BC SEN0000707457 (June 6, 2018). This raised “the question ‘is this an arms-length transaction’” and would require “a ton of additional disclosures in the audit report.” *Id.* Dondero, Ellington, and their lieutenants tried to conceal this disparity through retroactive “adjustments” to the ATE Policy terms, all of which underscore the illicit nature of the 2017 Fraudulent Conveyances.

85. Around June 2018, Sentinel executed the first of two undated endorsements (or amendments) to the ATE Policy, which “adjusted” the premium from \$25,000,000 to Sentinel’s \$68,362,333.62 valuation of the assets. *See* Ex. 69, Email from K. Irving, at UBSPROD2572277 (attaching Sentinel Presentation to CIMA); Ex. 52, Limited Liability Insurance Policy and Endorsements, at DISCEN0007913 (June 2018). The post-hoc increase in the ATE Policy

premium did not increase the policy limit or period of coverage—every other aspect of the ATE Policy remained the same. *See* Ex. 52, Limited Liability Insurance Policy and Endorsements.

86. Later that same month, Sentinel executed a second endorsement to the ATE Policy, reducing the premium and coverage by \$9 million for monies that the Insureds supposedly “prepaid” to “cover risk mitigation costs, which include but are not limited to, legal defense costs.” *See* Ex. 69, Email from K. Irving, at UBSPROD2572277 (attaching Sentinel Presentation to CIMA); Ex. 52, Limited Liability Insurance Policy and Endorsements, at DISCEN0007913.

87. Despite the substantive changes to the ATE Policy resulting from the endorsements, no representative of the Insureds signed either endorsement, and Beecher could not recall whether the Insureds had representation in connection with these amendments. *See* Ex. 106, Beecher Dep. at 236:7-13.

88. The fraudulent nature of the ATE Policy and related transfers came to light in March 2019 when the Cayman Island Monetary Authority (“CIMA”) conducted onsite inspections of Sentinel.¹⁵ Because Sentinel’s only active policy at the time was the ATE Policy, CIMA focused its assessment on the ATE Policy, the APA, and associated transfers. CIMA was concerned that “[t]hose charged with . . . governance could not explain the basis upon which the [2017 Transferred Assets] had been valued on or about August 1, 2017 for the purpose of premium settlement,” and “they could not explain the reason why the information that was relied on to value the [2017 Transferred Assets] could not be readily provided to the auditors upon request.” Ex. 67, Email from S. Dube, at BC SEN0000078819, -22 (May 6, 2019) (attaching CIMA Sentinel Final

¹⁵ “[CIMA’s] Insurance Supervision Division is responsible for the supervision, regulation, and licensing of all insurance companies and insurance brokers, managers and agents through an integrated risk-based supervisory approach while ensuring compliance with regulatory legislation.” Cayman Islands Monetary Auth., “Divisions,” <https://www.cima.ky/about-division> (last accessed Feb. 6, 2023).

Inspection Reports). CIMA similarly found the post hac endorsements troubling, as “[t]hose charged with governance could not explain why the premium was adjusted from US\$25 million to US\$68.3 million without a commensurate adjustment to the indemnity limit provided or why the initial pricing for the policy was subsequently deemed not sufficient.” *Id.* These facts, coupled with the realization that the 2017 Transferred Assets led to a near seven-fold increase in Sentinel’s investment portfolio between December 2016 and December 2017, “cast significant doubt on the economic substance and business purpose of the transactions relating to the ATE coverage” that were “at the very least questionable.” *Id.*

89. Dondero and Ellington’s lieutenants sought to legitimize the ATE Policy by lying to CIMA in claiming that Sentinel’s actuary independently determined the ATE Policy’s terms — which the actuary denied and the documentary evidence shows is false. *See* Ex. 67, Email from S. Dube, at BC SEN0000078822 (attaching CIMA Sentinel Final Inspection Reports). In reality, the actuary flagged a “huge down-side risk” with “not much to gain” and warned Sentinel that “[e]ven under reasonably optimistic assumptions, Highlands’ loss would exceed the projected premium.” Ex. 41, Email from T. Adamczak, at BC SEN0000745985-987, -993 (June 28, 2017).¹⁶ CIMA determined as much through its inspection, finding that Sentinel’s actuary “was not involved in the determination of premium pricing . . . to any extent at all” and that the actuary’s “involvement arose after premium decisions had been finalized by [Sentinel].” Ex. 67, Email from S. Dube, at BC SEN0000078822. CIMA expressed “concern that the management’s assertion that the ATE [P]olicy premium of US\$25 million was established based on a pricing study conducted by [Sentinel’s] actuary contradicts the actuary’s position.” *Id.* However, nothing came of these

¹⁶ This analysis assumed a premium of \$20 million and coverage of \$80 million—the final ATE Policy maintained the same losing ratio, with a \$25 million premium for \$100 million in coverage. Ex. 41, Email from T. Adamczak, at BC SEN0000745985-987.

inspections and the fraudulent nature of the 2017 Fraudulent Conveyances and ATE Policy remained hidden.

90. After the court entered the Phase I Judgment, Dondero and Ellington continued to make every effort to obscure from UBS the existence of the ATE Policy and the 2017 Fraudulent Conveyances.¹⁷

91. During years of settlement negotiations with UBS, UBS made requests for documentation relating to the Funds' assets as of February 2009 and any subsequent transfer or dissipation. *See* Ex. 13, Bk. Dkt. No. 1345, at 10 (Nov. 6, 2020). In response, Dondero, Ellington, and their lieutenants repeatedly lied to UBS, stating such documentation was limited or did not exist, that CDO Fund and SOHC were "ghost funds," that "had no assets left, but if there was a settlement, that Mr. Dondero could come up with funds from some other source to satisfy a relatively small settlement on behalf of those funds." *See, e.g.*, Ex. 87, Email from I. Leventon, at UBSPROD1738891 ("I know that UBS is aware of this situation and I know Andy Clubok knows of this situation because *I have personally discussed it with him several dozen times*. Including as recently as this year.") (emphasis added); Ex. 103, Ellington Subpoena (Mar. 1, 2022); Ex. 116, Ellington Dep. at 83:15-84:24 (Ellington did not disclose the ATE Policy to UBS's counsel or the Bankruptcy Court); Ex. 120, Leventon Dep. at 150:25-152:4, 268:4-20 (Leventon did not disclose the ATE Policy to UBS, the Independent Board, or HCM's bankruptcy counsel).¹⁸

¹⁷ Indeed, Dondero and Ellington's lieutenants even went as far as to disclaim any knowledge of Sentinel's relationship with HCM. *See, e.g.*, Ex. 89, Email from G. Demo, at UBSPROD3603372 (Feb. 9, 2021) (DiOrio, a director of Sentinel at the time, lies in response to a question from Demo requesting visibility into Sentinel's ownership and purpose, "It is a non-debtor, non-affiliate reinsurance company and I do not know who or how it is owned.").

¹⁸ Neither did Dondero, Ellington, and their lieutenants disclose to the Independent Board that HFP, SOHC, and CDO Fund were insured for up to \$100 million under the ATE Policy when representing that they were insolvent. *See* Ex. 117, Ellington Dep. at 133:3-10, 137:15-138:11 (Ellington did not disclose the ATE Policy to the Independent Board); Ex. 124, Sevilla Dep. at

92. It was only on or about February 10, 2021, after Dondero’s and Ellington’s removal, that the Independent Board first shared with UBS the existence of the ATE Policy and APA, revealing for the first time the clandestine scheme to frustrate the Judgment and defraud UBS. *See* Ex. 90, HCM and UBS Settlement Agreement, at 2 (acknowledging disclosure of ATE Policy).

C. The 2019 Fraudulent Conveyance To Sebastian Clarke

93. Just a month after the court found the Funds liable in the Underlying Action, Dondero and Ellington, through their lieutenants, sought to drain Sentinel of the remaining 2017 Transferred Assets.

94. In a single day on December 31, 2019, DiOrio and Sevilla forced through the transfer of \$35,201,589 of the 2017 Transferred Assets to Sebastian Clarke—yet another Cayman Island entity Dondero and Ellington owned and controlled.¹⁹ *See* Ex. 82, Email from M. DiOrio, at BC SEN0000638651 (Mar. 19, 2020) (Sevilla requests that the directors of Sebastian Clarke, John Cullinane and David Egglshaw, “review a matter for approval today” involving a transfer of assets “Sentinel currently marks at zero and which Sentinel would propose to transfer to Sebastian Clarke for minimal consideration”); *id.* at BC SEN0000638650 (DiOrio notes that “[a]ll we need is an email consent to the transfer and we will have it documented later this week”); Ex. 60, Email from J. Venza, at HCMUBS003785 (Sept, 5, 2018) (attaching Offshore Fund Structure Chart) (reflecting Dondero and Ellington’s ownership interests in various entities, including Sebastian

278:20-279:3 (Sevilla did not disclose the ATE Policy to the Independent Board); Ex. 86, Email from I. Leventon, at UBSPROD1706963 (Aug. 5, 2020) (Leventon did not disclose the ATE Policy when representing that “HFP (the parent of SOHC) and CDO Fund both informed their investors in 2009 that they had zero net asset value,” and that, after personally tracking down SOHC’s and CDO Fund’s assets, “both portfolio assets are illiquid unless the underlying PE positions are sold”).

¹⁹ Sentinel later told UBS that Sebastian Clarke returned the assets.

Clarke); Ex. 111, DiOrio Dep. at 109:22-110:21 (Sebastian Clarke was “an entity under still the same general common ownership” as Sentinel).

95. In exchange for the assets it sent Sebastian Clarke, Sentinel received just \$3, even though the assets included two promissory notes from the 2017 Transferred Assets with a face value of over \$35 million—notes from entities Dondero confirmed had the ability to pay.²⁰ See Ex. 99, Asset Transfer Agreement, at UBSPROD020571 (Dec. 31, 2019); Ex. 114, Dondero Dep. at 333:5-16 (confirming that Dugaboy has the solvency to pay off the Dugaboy promissory note); Ex. 115, Dondero Dep. at 190:1-6 (confirming that the estimated value of CLO HoldCo exceeds \$100 million).

96. When pushed to explain why he deemed the notes worthless, DiOrio could only recall vaguely that “there were some notes that were not paying interest, and I didn’t have the info to provide to VRC [the independent valuation company] to have them valued.” Ex. 111, DiOrio Dep. at 293:1-16. But, on the face of the \$32,800,000 promissory note from CLO HoldCo, no interest is due until maturity in 2025. Ex. 54, Email from L. Thompson, at Ex. A (attaching Assignment Agreement). And DiOrio was unaware whether Sentinel had even demanded payment on the promissory note backed by Dondero’s personal trust. Ex. 111, DiOrio Dep. at 295:14-296:21.

²⁰ Though within his power, Dondero has done nothing to cause these two promissory notes to be paid to Sentinel. Dondero is the sole beneficiary of the Dugaboy Investment Trust, and he has admitted that his sister, the trustee, “take[s] guidance from me on the asset management side.” Ex. 115, Dondero Dep. at 62:19-63:16; *see also* Ex. 114, Dondero Dep. at 280:7-21. Dondero “tr[ies] [to] have as much of [his] assets as possible [stored] in Dugaboy,” including “a lot of [his houses],” and has admitted that he had not ever asked his sister whether she would pay off the Dugaboy note. Ex. 115, Dondero Dep. at 245:21-246:8, 248:15-21. Similarly, Dondero testified that he has done nothing to ensure that CLO HoldCo would pay off the promissory note. *Id.* at 240:22-25.

97. DiOrio claimed the reason for the rush was that “Sentinel had to get these assets off its balance sheet per the instruction of CIMA” because they “could not be valued or were not valued” and would lead to “a qualified audit opinion.” Ex. 111, DiOrio Dep. at 109:22-110:13. But only DiOrio deemed these assets “worthless;” Sentinel did not have the assets independently valued. Ex. 82, Email from M. DiOrio, at BC SEN0000638649, -51 (DiOrio characterizing the assets transferred to Sebastian Clarke as “worthless” but admitting that Sentinel did not have the assets formally valued). And Beecher had “no way of confirming” the value of the assets because “Sentinel had no documents” on the assets’ value. Ex. 106, Beecher Dep. at 281:17-282:2. In fact, DiOrio only advised Beecher of the transfer months after the agreement’s execution. *See* Ex. 82, Email from M. DiOrio, at BC SEN0000638649 (DiOrio forwarding the agreement to Beecher on March 19, 2020, “Not sure if I ever sent this to you guys. Sale of worthless assets agreement”).

IV. DONDERO AND ELLINGTON USE THE 2017 TRANSFERRED ASSETS AS A PIGGY BANK

98. Dondero and Ellington exercised their control over Sentinel to enrich themselves using cash at Sentinel that was originally transferred with, or generated by, the 2017 Transferred Assets. This diminished the fraudulently transferred assets at Sentinel, all of which should have been available to UBS to satisfy the judgment.²¹

A. The 2019-2021 Voidable Transfers To Dondero And Ellington

99. In the months after the November 2019 Phase I Decision and Order, Dondero and Ellington spent, transferred, and otherwise dissipated the 2017 Transferred Assets. They did this in two main ways.

²¹ On September 1, 2022, UBS entered into a final settlement agreement with Sentinel, whereby, among other terms, Sentinel agreed to transfer to UBS what remained at Sentinel of the 2017 Transferred Assets, and UBS agreed to count those assets toward satisfaction of the Judgment. *See* Ex. 25, Partial Satisfaction-Piece for Post-Judgment Interest (Feb. 1, 2023).

100. *First*, Ellington charged the ATE Policy for ludicrous personal expenses, unrelated “business development” expenses meant to develop business for other Dondero- and Ellington-entities, and unrelated litigation funding expenses (collectively, and as set forth *infra* ¶¶ 103-112, the “Fraudulent Ellington Reimbursements”).

101. *Second*, Dondero, Ellington, and their lieutenants arranged for “dividend” transfers from Sentinel to Dondero and Ellington’s holding companies, Mainspring and Montage. *See infra* ¶¶ 113-119.

102. Each of these transfers was made for no consideration and was purely to transfer the 2017 Transferred Assets parked at Sentinel to Dondero and Ellington and away from UBS.

1. The 2019-2020 Fraudulent Ellington Reimbursements

103. Ellington received several direct cash transfers that funded his high-flying party lifestyle and supposed attempts to drum up non-Sentinel business—expenses unrelated to the ATE Policy or to Sentinel at all.

104. On December 16, 2019, Ellington submitted for reimbursement \$21,557.04 in expenses for travel to Los Angeles, New York City, and Chicago. *See* Ex. 74, Email from M. DiOrio, at BC SEN0000712799 (Dec. 17, 2019). DiOrio forwarded the expense to Beecher Carlson with instructions to reimburse pursuant to the ATE Policy with no further explanation to justify why they qualified as “risk mitigation” expenses under the ATE Policy. *Id.* Beecher made the reimbursement without question. Ex. 76, Email from CIBC Bank, at BC SEN0000004342-43 (Dec. 20, 2019).

105. On December 19, 2019, Ellington submitted for reimbursement \$318,934.88 in expenses for a single day in Austin and seven days in Las Vegas during December 11-17, 2019, all of which Sentinel reimbursed as “business development.” *See* Ex. 75, Email from T. Adamczak, at BC SEN0000663342 (Dec. 20, 2019) (attaching Ellington Dec. 19 Expense Report).

Among the expenses were \$42,324 in charges from a *single night* at Sapphire, a Las Vegas strip club,²² \$97,706.19 at nightclub OMNIA, and \$157,855.47 at the Wynn casino and hotel in Las Vegas. Ex. 117, Ellington Dep. at 368:16-373:2; Ex. 75, Email from T. Adamczak, at BC SEN00000663344 (attaching Ellington Dec. 19 Expense Report).

106. Ellington justified the expenses at OMNIA and the strip club Sapphire as related to a party for a real estate brokerage firm that had “worked out and disposed of” hundreds of millions of dollars of real estate for *HCM*. Ex. 117, Ellington Dep. at 369:6-18. Ellington wanted to “thank[] them for their service [to HCM].” *See id.* at 370:15-371:10.

107. The \$150,000+ Ellington spent at the Wynn Hotel was purportedly related to a trial in Lake Las Vegas. Ellington explained Sentinel had “a contingency relationship where Sentinel was investing in fronting part of the money for a return of any recoveries.” *See* Ex. 117, Ellington Dep. at 373:10-374:15. But according to public court records, Ellington and Sevilla’s trial in Lake Las Vegas was in *August and September* 2019 for *HCM*-affiliated entity “LLV Holdco.” *See* Ex. 70, Email from J. Sevilla, at UBSPROD2708622 (Sept. 13, 2019) (reflecting Sevilla and Ellington stayed at the Wynn Hotel during a seven-week trial on behalf of LLV Holdco); *see generally* Ex. 3, Docket Excerpts, *LLV Holdco LLC v. James Coyne*, No. A-17-749387 (Jan. 8, 2023) (case docket does not reflect any trial dates during December 2019).

108. On January 30, 2020, Ellington instructed DiOrio to submit reimbursement requests totaling \$78,841.93 for Ellington’s personal trips to London and Paris with his girlfriend Stephanie Archer as “Risk Mitigation” expenses under the ATE Policy. Ex. 80, Email from A. Devins (Feb. 6, 2020) (attaching Ellington January Expense Report). For instance, in a December 12, 2019

²² When Beecher asked questions about the Sapphire expenses, DiOrio simply stated that “this is how [HCM] do[es] business.” *See* Ex. 106, Beecher Dep. at 101:7-102:2.

email exchange planning for the trip, Archer wrote to Ellington, “I would love to do Christmas Eve Dinner at Claridge’s.” Ex. 72, Email from S. Ellington, at UBSPROD460936 (Dec. 12, 2019). Sure enough, on December 24, 2019, Ellington recorded a \$2,629.26 charge to the ATE Policy for “Risk Mitigation” at Claridge’s. Ex. 80, Email from A. Devins, at BC SEN0000727324 (attaching Ellington January 30 Expense Report). Ellington and Archer similarly enjoyed visits to the Park Chinois (\$4,155.66) and Sexy Fish restaurants (\$716.75), as well as a jaunt to the Four Seasons in Paris (\$8,089.44). *Id.* Each of these were billed as “Risk Mitigation” expenses. *Id.* When faced with this damning documentary evidence, Ellington admitted that none of the \$78,841.93 were in any way related to “Risk Mitigation” or even to Sentinel at all. Ex. 117, Ellington Dep. at 365:6-10.

109. Also in January 2020, Ellington instructed DiOrio to submit reimbursement requests totaling more than \$140,000 for a trip to Toronto that lasted less than a week. Ex. 80, Email from A. Devins, at BC SEN0000727325; Ex. 77, Email from M. DiOrio, at BC SEN0000713384-87 (Jan. 2, 2020). But Ellington could not keep his story straight as to why Sentinel should pay the bill. Although Ellington directed DiOrio to expense the \$43,353.54 for his private jet travel to Toronto as purely for “work . . . on settlement for the ATE matter,” Ex. 77, Email from M. DiOrio, at BC SEN0000713384-87, he also submitted the \$97,492.82 he spent while in Toronto for a mix of “risk mitigation” and “business development” expenses. Ex. 80, Email from A. Devins, at BC SEN0000727324, -26 (attaching Ellington January Expense Report).²³ Despite the conflicting justifications, Sentinel approved all of Ellington’s reimbursement requests for the trip. *See* Ex. 117, Ellington Dep. at 366:19-368:11.

²³ Like his other trips, while in Toronto, Ellington spent more than \$20,000 at the Shangri-La Hotel and \$18,292.60 at Goldie, a nightclub. *See* Ex. 80, Email from A. Devins, at BC SEN0000727325, (attaching Ellington January Expense Report).

110. Next, on March 12, 2020, Ellington’s secretary Sarah Goldsmith submitted a reimbursement request for another London trip costing \$273,662.82 for around six days of purported “travel & business meetings related to Sentinel.” *See* Ex. 81, Email from A. Damien, at BC SEN0000777547 (Mar. 16, 2020) (attaching Ellington March Expense Report). Those expenses included three \$6,000+ airfares for Kristen Leonardelli, Sara Leonardelli, and Julia Masiello—three people who appear to be unaffiliated with Sentinel. *Id.* at BC SEN0000777513-15. And again, on one day in London, Ellington spent \$75,914.86 at two restaurants and a night club. *Id.* at BC SEN0000777506.

111. Sentinel reimbursed every single Fraudulent Ellington Reimbursement that Ellington submitted. *See* Ex. 106, Beecher Dep. at 65:19-24. DiOrio confirmed that he would submit these reimbursements without question. *See* Ex. 111, DiOrio Dep. at 264:5-265:1 (“[W]hen he submitted something . . . and said it was for UBS, I trusted that was the case.”). After all, while DiOrio was a director at Sentinel, “Ellington was [his] direct boss” at HCM. *Id.* at 19:9-16. And as long as Dondero and Ellington said the expenses were appropriate, Sentinel reimbursed them. *See* Ex. 106, Beecher Dep. at 104:22-105:2 (Q . . . [The expense] is . . . appropriate because the UBOs said it was appropriate? . . . A To my knowledge, yes.”).

112. Beecher also “had no choice other than to follow the direction of the directors” no matter the expense. *See id.* at 85:11-86:8; *see also* Ex. 80, Email from A. Devins, at BC SEN0000727319 (processing fraudulent Ellington expenses). Beecher understood that even if it had pushed back, it “would have had no choice other” than to follow the instructions of DiOrio and other individuals controlled by Dondero and Ellington. *See* Ex. 106, Beecher Dep. at 85:22-86:5. In the end, Beecher understood Dondero and Ellington “called the shots,” and it never pushed back on any Fraudulent Ellington Reimbursement requests even when Beecher internally

questioned their legitimacy. *Id.* at 24:13-25:13; Ex. 75, Email from T. Adamczak, at BC SEN0000663342 (confirming that Beecher pushed through an expense despite “question[ing] how much ‘business development’ is actually being done”); Ex. 79, Email from A. Devins, at BC SEN0000713829 (June 1, 2020) (expensing private jet as a risk mitigation expense but noting internally, “I think it’s a little excessive, but who am I to say. . .”).

2. The 2020-2021 Fraudulent “Dividends” To Mainspring And Montage

113. From 2020-2021, Dondero and Ellington extracted millions from Sentinel that should have been payable to UBS to satisfy the Phase I Judgment through “dividends” to Mainspring and Montage. At the time, Dondero owned 99.5% of Mainspring and Ellington owned 99% of Montage, *see* Ex. 68, Email from C. Price, at DISCEN0008408, -8410 (attaching Sentinel Structure Ownership Chart). They only revealed their near-complete ownership of Mainspring and Montage—and thus Sentinel—after CIMA regulators warned that the complexity of Sentinel’s prior ownership structure “could impede effective regulatory judgment,” Ex. 45, Email from A. Devins, at BC SEN0000133653 (Mar. 22, 2018).

114. On April 24, 2020, Sentinel transferred a total of \$6.4 million to Mainspring and Montage, \$4,480,000.00 to Mainspring as payment of Dondero’s 70% share of the dividend and \$1,920,000.00 to Montage as Ellington’s 30% share of the dividend. *See* Ex. 101, CIBC Bank Statement, at BC SEN0000598154 (Apr. 30, 2020); Ex. 84, Email from CIBC, at BC SEN0000004334 (Apr. 24, 2020) (attaching wire transfer to Mainspring); Ex. 85, Email from CIBC, at BC SEN0000004242-43 (Apr. 24, 2020) (attaching wire transfer to Montage).

115. Despite DiOrio’s commitment that Sentinel would “not be entertaining any dividend issuance while the ATE policy is active,” Ex. 62, Email from J. Arbeit, at DISCSEN0006464-65 (Oct. 3, 2018) (Beecher advising that issuance of dividends to Dondero and Ellington “would decrease the cash position below the amount of the loss reserves”), this dividend

payment occurred *after* the court entered the Phase I Judgment. Sentinel’s own manager could not explain the basis for this dividend distribution. *See* Ex. 106, Beecher Dep. at 210:3-211:10.

116. As the ultimate beneficial owners of Sentinel, Dondero and Ellington determined when Sentinel issued the dividends. *See* Ex. 111, DiOrio Dep. at 196:8-197:3. Ellington simply “would say, can we issue a dividend, and [DiOrio] would send the analysis like if we—if you want to, we can, shareholders, so it is ultimately—he’s the UBO.” *Id.* at 195:12-25. Indeed, Dondero and Ellington “could ask [for dividends] every day of the year.” *Id.* at 196:8-21, 238:25-239:12; *see also id.* at 224:20-225:12 (Sentinel issued dividends at Ellington’s request rather than according to a set payment schedule).

117. On January 12, 2021, a year after the Phase I Judgment, Dondero and Ellington repeated the same play: they moved another \$2.5 million to themselves by sending \$1,750,000.00 to Mainspring and \$750,000.00 to Montage. *See* Ex. 102, CIBC Bank Statement, at BC SEN0000610180 (Jan. 29, 2021). This violated not only Sentinel’s commitment against dividend issuance while the ATE Policy was in effect, but also CIMA’s policy requiring that it receive notice before a dividend was issued. Ex. 95, CIMA Statement of Guidance, at 4.2.1 (Jan. 2014). When Sentinel finally provided notice of the dividend issuance to CIMA three months later, it obscured the retroactive nature of the request by noticing a future “dividend *to be declared and paid.*” Ex. 91, Email from G. Pereira, at BC SEN0000083961 (Apr. 27, 2021).

118. In the end, Sentinel’s board never rejected a single dividend request submitted on behalf of Dondero and Ellington. *See* Ex. 111, DiOrio Dep. at 196:22-197:1. Ultimately, Dondero and Ellington had “the ultimate responsibility of [Sentinel] meeting capital and solvency requirements.” Ex. 106, Beecher Dep. at 21:2-22:9, 23:25-24:25.

119. Ellington acknowledged receiving millions of dollars from these dividends.²⁴ Ex. 117, Ellington Dep. at 126:12-21. Meanwhile, when the Bankruptcy Court blocked certain bonus payments, Dondero used at least some of his dividend money to reward his loyalists with payments that matched the amounts HCM allegedly owed. *See id.*

B. The 2020 Voidable Transfer To Pay Bonuses In Violation Of The Bankruptcy Court Order

1. Dondero And Ellington Make Bonus Payments Blocked By The Bankruptcy Court

120. During its bankruptcy, HCM requested that the Bankruptcy Court allow it to pay all employee bonuses. Ex. 4, Bk. Dkt. No. 177, at 1 (Dec. 4, 2019). The Bankruptcy Court rejected bonus payments to four “statutory insiders”: Ellington; Leventon; Frank Waterhouse, former HCM CFO; and Thomas Surgent, former HCM Chief of Compliance, *see* Ex. 7, Bk. Dkt. No. 380, at 2-3 (Jan. 22, 2020) (order approving payment only for “Covered employees”); *see also* Ex. 17, Bk. Dkt. No. 2423, at 118-19 (June 8, 2021) (transcript of Jan. 21, 2020 hearing excluding four “statutory insiders” from the “Covered employees”).

121. In defiance of this order, and with knowledge of the Judgment, Dondero and Ellington schemed to funnel payments to Ellington, Waterhouse, Leventon, and Surgent through Dondero- and Ellington-controlled entities using Judgment Debtor resources. *See* Ex. 117, Ellington Dep. at 60:22-61:8 (describing nature of the plan); *id.* at 216:7-217:11 (conceding he developed the plan); *id.* at 126:12-21 (conceding he, Leventon, Surgent, and Waterhouse received millions from Mainspring); *id.* at 129:5-24 (conceding he was aware of the Judgment when he

²⁴ Ellington disputed that he had ever received any “dividends” from Sentinel, but agreed that he had received “distributions,” based on his understanding of the terms. Ex. 117, Ellington Dep. at 125:3-17. At the time of the payments to Dondero and Ellington, Sentinel called them “dividends” and this Petition adopts that term.

orchestrated the payments); Ex. 115, Dondero Dep. at 126:7-25, 127:9-18, 128:19-129:15 (confirming Ellington developed the plan).

122. Ellington created an entity called Tall Pine Group, LLC (“Tall Pine”) and its general partner, Sunshine Coast Development, LLC (“Sunshine Coast”) to enter into consulting agreements with various Dondero-controlled entities, including NexBank,²⁵ NexPoint,²⁶ Highland Funds Asset Management,²⁷ Sentinel,²⁸ and the DAF,²⁹ and then subcontract with entities owned by or affiliated with Surgent, Waterhouse, and Leventon. See Ex. 117, Ellington Dep. at 56:21-24, 59:7-60:7, 60:22-61:8, 217:12-24; see also Ex. 120, Leventon Dep. at 29:3-31:11 (conceding Leventon received some of the blocked bonus payments from NexPoint).³⁰

²⁵ **NexBank Capital, Inc.** (“NexBank”) is majority owned by Dondero. See Ex. 100, HCM Affiliate Organizational Chart. Ellington discussed the consulting scheme with John Holt (President and Chief Executive Officer) and Matt Siekielski (Chief Operating Officer). See Ex. 117, Ellington Dep. at 56:21-24, 217:12-217:23.

²⁶ **NexPoint Advisors, L.P.** (“NexPoint”), with general partner NexPoint Advisors GP, LLC, is 100% owned by Dondero. See Ex. 100, HCM Affiliate Organizational Chart. Ellington discussed the consulting scheme with Brian Mitts (Chief Financial Officer of NexPoint Real Estate Advisors). See Ex. 117, Ellington Dep. at 217:12-24; *id.* at 56:19-24.

²⁷ **Highland Funds Asset Management, L.P.**, with general partner Strand Advisors XVI, Inc., is 100% owned by James Dondero. See Ex. 100, HCM Affiliate Organizational Chart (July 2019); see also Ex. 94 Highland Funds Asset Management Relationship, at UBSPROD1824596 (Feb. 18, 2011) (clarifying that Highland Capital Management Fund Advisors, L.P. was formerly known as Highland Funds Asset Management, L.P.).

²⁸ Ellington used his influence at Sentinel to convince the directors to make a distribution to Mainspring to help fund the bonus payments. See Ex. 117, Ellington Dep. at 215:2-9.

²⁹ The **Charitable DAF Fund, L.P.**, is indirectly controlled by Dondero, as described *supra* ¶¶ 12, 56, and was funded with his own assets, his family trusts, and HCM. See Ex. 18, Bk. Dkt. No. 2660, at 2 (Aug. 4, 2021) (CLO HoldCo Contempt Order).

³⁰ At times, the contributing entities, such as Mainspring and NexPoint, made these payments to or created these consulting agreements directly with entities owned by or affiliated with Surgent, Waterhouse, and Leventon. See Ex. 19, Bk. Dkt. No. 2856 ¶ 32 (Sept. 21, 2021) (stipulation that Surgent received \$750,906.13 from Tall Pine, \$1,887,929.00 from Mainspring, and \$135,437.00 from NexPoint).

123. Under the consulting agreements, the contributing entities “were jointly and severally liable for the total amount on the various milestone payment dates.” Ex. 117, Ellington Dep. at 214:7-18. Contributions were based not on services rendered but on ability to pay and regulatory limitations. *See id.* When Tall Pine received a “consulting” payment, it would distribute the payment to a pass-through entity controlled by one of the employees. *See id.* at 59:12-60:2. As the ultimate economic owner of Tall Pine, *id.* at 60:10-16, Ellington kept the amounts that remained after it paid out the other claims.

124. The objective was to create the appearance of legitimate business dealings to conceal Dondero and Ellington’s true purpose of funneling cash to senior leaders to thwart the Bankruptcy Court’s freeze on bonus payments. But such “consulting agreements” were fraudulent because the “consultants” performed no other work on top of the services already being performed by those individuals as employees of HCM, and in certain instances some of the employees did no work for certain contributing entities. For example, Ellington used distributions from Sentinel to Mainspring to pay Waterhouse’s HCM bonus—but Waterhouse did not do any work for Sentinel. Ex. 117, Ellington Dep. at 226:1-13.

125. Ellington ultimately directed the amount of the payments and directed members of his legal team, including Sevilla and Leventon, to help structure these consulting agreements and coordinate with the various parties. *Id.* at 54:11-24, 215:21-23, 216:7-15; Ex. 115, Dondero Dep. at 133:13-15. He also worked with Waterhouse, the Chief Financial Officer at HCM for more than decade, who instructed the accounting department to generate the amounts HCM owed in bonuses to himself, Ellington, Leventon, and Surgent so that Dondero and Ellington could pay those amounts through the consulting agreements. Ex. 117, Ellington Dep. at 213:8-215:1; Ex. 20, Bk. Dkt. No 2940 ¶ 1 (Oct. 19, 2021).

126. Under these fraudulent consulting agreements, Ellington, Surgent, Waterhouse, and Leventon received³¹ roughly \$8,638,536.07 in 2020, including about \$5,874,203.21 from Mainspring.³²

- Ellington received \$3,074,408. See Ex. 15, Bk. Claim No. 244 (Mar. 23, 2021) (Ellington's amended claim for \$3,074,408.16 in bonus payments).
 - Surgent received \$2,774,272. Ex. 19, Bk. Dkt. No. 2856 ¶ 32 (Motion for Entry of Order, reflecting Surgent's claim for \$2,774,272.13 in bonus payments).
 - Waterhouse received \$2,102,260. Ex. 8, Bk. Claim No. 182, at 2 (May 26, 2020) (Waterhouse's claim for \$2,102,260.99 in bonus payments).
 - Leventon received \$687,594. Ex. 14, Bk. Claim No. 216 Rider 3, at 3 (Mar. 3, 2021) (Leventon's amended claim for \$687,594.79 in bonus payments).
2. Ellington And Others Defraud The Bankruptcy Court By Filing Claims Seeking Bonuses Already Procured By Fraud

127. Despite having received cash intended to replace the bonuses the Bankruptcy Court denied, Waterhouse, Leventon, Surgent, and Ellington filed proofs of claim that included the amounts already secured through these illicit payments. Ex. 8, Bk. Claim No. 182 (Waterhouse's claim for \$2,102,260.99); Ex. 9, Bk. Claim No. 183 (May 26, 2020) (Surgent's claim for \$3,958,628.14); Ex. 14, Bk. Claim No. 216 (Leventon's amended claim for \$687,594.79); Ex. 15, Bk. Claim No. 244 (Ellington's amended claim for \$3,074,408.16). After Waterhouse, Leventon,

³¹ Ellington testified that he, Surgent, Waterhouse, and Leventon were paid "the amounts that each of them believed were owed to them by HCM, but not paid." Ex. 117, Ellington Dep. at 211:5-213:14.

³² Upon HCM's discovery of some of the illicit payments, Surgent disclosed the full scheme and revealed that Mainspring had contributed 68% of his total bonus payments. Ex. 19, Bk. Dkt. No. 2856 ¶ 32. Each entity contributed the same percentage to each employee. Ex. 117, Ellington Dep. at 225:11-18. Thus, about \$5,874,203.21 of these illicit bonus payments came through Mainspring from Sentinel.

and Ellington left HCM, each of them joined Skyview Group (“Skyview”),³³ an entity Ellington owns. They assigned their claims to CPCM LLC (“CPCM”), a wholly owned subsidiary of Skyview. *See* Ex. 116, Ellington Dep. at 38:23-45:21; Ex. 120, Leventon Dep. at 56:24-57:2. CPCM ultimately withdrew both Leventon’s and Ellington’s claims because of objections.

128. In January 2021, HCM entered into stipulations with Surgent and Waterhouse that ostensibly resolved their claims. The Bankruptcy Court approved the settlement in February 2021. But before any payment could occur, the Independent Board uncovered evidence of the above-described sizable payments from entities owned by Dondero and Ellington and filed a motion to reconsider the stipulation on account of the uncovered fraud. Ex. 19, Bk. Dkt. No. 2856 ¶¶ 26-35; Ex. 20, Bk. Dkt. No. 2940 ¶¶ 24-27. After HCM presented this evidence to the Bankruptcy Court, Surgent agreed to apply payments already received against his claim. Ex. 19, Bk. Dkt. No. 2856 ¶¶ 36-39. CPCM, however, fought the motion, and Waterhouse moved to quash a subpoena sent by HCM as imposing an undue burden on a third party. Ex. 21, Bk. Dkt. No. 3191 ¶ 5. Ultimately, CPCM and Waterhouse agreed to a settlement and withdrew the claim against HCM for bonus amounts. Ex. 22, Bk. Dkt. No. 3317 ¶ 18 (Mar. 24, 2022).

³³ Skyview also hired DiOrio, Irving, and Vitiello. *See* Ex. 110, DiOrio Dep. at 12:11-12; Ex. 119, Irving Dep. at 10:2-24; Ex. 128, Vitiello Dep. 64:6-65:4. Skyview has around 30 to 40 employees, “almost all ex-Highland Capital Management employees.” Ex. 120, Leventon Dep. at 55:23-56:18. Leventon testified that, at the time, it operated out of the same offices as NexBank and NexPoint, *id.*, entities that Dondero fully controls, *see supra* ¶ 122, nn.25-26.

CLAIMS FOR RELIEF

I. CLAIM I: TURNOVER PREDICATED ON FRAUDULENT AND VOIDABLE CONVEYANCES AGAINST CLO HOLDCO, ELLINGTON, MAINSPRING, AND MONTAGE (CPLR 5225(B))

A. New York’s Former Fraudulent Conveyance Law (Effective Through April 3, 2020)

129. The former version of New York Debtor & Creditor Law (“DCL”) § 276³⁴ sets forth a clear standard for finding and voiding intentional fraudulent conveyances. It provides, “[e]very conveyance made and every obligation incurred with actual intent . . . to hinder, delay, defraud either present or future creditors, is fraudulent as to both present and future creditors.” DCL 276 (2019).

130. Because “fraudulent intent, by its very nature, is rarely susceptible to direct proof,” it “must be established by inference from the circumstances surrounding the allegedly fraudulent act.” *Amusement Indus., Inc. v. Midland Ave. Assocs., LLC*, 820 F. Supp. 2d 510, 530 (S.D.N.Y. 2011).

131. To establish fraudulent intent under the earlier DCL 276, courts look to “badges of fraud,” which are “circumstances so commonly associated with fraudulent transfers ‘that their presence gives rise to an inference of intent.’” *Wall St. Assocs. v. Brodsky*, 257 A.D.2d 526, 529 (1st Dep’t 1999).

132. These “badges of fraud” include:

- (1) a close relationship between the parties to the transaction,
- (2) a secret and hasty transfer not in the usual course of business,

³⁴ The former version of DCL 276, which was in effect through April 3, 2020, applies to all fraudulent conveyances that occurred through that date. James Gadsden & Alan Kolod, Supplemental Practice Commentaries, McKinney’s Cons Laws of NY, Book 12, Debtor and Creditor Law Ch. 12, Art. 10 (explaining that the amended DCL “became effective on April 4, 2020, and applies to transfers and incurrences effected on or after that date”).

- (3) inadequacy of consideration,
- (4) the transferor's knowledge of the creditor's claim and his or her inability to pay it,
- (5) the use of dummies or fictitious parties, and
- (6) retention of control of the property by the transferor after the conveyance.

Matter of Shelly v. Doe, 249 A.D.2d 756, 758 (3d Dep't 1998).

133. In addition, "when a transfer has been made for no consideration, the courts recognize a rebuttable presumption of insolvency and fraudulent transfer." *Wimbledon Fin. Master Fund, Ltd. v. Wimbledon Fund, SPC*, 2016 WL 7440844, at *4-6 (Sup. Ct. N.Y. Cnty. Dec. 22, 2016) (applying CPLR 5225 turnover principles to DCL 276).

B. The 2010 Fraudulent Conveyance To CLO HoldCo

134. Paragraphs 1-133 are incorporated by reference as if fully stated here.

135. On December 23, 2010, CDO Holding transferred its entire portfolio of assets to CLO HoldCo for only a little cash and a note with no principal or interest payments due for fifteen years. *See supra* ¶¶ 51, 59. Because CDO Holding was an alter ego of HFP, this transfer of assets was made by an entity of which UBS was a current or future creditor.

136. The circumstances surrounding the transaction, including the strong likelihood that the court in the Underlying Action would assess liability against HFP and Leventon's specific awareness that such liability "would then expose CDO Holding's assets to seizure," explain the real reason for a trade that otherwise did not make sense. *See supra* ¶ 53. Indeed, the trade bore many of the quintessential "badges of fraud" that reveal it was a fraudulent conveyance.

137. *A Close Relationship Between The Parties To The Transaction:* CDO Holding and CLO HoldCo were each controlled by Dondero, also the ultimate controlling shareholder of

each of the Judgment Debtors. On an internal compliance report, Dondero signed as the “gatekeeper” for both entities. *See supra* ¶ 57.

138. ***A Secret And Hasty Transfer Not In The Usual Course Of Business:*** Despite Dondero justifying the transfer for “liquidity,” CDO Holding transferred substantially *all* of its assets in exchange for consideration that was in large part a note that was not payable for *fifteen years*. There was also no negotiation of any kind; the rushed terms were set based on just a single valuation, prompting concern from an HCM employee. And CDO Holding recorded no sales to any other entity in 2010. *See Ex. 96, CDO Holding Balance Sheet, at UBSPROD4957189, tab “200.3 CDO BS.”* This was not a transfer “in the usual course of business.” *See supra* ¶¶ 58-59.

139. In addition, the 2010 Fraudulent Conveyance was “hasty”: it was executed just days after CLO HoldCo, the receiving entity, was created in the Cayman Islands for the purpose of receiving these assets. *See supra* ¶¶ 55, 57.

140. ***Inadequacy Of Consideration:*** The inadequacy of the consideration underscores how brazen this transfer was. Rather than receiving nearly \$40 million in cash for the CLOs on the open market, CLO HoldCo sold the assets to another Dondero-controlled entity for consideration that was, in large part, a note not payable for fifteen years. *See supra* ¶ 59.

141. ***The Use Of Dummies Or Fictitious Parties:*** Although not a “fictitious” party, CLO HoldCo was set up specifically to carry out *this* fraudulent conveyance. *See supra* ¶ 55.

142. ***Retention Of The Property After The Conveyance:*** Dondero, ultimately controlled CDO Holding (through HFP) and CLO HoldCo. After Dondero personally funded a portion of the consideration for the transfer, Dondero’s close ally Grant Scott oversaw the parent structure that housed CDO Holding’s former assets at CLO HoldCo. *See supra* ¶¶ 56-57.

143. The Court should void the 2010 Fraudulent Conveyance, enter judgment against CLO HoldCo for the value of the transferred assets, and award UBS’s costs and attorney’s fees incurred in connection with this special proceeding. *See* DCL 276-A (2019).

C. The Ellington Reimbursements Were Fraudulent Conveyances

144. Paragraphs 1-143 are incorporated by reference as if fully stated here.

145. The hundreds of thousands of dollars that Ellington spent on lavish personal vacations and questionable “business development” expenses were in fact assets to which UBS was entitled based on its status as a creditor—indeed, the largest creditor—of the Judgment Debtors.

146. The transactions that led to the “reimbursements” occurred in two steps: (i) move the assets from the Judgment Debtors to Sentinel, and then (ii) move the assets from Sentinel to Ellington.

147. New York’s fraudulent conveyance law protects judgment creditors against exactly these kinds of fraudulent conveyances, which used Judgment Debtor assets to pay for the lifestyle expenses of those who controlled those Judgment Debtors. For these reasons, the badges of fraud are readily apparent from the Fraudulent Ellington Reimbursements.

148. ***A Close Relationship Between The Parties To The Transaction:*** Ellington did not just have a close relationship to the other parties in the transaction, he created the transaction and controlled it from all sides. As Dondero’s trusted lieutenant, Ellington is the one who proposed moving the assets away from the Transferors and sending them to Sentinel’s Cayman Islands accounts—accounts over which Ellington had a 30% stake as one of the ultimate beneficial owners. *See supra* ¶¶ 78, 80. Once Dondero and Ellington had the assets tucked away offshore, Ellington was one of the two people who “called the shots” about Sentinel and the use of the assets. *See supra* ¶ 80. Ellington even took his control a step further: he installed his subordinate DiOrio

onto Sentinel's board and then submitted the Fraudulent Ellington Reimbursements to him directly to get approved. *See supra* ¶ 81.

149. ***A Secret And Hasty Transfer Not In The Usual Course Of Business:*** DiOrio unquestioningly submitted hundreds of thousands of dollars in Ellington's highly questionable charges without receiving from Ellington, or providing to Beecher, *any* legitimate business justification for the massive costs. *See supra* ¶¶ 103-112.

150. ***Inadequacy Of Consideration:*** There was no consideration provided for these expenses—Sentinel never got any benefit, a single new client, or a single new dollar, in exchange for the \$833,843.05 it provided Ellington in travel, fine dining, and partying reimbursements. *See supra* ¶¶ 103-112.

151. ***The Transferor's Knowledge Of The Creditor's Claim And His Or Her Inability To Pay It:*** Ellington and DiOrio knew of UBS's Judgment and understood the 2017 Transferred Assets should go to UBS to pay that Judgment—their own legal advisors at Solomon Harris told them as much. *See supra* ¶ 72. They distributed the assets through the Fraudulent Ellington Reimbursements anyway.

152. The Court should void the Fraudulent Ellington Reimbursements and award UBS's costs and attorney's fees incurred in connection with this special proceeding. *See* DCL 276-A (2019).

D. New York's Current Voidable Transactions Law (Effective April 4, 2020)

153. On April 4, 2020, New York replaced its former fraudulent conveyance statute. *See* James Gadsden & Alan Kolod, Supplemental Practice Commentaries, McKinney's Cons Laws of NY, Book 12, Debtor and Creditor Law Ch. 12, Art. 10 (explaining that the amended DCL "became effective on April 4, 2020, and applies to transfers and incurrences effected on or after that date").

154. The newly enacted statute addresses “voidable transactions” instead of “fraudulent conveyances.” Substantively, however, much of the voidable transactions law remains the same. For instance, DCL 273(a)(1) provides that a transfer made by a debtor is voidable as to a creditor, whether the creditor’s claim arose before or after the debtor made the transfer, if made “with actual intent to hinder, delay or defraud any creditor of the debtor.” DCL 273(a)(1) (2020).

155. The statute defines “Debtor” to include any “person that is liable on a claim.” DCL 270(f). The statute provides eleven factors to weigh when determining whether a transaction is voidable (like the badges of fraud that courts consider when reviewing claims under the prior version of DCL 276). *See* DCL 273. As relevant here, these factors include, among others, whether: “the transfer or obligation was to an insider;” “the transfer or obligation was disclosed or concealed;” “the debtor removed or concealed assets;” “the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;” and “the transfer occurred shortly before or shortly after a substantial debt was incurred.” DCL 273(b).

E. The April 2020 And January 2021 “Dividends” To Mainspring And Montage Were Voidable Conveyances

156. Paragraphs 1-155 are incorporated by reference as if fully stated here.

157. Like the Fraudulent Ellington Reimbursements, the multi-million-dollar “dividends” that Dondero and Ellington sent themselves through Sentinel were the final step in the process to move Judgment Debtor assets away from UBS and to themselves. They are voidable under New York’s 2020 Debtor and Creditor Law.

158. *The Transfers Were To Insiders:* Dondero and Ellington “called the shots” at the Judgment Debtors as well as Sentinel, and the payments to Mainspring and Montage were payments to Dondero and Ellington as Sentinel’s ultimate beneficial owners. *See supra* ¶¶ 112,

114; DCL 273(b)(1); *see also* DCL 270(h)(2)(iii) (defining “Insider” to include “a person in control of the debtor”). Sentinel made the payments even after Sentinel’s directors determined the insurer would not pay any dividends while the ATE Policy was active. *See supra* ¶¶ 115-116.

159. ***The Transfers Were For Insufficient Consideration:*** The 2017 Fraudulent Conveyances from the Judgment Debtors were for insufficient consideration. The 2020 and 2021 transfers from Sentinel to Dondero and Ellington in their capacity as “shareholders” were for no consideration. Sentinel made the transfers only because of a specific request from Ellington (rather than a set payment schedule). *See supra* ¶ 116.

160. ***The April 2020 Transfer Occurred Shortly After A Substantial Debt Was Incurred:*** The court entered the Phase I Judgment shortly before the April 2020 transfers. At the time, Dondero and Ellington understood—because Solomon Harris warned them—that the court may order Sentinel to return all of the 2017 Transferred Assets to UBS in a fraudulent conveyance action like this one. *See supra* ¶ 72; *see also* DCL 273(b)(10).

161. The Court should void the dividends to Mainspring and Montage and award UBS’s costs and attorney’s fees incurred in connection with this special proceeding. *See* DCL 276-A (2020).

II. CLAIM II: TURNOVER PREDICATED ON ALTER EGO LIABILITY AGAINST DONDERO, ELLINGTON, AND CDO HOLDING (CPLR 5225(B))

162. Paragraphs 1-161 are incorporated by reference as if fully stated here.

163. To establish an alter ego claim, a plaintiff must show (i) that the defendant exercised “complete domination of the corporation . . . in respect to the transaction attacked,” and (ii) “that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury.” *Baby Phat Holding Co. v Kellwood Co.*, 123 A.D.3d 405, 407 (1st Dep’t 2014).

164. The first element—domination or control—can involve many factors, including the disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors, and personnel; common office space or telephone numbers; the degree of discretion demonstrated by the allegedly dominated corporation; whether dealings between the parties involved were at arm’s length; whether the dominated corporation was treated as independent profit center; and the payment or guaranty of the corporation’s debts by the dominating entity. *See Fantazia Int’l Corp. v CPL Furs N.Y., Inc.*, 67 A.D.3d 511, 512 (1st Dep’t 2009). No one factor is dispositive. *Id.*

165. As to the second element—using control to commit a fraud or wrong against the plaintiff—a scheme to render an entity judgment-proof is one of the classic examples justifying alter ego liability. *See, e.g., Chase Manhattan Bank (N.A.) v. 264 Water St. Assocs.*, 174 A.D.2d 504, 505 (1st Dep’t 1991) (allegations that defendants “masterminded a scheme to denude the subsidiary of its assets in order to render it unable to honor its obligations resulting in a loss to plaintiff” held sufficient).

166. If a defendant or respondent qualifies as an alter ego, it becomes liable for the full amount of the outstanding judgment against its alter ego. *See Ex. 24, Phase II Judgment*, at 5 (“alter ego liability makes HFP liable for satisfying the judgment against SOHC”).

A. Dondero And Ellington Were Each Alter Egos Of The Judgment Debtors

167. Dondero and Ellington exercised complete control over the Judgment Debtors and used that control to defraud UBS. As a matter of equity, this Court should pierce the corporate veils of HFP, CDO Fund, and SOHC and hold that Dondero and Ellington—as the individuals ultimately responsible for the Judgment Debtors’ harm to UBS—are their alter egos and thus personally liable for the Judgment.

1. Dondero And Ellington Dominated The Judgment Debtors

168. Applying the factors that New York courts consider when determining whether individuals exercised “complete dominion” over their alter ego to the facts in this Petition confirms that Dondero and Ellington exercised complete dominion over the Judgment Debtors.

169. ***Disregard Of Corporate Formalities:*** Dondero and Ellington disregarded the corporate formalities of HCM, SOHC, CDO Fund, and HFP to advance their own personal interests. They facilitated transfers among these entities without even trying to provide the appearance of arm’s-length bargaining. *See supra* ¶¶ 52-57. During the Underlying Action, a testifying expert detailed the substantial evidence of an alter ego relationship between Dondero and HCM, SOHC, CDO Fund, and HFP since the time of the transaction underpinning the Underlying Action, specifically noting the “lack of separateness” between the entities. *See supra* ¶ 33.

170. Through 2017, Dondero and Ellington continued to operate just as they always had done, without any regard for the corporate forms of the Judgment Debtors. For instance, in the case of the 2017 Fraudulent Conveyances, one of the main benefits of the asset transfers was to help Dondero avoid a potential \$50 million personal tax bill. *See supra* ¶ 64. At other times, Dondero brazenly authorized loans from the entities to himself. *See supra* ¶ 33. Dondero even altered formal control structures to increase his domination: In 2009, Dondero eliminated the requirement that HFP have independent directors and made himself the sole director of HFP—and thus the direct decision maker for HFP and its subsidiaries, including SOHC and CDO Holding. *See supra* ¶ 33.

171. Dondero and Ellington also enriched themselves through improper use of HCM employees for any entity they pleased, repeatedly ignoring corporate formalities. Despite their formal terms of employment, HCM employees served as Dondero and Ellington’s workers,

completing any task that Dondero and Ellington asked them to complete, whether personal or business related, including work for the Judgment Debtors. *See supra* ¶¶ 35-40.

172. The Judgment Debtors were not separate bona fide entities with distinct corporate ownership and controls—they were part of an overall structure that Dondero and Ellington unilaterally directed. Dondero was the ultimate decision maker for the Judgment Debtors. *See supra* ¶¶ 27-30, 32-33. He did not consult any board before authorizing the sale and assignment of the assets of SOHC, CDO Fund, HFP, and related entities. *See supra* ¶¶ 28-29. In fact, many of these entities did not have separate boards of directors or any sort of formal corporate structure. *See supra* ¶¶ 28, 33, 35. And Ellington, as Dondero’s right-hand man, also exercised unfettered authority over the Judgment Debtors, including signatory authority and directing litigation and settlement efforts. *See supra* ¶ 31, 36.

173. Dondero and Ellington repeatedly disregarded corporate formalities by shuffling assets among entities they controlled, including the Judgment Debtors, without formal documentation. Wholly owned subsidiaries of HFP would often dividend money up to HFP and HFP would then put the cash into different subsidiaries to satisfy one of that subsidiary’s debts. *See supra* ¶¶ 52-54. At times, these transfers also were made without formal documentation. *See supra* ¶¶ 52-53. In 2008, with a single word, Dondero and Ellington directed HFP to withdraw about \$15 million from CDO Holding before directing the funds to SOHC to cover SOHC’s losses. *See supra* ¶ 53.

174. Whether orders came from Dondero himself, or his proxy Ellington, the result was the same: protect the collective interests of Dondero, Ellington, and their web of entities, rather than the distinct interests (and responsibilities) of any one entity. *See supra* ¶¶ 29, 31, 34, 36-40, 49-55, 61-81.

175. **Common Office Space:** Dondero- and Ellington-controlled entities, including the Judgment Debtors, shared common office space and operated out of the same registered addresses, with no separation of the entities. *See supra* ¶ 35. The entities employed the same roster of employees, did not separately pay those employees, and did not retain separate internal counsel. *See supra* ¶¶ 34-37.

176. **Deliberate Undercapitalization:** Dondero and Ellington deliberately undercapitalized the Judgment Debtors to prevent UBS from collecting on the Judgment. *See supra* ¶¶ 49, 55-78, 93-97. In the wake of the adverse summary judgment rulings, and with trial looming in the Underlying Action for claims on which their own lieutenant Leventon told them they would be found liable, Dondero and Ellington ensured that the Judgment Debtors would be judgment proof by effecting the 2017 Fraudulent Conveyances. *See supra* ¶¶ 61-92.

177. **Intermingling Of Funds:** Dondero and Ellington intermingled their funds and those of the entities they controlled. In one instance, Dondero committed HCM’s cash to cover HFP’s shortfalls in the face of margin calls. *See supra* ¶ 33. Dondero also used his own money to partially fund the consideration CLO HoldCo sent to CDO Holding in the 2010 Fraudulent Conveyance. The testifying expert in the Underlying Action noted many additional examples of “HFP’s and its subsidiaries’ financial dependence on HCM,” which Dondero dominated, controlled, and even funded. *See supra* ¶ 33.

178. After Dondero and Ellington combined all the assets of the Judgment Debtors (and the other Transferors) in Sentinel in 2017, they later withdrew assets for themselves or entities they controlled whenever they saw fit, both as “dividends” and improper “reimbursements.” *See supra* ¶¶ 98-119.

179. ***Overlap In Ownership, Officers, And Directors:*** Dondero and Ellington owned and controlled the Judgment Debtors. Dondero co-founded HCM and held the most influential roles up and down the HCM organizational chart. Dondero held many titles under the HCM umbrella and particularly among the Judgment Debtors: He was HCM’s President and Chief Executive Officer from 1993 until his removal in 2020; chairman of the Board of Directors for HFP; sole Director for SOHC; and President and ultimate General Partner for CDO Fund until his resignation in 2021. *See supra* ¶¶ 6, 27 n.3, 28-29. Ellington, always at Dondero’s side, implemented Dondero’s directives while maintaining discretion to make his own decisions about the entities. *See supra* ¶¶ 28, 31, 36, 39-40, 77-78. The two maintained these roles and their control over the Judgment Debtors as officers of Strand, HCM’s general partner. *See supra* ¶¶ 29-31. Dondero was Strand’s sole stockholder. *See supra* ¶ 29.

180. ***The Degree Of Discretion Demonstrated By The Allegedly Dominated Corporation:*** Dondero and Ellington were the decision makers for all the entities. *See supra* ¶¶ 28-34, 36, 52-54, 65, 67, 71, 77. Dondero, and Ellington as his designee, unilaterally made decisions for HCM and, through his control of HCM, controlled the Judgment Debtors as well. *See supra* ¶¶ 28-34, 36, 52-54, 65, 67, 71, 77. These decisions were not for the benefit of the individual entities but were all in service of protecting Dondero and Ellington themselves.

181. ***Whether Dealings Between The Parties Involved Were At Arm’s Length:*** The key dealings at issue in this Turnover Petition, the 2017 Fraudulent Conveyances, were not at arm’s length. Rather, the Judgment Debtors collectively transferred all of their assets, all with different valuations, for a shared (and sham) ATE Policy that did not treat them differently based on their differing contributions to the Policy. *See supra* ¶¶ 74-76. The shared contribution—including by three non-insureds, and the shared coverage (including CDO Holding, a non-party to

the Underlying Action)—evidences that these entities were merely instruments of the broader plan to move assets out of UBS’s reach. Once they shuffled the 2017 Transferred Assets out of the Judgment Debtors, Dondero and Ellington appropriated the assets for their own ends, including through personal withdrawals as dividends and reimbursements for romantic getaways. *See supra* ¶¶ 98-119.

2. Dondero And Ellington Used Their Domination Over The Judgment Debtors To Defraud And Harm UBS

182. Dondero’s and Ellington’s control over the Judgment Debtors enabled them to orchestrate the fraudulent acts that have directly led to UBS’s harm: its difficulty collecting on the Judgment.

183. *Use Of Corporate Funds For Personal Purposes:* Dondero and Ellington routinely directed Judgment Debtor funds and assets to Sentinel, and ultimately to Dondero and Ellington themselves. *See supra* ¶¶ 61-81, 93-128. Dondero and Ellington diverted these funds out of Judgment Debtor hands and into Sentinel’s coffers to render the Judgment Debtors judgment proof and keep the assets in Dondero and Ellington’s possession, using the assets for their own ends and to fund other entities they controlled. *See supra* ¶¶ 61-81, 93-128.

184. Ellington, in particular, used Judgment Debtor assets to fund his lavish lifestyle, including tens of thousands of dollars in luxurious trips to London and Paris for him and his companions, personal meals with his girlfriend, and to reimburse his outings to bars, night clubs, and a strip club. *See supra* ¶¶ 103-110. None of these reimbursements were for any plausible business purpose—much less related to the Policy insuring against the Underlying Action—and instead were strictly for Ellington’s personal expenses. *See supra* ¶¶ 103-112.

185. Dondero and Ellington also used Judgment Debtors funds in issuing Mainspring and Montage millions of dollars in “dividends,” which they in turn used for their own personal

purposes. *See supra* ¶¶ 113-128 (Ellington confirming he received millions in dividends; Dondero approving the use of his dividends to make fraudulent bonus payments). Like the Ellington reimbursements and original 2017 Fraudulent Conveyances, Dondero and Ellington masterminded the dividends, showing the complete control Dondero and Ellington had over the Judgment Debtors and the later transferees of the Judgment Debtors' assets.

186. Like fraud and breaches of contract the Court identified in the Underlying Action, the 2017 Fraudulent Conveyances that Dondero and Ellington orchestrated from the Judgment Debtors to Sentinel were quintessential abuses of the corporate form at UBS's expense, satisfying the second required element for alter ego liability. The Court should thus pierce the corporate veil and hold Dondero and Ellington liable for the judgment against CDO Fund, SOHC, and HFP.

B. Dondero And Ellington Were The Alter Egos Of Mainspring And Montage, Respectively

187. As a matter of equity, Dondero should be liable for the debts of Mainspring and Ellington should be liable for the debts of Montage. At the time of the fraudulent conveyances from Sentinel to Mainspring and Montage, Dondero had complete control of Mainspring as its ultimate beneficial owner, and Ellington had complete control of Montage as its ultimate beneficial owner. *See supra* ¶¶ 13-14. In fact, Dondero controls 99.5% of Mainspring's assets and Ellington controls 99% of Montage's assets. *See supra* ¶ 113.

1. Dondero And Ellington Dominated Mainspring And Montage, Respectively

188. Once again applying the same alter ego factors, the evidence confirms that Dondero and Ellington exercised complete dominion over Mainspring and Montage, respectively.

189. ***Intermingling Of Funds:*** Sentinel's "dividend" payments were at the sole discretion of Dondero and Ellington in their personal capacities. *See supra* ¶¶ 113-119. But to pay Dondero's and Ellington's respective dividends, Sentinel transferred money not to them

directly but to Mainspring and Montage. *See supra* ¶¶ 113-119. Even as Beecher facilitated these payments to Mainspring and Montage, it understood that it was in fact paying dividends to Dondero and Ellington. *See supra* ¶¶ 115-118.

190. ***Overlap In Ownership:*** At the time of the fraudulent conveyances from Sentinel to Mainspring and Montage, Dondero had complete control and domination of Mainspring as its ultimate beneficial owner, and Ellington had complete control and domination of Montage as its ultimate beneficial owner. *See supra* ¶¶ 13-14, 116-119. Dondero and Ellington were also the ultimate controllers of the Transferors, who sent the assets to Sentinel, and of Sentinel itself.

191. ***The Degree Of Discretion Demonstrated By The Allegedly Dominated Corporation:*** Neither Mainspring nor Montage demonstrated any discretion. Rather, Dondero and Ellington took the dividend payments that Sentinel deposited and used them for personal purposes unrelated to Mainspring and Montage. They moved the money to other entities they controlled to pay court-blocked bonuses to former *HCM* employees who were never affiliated with Mainspring and even to personally enrich Ellington. *See supra* ¶¶ 120-128. There is no indication that Mainspring or Montage had any operations or purpose other than to receive money for Dondero and Ellington.

2. Dondero And Ellington Used Their Control Of Mainspring And Montage To Defraud UBS

192. Dondero and Ellington used their complete dominion over Mainspring and Montage to take for themselves funds that should have been available to satisfy the Judgment.

193. By ordering the siphoning of millions of dollars in dividends from Sentinel to Mainspring and Montage, Dondero and Ellington ensured that Sentinel would have even fewer Judgment Debtor assets to return to satisfy the Judgment. *See supra* ¶¶ 113-119. Dondero and Ellington forced through these dividend payments over Sentinel's express commitment that it

would “not be entertaining any dividend issuance while the ATE policy is active.” *See supra* ¶¶ 113-119. Dondero and Ellington’s clear disregard of this commitment illustrates their abuse of their complete control over the entities.

194. Dondero and Ellington abused their control over these dummy entities by secreting assets from the Judgment Debtors and to other entities that Dondero and Ellington owned and controlled all to frustrate any claim UBS had to those funds. *See supra* ¶¶ 51-81, 93-128. The Court should pierce the corporate veil and hold Dondero and Ellington liable for the judgment against CDO Fund, SOHC, and HFP.

C. CDO Holding Is An Alter Ego Of HFP

195. When it transferred substantially all of its assets to CLO HoldCo in 2010, CDO Holding was an alter ego of Judgment Debtor HFP.

196. CDO Holding’s relationship to HFP is in all material respects the same as SOHC’s adjudged alter ego relationship to HFP. In its alter ego default judgment in the Underlying Action, the court held that UBS’s allegations sufficiently linked SOHC and HFP as alter egos because SOHC “was HFP’s instrumentality, had no independence, could not exercise any business discretion, did not have its own offices, officers or employees, and that HFP completely dominated the day-to-day operations of SOHC as well as SOHC’s *sister affiliates*.” Ex. 24, Phase II Judgment, at 6 (emphasis added). The evidence shows that HFP both dominated CDO Holding and abused its control over CDO Holding to defraud UBS. The Court should reverse-pierce the corporate veil and hold CDO Holding to account for its role as a controlled asset repository for HFP.

1. **HFP Dominated Its “Asset Repository” CDO Holding**

197. The factors that characterized the HFP and SOHC alter ego relationship also apply to HFP and CDO Holding, one of SOHC’s “sister affiliates.”

198. ***Disregard Of Corporate Formalities:*** CDO Holding, under the complete control and domination of HFP, was a key repository for HFP assets. It had no independence and regularly saw its assets taken by HFP for the benefit of HFP or HFP's other subsidiaries. *See supra* ¶¶ 52-55.

199. ***Intermingling Of Funds:*** In 2017, CDO Holding intermingled its funds and assets with several other Dondero-controlled entities, including HFP, to pay the premium on the ATE Policy. *See supra* ¶¶ 61-78. The entities that combined their funds to pay the ATE Policy did not allocate coverage amounts according to contributions; the real goal of the ATE Policy was to move money from the Judgment Debtors and their potential alter egos to Sentinel, another entity that Dondero and Ellington owned and controlled. *See supra* ¶¶ 61-76. Moreover, CDO Holding was not a named defendant in the Underlying Action but still was an Insured because it was an alter ego of defendant HFP, and Dondero and Ellington realized that a court would determine as much. *See supra* ¶¶ 64, 75.

200. ***Overlap In Ownership, Officers, And Directors:*** Dondero was ultimately in charge of HFP and CDO Holding and was the sole director of each. *See supra* ¶¶ 28-30, 32-33, 62.

201. ***The Degree Of Discretion Demonstrated By The Allegedly Dominated Corporation:*** There is no evidence that CDO Holding ever demonstrated any discretion. Just the opposite, it saw its assets stripped for the benefit of HFP and its other subsidiaries, such as SOHC. *See supra* ¶¶ 51-53. These transfers were not arm's-length transactions; CDO Holding was simply an asset repository that existed for the benefit of HFP. CDO Holding also lost all of its equity assets in a single 2010 transfer conducted at the direction of HFP's controller Dondero. *See supra* ¶¶ 49-51, 55-59.

202. *The Payment Or Guaranty Of The Corporation's Debts By The Dominating Entity:* At other times, HFP moved money into CDO Holding to enable CDO Holding to make distributions to other creditor entities or make payments for other of HFP's subsidiaries. *See supra* ¶ 54.

2. HFP Used Its Domination Over CDO Holding To Defraud UBS

203. HFP, alongside its controller Dondero, used its control of CDO Holding to defraud UBS. In 2010, Dondero ordered a transaction to fraudulently move substantially all of CDO Holding's assets to CLO HoldCo. The portfolio was worth nearly \$40 million. *See supra* ¶¶ 51, 55-60. In return, CDO Holding received scant cash and a note that was not payable until 2025. *See supra* ¶ 59.

204. The 2010 asset transfer to Dondero-controlled CLO HoldCo, which left CDO Holding and HFP without assets they could have used to satisfy the Judgment, satisfies the second element of an alter ego claim. It was a fraud against UBS that sought to prevent UBS from collecting on any eventual judgment in the underlying action.

205. The Court should thus reverse-pierce the corporate veil to find that CDO Holding was the alter ego of HFP at the time of the 2010 Fraudulent Conveyance and that CDO Holding was and is liable for the HFP's portion of the Judgment.

II. CLAIM III: VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO") BY DONDERO AND ELLINGTON (18 U.S.C. § 1962(C))

206. For the reasons set forth above, Dondero and Ellington each are alter egos of the Judgment Debtors and should be personally liable for the full outstanding amount on the Judgment. If the Court finds for UBS on Claim II, it need not reach Claims III and IV.

207. In the alternative, Dondero and Ellington are liable for treble damages under 18 U.S.C. § 1962(c) for the reasons below.

208. A civil RICO claim is established when there is: “(1) a violation of the RICO statute, 18 U.S.C. § 1962; (2) an injury to business or property; and (3) that the injury was caused by the violation of Section 1962.” *NRO Bos. LLC v. Yellowstone Cap. LLC*, 72 Misc. 3d 267, 271 (Sup. Ct. Rockland Cnty. 2021) (quoting *DeFalco v. Bernas*, 244 F.3d 286, 305 (2d Cir. 2001)). A violation of § 1962(c) requires a corresponding criminal violation of the substantive RICO statute through “seven constituent elements: (1) that the defendant (2) through the commission of two or more acts (3) constituting a ‘pattern’ (4) of ‘racketeering activity’ (5) directly or indirectly . . . participates in (6) an ‘enterprise’ (7) the activities of which affect interstate or foreign commerce.” *Moss v. Morgan Stanley Inc.*, 719 F.2d 5, 17 (2d Cir. 1983) (quoting 18 U.S.C. § 1962(c)). A plaintiff can establish civil damages by showing “that he was ‘injured in his business or property by reason of a violation of section 1962.’” *Id.* (emphasis omitted) (quoting 18 U.S.C. § 1964(c)).

209. Dondero and Ellington are each individuals able to hold a legal or beneficial interest in property and are thus “person[s]” under 18 U.S.C. §§ 1961(3) and 1962(c).

210. Dondero and Ellington each violated 18 U.S.C. § 1962(c) by leveraging a separate and distinct enterprise that engaged in a pattern of racketeering activity that harmed UBS in violation of 18 U.S.C. § 1964(c).

211. Dondero and Ellington, acting individually and together in concert, have orchestrated and participated in a continually running scheme dating to at least 2010 and lasting to the present. They have, among other acts, fraudulently transferred assets to individuals and companies in different states and countries in anticipation and frustration of an adverse judgment in the Underlying Action. Dondero and Ellington, through the Enterprise, conducted the predicate

acts of racketeering through interstate wires or other instrumentalities of interstate commerce, including by sending funds to the Cayman Islands and other international destinations.

A. The RICO Enterprise

212. Dondero and Ellington conducted these misrepresentations and frauds through an association-in-fact enterprise that comprised these nine persons and nineteen entities: Dondero and Ellington, together with Leventon, Sevilla, DiOrio, Waterhouse, Irving, Vitiello, and Surgent (the “Associates”); and CDO Fund, SOHC, HFP, HFC, CDO Opportunity Fund, CDO Holding, CLO HoldCo, Sentinel, Sebastian Clarke, Mainspring, Montage, Tall Pine, Sunshine Coast, NexBank, NexPoint, Highland Funds Asset Management, the DAF, Skyview, and CPCM (collectively, “the Enterprise”). The common purpose of the Enterprise was to generate money for its members. *See supra* ¶¶ 49-97.

213. The entities that constituted the Enterprise were owned, directed, or otherwise controlled by Dondero and Ellington, as described in ¶¶ 13, 14, 32, 33, 94, 122, and 147, *supra*, and served these functions in the Enterprise:

- ***The Transferors.*** The role of CDO Fund, SOHC, HFP, HFC, CDO Opportunity Fund, and CDO Holding, as Judgment Debtors or subsidiaries of HCM and/or Judgment Debtors against whom UBS could foreseeably collect on the Judgment, was to be rendered insolvent and therefore judgment-proof.
- ***The Transferees.*** The role of CLO HoldCo, Sentinel, Sebastian Clarke, Mainspring, Montage, Tall Pine, and Sunshine Coast (together, “the Transferees”) was to receive fraudulently transferred assets from the Transferors or other Transferees and shuffle assets farther away from UBS and to Dondero and Ellington.
- ***The Facilitators Of Bonus Payments.*** The role of NexBank, NexPoint, Highland Funds Asset Management, the DAF, Mainspring, Sunshine Coast, Tall Pine, Skyview, and CPCM was to make—and cover-up—fraudulent payments to associates Ellington, Leventon, Waterhouse, and Surgent. This scheme diverted about \$5.9 million in Judgment Debtor assets.

214. The Associates were employees at HCM who reported to Dondero or Ellington and who engaged in predicate acts or received the spoils of the predicate acts at Dondero and Ellington’s direction.

215. **Leventon** worked at HCM for more than a decade, ultimately as Assistant General Counsel, and reported directed to Ellington. *See supra* ¶ 36. He also did personal work for Dondero while employed at HCM, including working on his divorce and litigating a lemon law claim. *See supra* ¶ 37. Leventon worked with Ellington closely in bringing to life Ellington’s idea for the ATE Policy to drain substantially all assets from the Transferors. *See supra* ¶¶ 64-65. He also helped draft the fraudulent consulting agreements and coordinated with Sentinel and other funding entities in the Enterprise—for which he was paid his “bonus” of roughly \$687,594.00. *See supra* ¶¶ 126-127. Despite receiving these payments, and to cover his tracks, Leventon lied to the Bankruptcy Court and filed an amended claim. *See supra* ¶¶ 127. After getting fired from HCM, Leventon went to work at Ellington-owned Skyview. *See id.*

216. **Sevilla** worked at HCM for nine years, ultimately as Assistant General Counsel. *See supra* ¶ 36. He worked directly with Ellington and Dondero and even did personal work for them, including conducting diligence on personal investments Ellington was considering and helping Dondero with his divorce, paying bills, and administrative matters. *See supra* ¶ 37. Sevilla oversaw the daily management of Sentinel and helped develop the idea that the ATE Policy premium would be satisfied by transferring the entire investment portfolios of the Transferors. *See supra* ¶ 65. Sevilla also facilitated the fraudulent conveyance between Sentinel and Sebastian Clarke. *See supra* ¶ 94. He also helped structure the fraudulent consulting agreements to pay associate bonuses and coordinated with Sentinel and other funding entities in the Enterprise. *See*

supra ¶¶ 125-127. After getting fired from HCM, Ellington hired Sevilla to work at Skyview. *See supra* ¶ 127.

217. **DiOrio** has known Ellington since 2009. *See supra* ¶ 40. When Ellington approached him in a bar in 2014, DiOrio blindly agreed to serve as a director of an Ellington-controlled company in Sentinel’s ownership structure. *See supra* ¶ 40. As an HCM employee, DiOrio did personal work for Ellington, including paying rent on a warehouse he leased and helping to manage his personal trust. *See supra* ¶ 39. After Ellington asked DiOrio to serve as a director of Sentinel, DiOrio pushed through Ellington’s requests for reimbursement of hundreds of thousands of dollars in personal expenses without question. *See supra* ¶¶ 111-112. From his position as a director of Sentinel, DiOrio also ultimately helped funnel \$8,900,000.00 in “dividends” to Dondero and Ellington. *See supra* ¶¶ 113-119. DiOrio also facilitated the fraudulent conveyance between Sentinel and Sebastian Clarke and falsely characterized the assets transferred as “worthless.” *See supra* ¶¶ 93-97. After getting fired from HCM, Ellington hired DiOrio to work at Skyview. *See supra* ¶ 40.

218. **Waterhouse** served as the Chief Financial Officer of HCM for more than a decade. *See supra* ¶ 125. At Ellington’s instruction, Waterhouse had employees in his department determine the amounts HCM owed in bonuses to Waterhouse, Ellington, Leventon, and Surgent so that they could be paid through the fraudulent consulting agreements. *See supra* ¶¶ 120-125. For his participation in this scheme, Waterhouse received the roughly \$2,000,000.00 bonus blocked by the Bankruptcy Court. *See supra* ¶ 126. Despite receiving these payments, and to cover his tracks, Waterhouse lied to the Bankruptcy Court and filed an amended claim for his bonus payment. *See supra* ¶ 127. After getting fired from HCM, Ellington hired Waterhouse to work at Skyview. *See supra* ¶ 127.

219. *Surgent* has been a long-time employee at HCM, serving as Chief Compliance Officer for much of the relevant period. *See supra* ¶ 120. According to a stipulation he signed with the Independent Board, *Surgent* entered into consulting agreements with Mainspring and Tall Pine and, in March and September 2020, received payments through a pass-through entity (Prive Solutions LLC) totaling \$2,774,272.13. *See supra* ¶ 126. This included \$750,906.13 from Tall Pine, \$1,887,929.00 from Mainspring, and \$135,437.00 from NexPoint. *See supra* ¶ 122 n.30. *Surgent* failed to disclose these payments and instead submitted a claim to the Bankruptcy Court seeking, in part, money he had already received. *See supra* ¶¶ 126-127.

220. *Irving* reported to Ellington for the more than eight years she worked at HCM. She testified that she “would work on anything that Mr. Ellington needed [her] to work on,” including diligence for Ellington’s personal investments. *See supra* ¶ 36. *Irving* was instrumental in ensuring that Sentinel received all the assets in satisfaction of the premium payment under the APA. *See supra* ¶ 77. After getting fired from HCM, *Irving* joined Skyview, where she reports to Sevilla and ultimately Ellington. *See supra* ¶ 127 n.33.

221. *Vitiello* worked in the legal department in HCM for seven years, at times reporting to Leventon. She conducted personal work for Dondero, including helping to manage a building Dondero leased to a salon. *See supra* ¶ 37. *Vitiello* worked with Leventon and Ellington to design the ATE Policy to drain substantially all assets from the Judgment Debtors. *See supra* ¶ 64. She is now at Skyview. *See supra* ¶ 127 n.33.

B. The Pattern Of Racketeering Activity

222. From at least 2010 to the present, Dondero and Ellington were associated with the Enterprise and conducted or participated, directly or indirectly, in the management and operation of the Enterprise’s affairs through a pattern of racketeering activity, including acts of

wire fraud in violation of 18 U.S.C. § 1343 and acts of money laundering in violation of 18 U.S.C. § 1956.

223. These acts were a pattern of fraudulent transactions intended to facilitate the theft of Judgment Debtor assets using the Associates, misrepresentations, and shell companies to hide their involvement in the schemes.

224. The predicate acts funneled money ever farther away from UBS. They centered on these events: (1) the 2010 Fraudulent Conveyance; (2) the 2017 Fraudulent Conveyances; (3) the 2018 fraudulent amendments to the ATE Policy; (4) the 2019 fraudulent conveyance to Sebastian Clarke; (5) the 2019-2020 Fraudulent Ellington Reimbursements; (6) the 2020-2021 fraudulent dividends to Mainspring and Montage; (7) the 2020 fraudulent bonus payments; and (8) misrepresentations to UBS about the solvency of the Judgment Debtors.

225. ***Horizontal Relatedness.*** Dondero and Ellington conducted the related acts constituting the pattern of racketeering activity for the same purpose: making themselves rich and hiding the assets to which UBS had superior right. *See supra* ¶¶ 49-72, 82-87, 90-92, 93-97, 103-112, 113-117, 122-126. The methods of commission are also similar: Dondero and Ellington repeatedly flouted corporate formalities to use the Associates and entities under their control to hide the assets owed to UBS. For example, Dondero and Ellington failed to observe corporate formalities in moving assets from the Transferors and among the Transferees, *see supra* ¶¶ 55-63, 94, in using individuals involved in the Enterprise to do their personal work and the work of other entities in the Enterprise, *see supra* ¶¶ 36-40, in misrepresenting to regulators the fraudulent nature of the ATE Policy, *see supra* ¶¶ 88-89, in using Sentinel as a piggy bank to reimburse personal expenses and pay out dividends, *see supra* ¶¶ 103-119, and in fraudulently issuing bonus payments blocked by the Bankruptcy Court, *see supra* ¶¶ 120-127.

226. *Vertical Relatedness.* The acts constituting the pattern of racketeering activity related to the Enterprise as a whole: Dondero and Ellington were able to commit the offenses only because of their powerful positions in the Enterprise.

227. As chair and sole member of the Board of Directors for HFP, sole Director for SOHC, and President and ultimate General Partner for CDO Fund, Dondero had specific control over the Judgment Debtors. *See supra* ¶¶ 28-33. As the sole stockholder and sole director of Strand, Dondero had ultimate control over every HCM entity, affiliate, and employee. *See supra* ¶ 29. Dondero often leveraged this control to direct individuals associated with the Enterprise to perform work for other entities in the Enterprise. *See supra* ¶¶ 36-38. Dondero also used his position to authorize fraudulent conveyances, sometimes from all sides: he approved, for example, both the sale and purchase of assets from CDO Holding to CLO HoldCo in 2010. *See supra* ¶¶ 51-57. And he signed the ATE Policy on behalf of all Transferors at the same time he was the 70% ultimate beneficial owner of Sentinel and a member of the ITA Advisory Board overseeing Sentinel. *See supra* ¶¶ 71, 77-78, 80. He also exercised his authority over Sentinel and the other funding entities to authorize their issuance of fraudulent “consulting” payments to associates who had rendered services to HCM. *See supra* ¶¶ 122-126.

228. Ellington also leveraged his position as Dondero’s right-hand man in the Enterprise to commit this pattern of racketeering. Ellington’s position as General Counsel at HCM, an officer of Strand, and a 30% ultimate beneficial owner of Sentinel uniquely positioned him to implement his idea to drain all Judgment Debtor assets pursuant to the ATE Policy and APA. *See supra* ¶¶ 31, 64, 80. He also used these positions to acquire fraudulent reimbursements and unwarranted dividends. *See supra* ¶¶ 103-119. Finally, Ellington leveraged his position in the Enterprise to

smuggle bonus payments to himself and to Waterhouse, Leventon, and Surgent in 2020 under sham consulting agreements using Judgment Debtor funds. *See supra* ¶¶ 122-127.

229. **Continuity.** The pattern of racketeering activity Dondero and Ellington engaged in and conducted has been continuous from at least 2010 to the present. Dondero and Ellington have completed at least *seven* separate schemes involving predicate acts of wire fraud and money laundering over the course of more than a decade. *See* Ex. A (table detailing selected acts of wire fraud); Ex. B (table detailing selected acts of money laundering). Such misconduct satisfies the requirements of closed-ended continuity.

230. In the alternative, the pattern of racketeering activity committed by Dondero and Ellington is open-ended in that it has no predetermined end date and is continuous, as Dondero and Ellington have shown that their scheme is the regular way of operating and conducting themselves and their ongoing business. *See supra* ¶¶ 49-72, 82-87, 90-92, 93-97, 103-112, 113-117, 122-126. Dondero and Ellington used their connections while controlling HCM to move Judgment Debtor assets not only within HCM, but to other entities outside HCM that were also in their control. *See supra* ¶¶ 113-119. As their control over HCM faded during the bankruptcy, Dondero and Ellington simply created or recruited non-HCM entities to join the Enterprise, including NexBank, NexPoint, Highland Funds Asset Management, the DAF, Tall Pine, Sunshine Coast, Skyview, and CPCM. *See supra* ¶ 122.

231. Dondero and Ellington retain positions of power in the Enterprise. *See supra* ¶¶ 122, 127 n.33. Ellington employs most of the Associates at Skyview, which at first shared an address with, and still preforms work for, Dondero-affiliated entities NexPoint and NexBank. *See supra* ¶ 127 n.33. Thus, there also exists the threat of continuing long-term racketeering activity.

C. The Predicate Acts

1. Wire Fraud In Violation Of 18 U.S.C. § 1343

232. Dondero and Ellington used the Enterprise to transmit communications in interstate commerce by means of wire in violation of 18 U.S.C. § 1343 in furtherance of their scheme to defraud UBS.

233. UBS incorporates by reference Exhibit A, which sets forth particular uses of wire communications in the U.S. in furtherance of the scheme to defraud, describing which RICO Defendant or individual associated with the Enterprise caused the communication to be wired, when the communication was made, and how it furthered the scheme. The wire communications described in Exhibit A were made in furtherance of the scheme to defraud UBS.

234. UBS also incorporates by reference Exhibit B, which sets forth money laundering transactions in furtherance of the scheme to defraud. Each of these wire transfers was made in furtherance of the scheme to defraud UBS and constitutes another instance of wire fraud.

a. The 2010 Fraudulent Conveyance

235. On or about December 23, 2010, Dondero, through the Enterprise, violated 18 U.S.C. § 1343 by using interstate wires to fraudulently transfer to CLO HoldCo nearly all the assets from CDO Holding, a subsidiary and alter ego of HFP. *See supra* ¶¶ 49-60.

236. This fraudulent conveyance aimed to render CDO Holding judgment-proof and to keep UBS from receiving the money the Judgment Debtors owed in the Underlying Action. Exhibit A lists specific instances of wire fraud undertaken in furtherance of this scheme.

b. The 2017 Fraudulent Conveyances

237. On or about April 2017, through the Enterprise (including through associates Leventon, Sevilla, DiOrio, Irving, and Vitiello), Dondero and Ellington violated 18 U.S.C. § 1343

by using interstate wires to orchestrate the 2017 Fraudulent Conveyances to render the Transferors judgment proof.

238. After summary judgment rulings in favor of UBS in the Underlying Action, Dondero and Ellington anticipated an enormous damages verdict. *See supra* ¶ 61. Despite the explicit warning by outside counsel as to the “legal validity” of sending assets “beyond the reach of the plaintiffs in the [Underlying Action] against the [F]unds,” *see supra* ¶ 72, Dondero and Ellington drained the 2017 Transferred Assets, valued at over \$105,647,679.00, in satisfaction of the ATE Policy’s \$25,000,000.00 “premium.” *See supra* ¶ 72.

239. The 2017 Fraudulent Conveyances included the use of interstate wires to deceive UBS, Cayman regulators, and HCM employees and other persons facilitating the transfer to believe that the ATE Policy was in good faith instead of a fraudulent sham. *See supra* ¶¶ 68-71. The objective of the transfer was to render the Transferors judgment-proof and to defraud UBS of the more than one billion dollars it was owed. *See supra* ¶ 64. Exhibit A lists specific instances of wire fraud sent in furtherance of this scheme.

c. The 2018 Fraudulent Adjustments To The ATE Policy

240. In or around June 2018, through the Enterprise (including associates DiOrio, Sevilla, and Irving), Dondero and Ellington violated 18 U.S.C. § 1343 by using interstate wires to make fraudulent retroactive “adjustments” to ATE Policy terms and valuations of the 2017 Transferred Assets. *See supra* ¶¶ 82-87.

241. The objective of the adjustments was to keep the Transferors judgment-proof and to defraud UBS of the millions of dollars the Judgment Debtors owed. *See supra* ¶¶ 90-92. Exhibit A lists specific instances of wire fraud undertaken in furtherance of this scheme.

d. The 2019 Fraudulent Conveyance To Sebastian Clarke

242. In or around December 31, 2019, through the Enterprise (including through associates DiOrio and Sevilla), Dondero and Ellington violated 18 U.S.C. § 1343 by using the interstate wires to transfer certain of the 2017 Transferred Assets to Sebastian Clarke for \$3 to hide assets from UBS. *See supra* ¶¶ 93-97. Exhibit A lists specific instances of wire fraud sent in furtherance of this scheme.

e. The 2019-2020 Fraudulent Ellington Reimbursements

243. In or around November 2019 until March 2020, through the Enterprise (including through associate DiOrio), Ellington violated 18 U.S.C. § 1343 by using the interstate wires to defraud UBS by reimbursing his personal entertainment expenses and business expenses unrelated to the UBS litigation or the ATE Policy.

244. The objective of these reimbursements was to enrich Ellington and to hide assets from UBS that could be used as payment for the Judgment. *See supra* ¶¶ 102-112. Exhibit A lists specific instances of wire fraud sent in furtherance of this scheme.

f. The 2020-2021 Fraudulent “Dividends”

245. In or around April 2020 and January 2021, through the Enterprise (including through associate DiOrio), Dondero and Ellington violated 18 U.S.C. § 1343 by using interstate wires to defraud UBS by causing Sentinel to issue \$8,900,000.00 in dividends to entities owned and controlled by Dondero and Ellington. *See supra* ¶¶ 114, 117.

246. Sentinel fraudulently issued these distributions upon the request of Ellington, even with the knowledge that Sentinel would need to return all of the 2017 Transferred Assets to the Transferors, because the 2017 Fraudulent Conveyances were fraudulent. *See supra* ¶¶ 113-117. And Sentinel issued the distributions after its directors had set a moratorium on dividend issuance while the ATE Policy was active. *See supra* ¶¶ 115, 117.

247. The objective of these dividends was to enrich Dondero and Ellington, to hide assets that could be used to pay the Judgment, and to defraud UBS of the millions of dollars owed. *See supra* ¶¶ 113-119. Exhibit A lists specific instances of wire fraud sent in furtherance of this scheme.

g. The 2020 Fraudulent Bonus Payments

248. In or around 2021, through the Enterprise (including through associates Leventon, Sevilla, Surgent, and Waterhouse), Dondero and Ellington also violated 18 U.S.C. § 1343 by using interstate wires to defraud UBS by diverting Judgment Debtor assets to Ellington, Waterhouse, Leventon, and Surgent.

249. In 2020, the Bankruptcy Court blocked HCM from making bonus payments to Waterhouse, Ellington, Leventon, and Surgent. *See supra* ¶ 120. Ellington came up with a plan (approved by Dondero) to make these bonus payments to himself and the others by transferring assets from entities in Ellington and Dondero's control. *See supra* ¶ 120.

250. In furtherance of this scheme, Ellington used interstate wires to convince various Dondero-affiliated entities and their affiliates, including NexBank, NexPoint, Highland Funds Asset Management, Mainspring, and the DAF to contribute to the illicit payments. *See supra* ¶ 122.

251. In furtherance of this scheme, Ellington used interstate wires to create Tall Pine and its general partner, Sunshine Coast, as "special purpose entities" to enter into consulting agreements with NexBank, NexPoint, Highland Funds Asset Management, Mainspring, and the DAF, and then to subcontract with entities owned by or affiliated with Surgent, Waterhouse, and Leventon. *See supra* ¶ 122.

252. In furtherance of this scheme, Dondero and Ellington caused "consulting" payments to be issued via interstate wires (either directly or through Tall Pine) to pass-through

entities controlled by Ellington, Surgent, Waterhouse, and Leventon. *See supra* ¶¶ 122-123. Contributions were based not on services rendered but on ability to pay and regulatory limitations. *See supra* ¶¶ 124-125.

253. As a result of this scheme, Dondero and Ellington diverted approximately \$5,874,203.21 of Judgment Debtor assets from Sentinel, through Mainspring, to Ellington, Surgent, Waterhouse, and Leventon. *See supra* ¶ 126.

254. Despite having received these payments, Ellington, Surgent, Waterhouse, and Leventon filed proofs of claim seeking those same amounts in bonuses. *See supra* ¶ 127. In furtherance of the scheme, Ellington, Waterhouse, and Leventon assigned these claims to CPCM, a wholly owned subsidiary of Skyview, which pursued them on their behalf.

255. The objective of this scheme was to enrich Ellington and the Associates, to hide assets from UBS for the Judgment, and to defraud UBS of the millions of dollars owed. *See supra* ¶ 121. Exhibit A lists specific instances of wire fraud in furtherance of this scheme.

h. The Misrepresentations About The Solvency Of CDO Fund And HFP

256. As part of the scheme to defraud UBS, Ellington, through his control of the Enterprise, made false representations to UBS as to the solvency of the Judgment Debtors and their ability to pay the Judgment. This scheme included the use of interstate wires to deceive UBS and to deprive it of money owed.

257. In furtherance of this scheme, Ellington repeatedly misrepresented to UBS that some of the Judgment Debtors had been “ghost funds” since 2009 without disclosing that Dondero and Ellington had made them insolvent through the 2010 Fraudulent Conveyance and 2017 Fraudulent Conveyances. *See supra* ¶ 46, 91. Exhibit A lists specific instances of wire fraud sent in furtherance of this scheme.

2. Money Laundering In Violation Of 18 U.S.C. § 1956

258. Dondero and Ellington have also committed acts of money laundering to carry on and promote illegal activity in violation of 18 U.S.C. § 1956. They knowingly caused the transportation, transmission, and transfer of funds to or from the United States to themselves and other Enterprise associates to promote unlawful activity, including but not limited to the violations of 18 U.S.C. § 1343 alleged above.

259. Dondero and Ellington engaged in several financial transactions over the course of operating and managing their scheme to defraud UBS, including (i) financial transactions constituting predicate acts of wire fraud and (ii) financial transactions to funnel the proceeds of their scheme between and among themselves and other individuals associated with the Enterprise.

260. The assets sent from CLO HoldCo to CDO Holding became proceeds of wire fraud at the time of the 2010 Fraudulent Conveyance, because they stemmed from a fraudulent transfer. *See supra* ¶¶ 49-60. Later, Dondero and Ellington engaged in financial transactions involving additional proceeds of wire fraud, including: (1) the 2017 Fraudulent Conveyances; (2) the 2019 fraudulent conveyance to Sebastian Clarke; (3) the 2019-2020 Fraudulent Ellington Reimbursements; (4) the 2020-2021 fraudulent dividends to Mainspring and Montage; and (5) the 2020 fraudulent bonus payments.³⁵

³⁵ Even if every individual transfer did not comprise Judgment Debtor assets, all financial transactions made under the fraudulent bonus scheme in 2020 also involved the proceeds of wire fraud as defined in 18 U.S.C. § 1956(a)(1)(B) because each transaction was part of a set of parallel or dependent transactions in this scheme, at least one of which (the payments made from Mainspring) involved the proceeds of wire fraud. In addition, all were part of a single plan or arrangement concocted by Ellington to pay himself, Leventon, Waterhouse, and Surgent bonuses blocked by the Bankruptcy Court. *See supra* ¶¶ 120-128.

261. Dondero and Ellington directed these transactions with knowledge that the funds at issue were actually owed to UBS (either pursuant to the contractual breach, court order, or the Judgment). The funds were therefore the proceeds of wire fraud in violation of 18 U.S.C. § 1343:

- The 2017 Fraudulent Conveyances occurred after it became clear to Dondero and Ellington that the Judgment Debtors would lose in the Underlying Action. *See supra* ¶ 72.
- The 2019 fraudulent conveyance from Sentinel to Sebastian Clarke; the 2019 and 2020 Fraudulent Ellington Reimbursements; the 2020 and 2021 fraudulent dividends from Sentinel to Mainspring and Montage; and the voidable transfers from Mainspring (at times, through Tall Pine) to entities owned by Ellington, Leventon, Waterhouse, and Surgent all took place after the court in the Underlying Action found CDO Fund and SOHC liable to UBS. *See supra* ¶¶ 93-95, 103-112, 120-122, 113-117.

262. Dondero and Ellington conducted these financial transactions with the intent to promote and continue their unlawful activities as alleged in this Petition, and designing the financial transactions in whole or part to conceal or disguise the nature, location, source, ownership, and control of the proceeds of their unlawful activities, and to prevent recovery of the proceeds by UBS. *See supra* ¶¶ 49, 61-63, 93, 98, 103, 113, 120-121. Had Dondero and Ellington intended to pay the Judgment, then they would have revealed the existence of the ATE Policy when the court issued the Phase I Decision and Order, rather than point to their empty pockets. *See supra* ¶¶ 46-47.

263. Exhibit B details known money laundering transactions in furtherance of the scheme to defraud. The twelve money laundering violations listed in the table total more than \$130 million.

D. Summary Of Allegations To Each RICO Defendant

264. Dondero and Ellington have both participated in and conducted the affairs of the Enterprise by engaging in multiple predicate acts, as alleged above and summarized immediately

below. The conduct of each constitutes a pattern of racketeering activity under 18 U.S.C. § 1961(5).

265. **Dondero** has committed many predicate acts, including wire fraud and money laundering. Dondero, directly or indirectly, used the interstate wires in violation of 18 U.S.C. § 1343 to:

- fraudulently transfer assets rightfully owed to UBS to CLO HoldCo in 2010;
- fraudulently transfer assets rightfully owed to UBS to Sentinel in 2017;
- fraudulently issue amendments to cover up the sham ATE Policy in 2018;
- fraudulently transfer assets rightfully owed to UBS to Sebastian Clarke in 2019;
- fraudulently transfer assets rightfully owed to UBS from Mainspring to Tall Pine and ultimately to Ellington and entities owned by Leventon, Waterhouse, and Surgent as bonus payments from HCM in 2020; and to
- fraudulently transfer assets rightfully owed to UBS to himself and Ellington through the issuance of dividends from Sentinel to Mainspring and Montage (their alter egos) in 2020-2021.

266. Dondero also engaged in financial transactions involving the known proceeds of wire fraud in violation of 18 U.S.C. § 1956, including:

- the 2017 Fraudulent Conveyances;
- the 2019 fraudulent conveyances to Sebastian Clarke;
- the voidable transfers of about \$5.9 million from Mainspring (at times, through Tall Pine) to entities owned by Ellington, Leventon, Waterhouse, and Surgent in 2020; and
- the fraudulent issuance of roughly \$9 million in “dividends” to himself and Ellington from Sentinel in 2020-2021.

267. **Ellington** has committed many predicate acts, including wire fraud and money laundering. Ellington, directly or indirectly, used the interstate wires in violation of 18 U.S.C. § 1343 to:

- fraudulently transfer assets rightfully owed to UBS to Sentinel in 2017;
- fraudulently issue amendments to cover up the sham ATE Policy in 2018;
- fraudulently transfer assets rightfully owed to UBS to Sebastian Clarke in 2019;
- fraudulently transfer assets rightfully owed to UBS to himself through personal expense reimbursements in 2019-2020;
- fraudulently transfer assets rightfully owed to UBS from Mainspring to Tall Pine and ultimately to himself and entities owned Leventon, Waterhouse, and Surgent as bonus payments from HCM in 2020;
- fraudulently transfer assets rightfully owed to UBS to himself and Dondero through the issuance of dividends from Sentinel to Mainspring and Montage (their alter egos) in 2020-2021; and to
- fraudulently make repeated misrepresentations to UBS as to the solvency of the Judgment Debtors and their ability to pay on the Judgment.

268. Ellington also engaged in financial transactions involving the known proceeds of wire fraud in violation of 18 U.S.C. § 1956, including:

- the 2017 Fraudulent Conveyances;
- the 2019 fraudulent conveyances to Sebastian Clarke;
- the fraudulent reimbursements of \$833,843.05 for his personal expenses in 2019-2020;
- the voidable transfers of about \$5.9 million from Mainspring (at times, through Tall Pine) to entities owned by Ellington, Leventon, Waterhouse, and Surgent in 2020; and
- the fraudulent issuance of roughly \$9 million in “dividends” to himself and Dondero from Sentinel in 2020-2021.

E. The Harm To UBS

269. UBS has suffered substantial injury to its business and property because of, and through, Dondero and Ellington’s commission of the enumerated racketeering acts in violation of 18 U.S.C. §§ 1962(c) and 1964(c).

270. Dondero and Ellington have frustrated UBS's ability to collect virtually any of the more than a \$1 billion judgment entered against CDO Fund, SOHC, and HFP. *See supra* ¶ 98. The looting of the Judgment Debtors and subsequent shuffling of assets continued for more than a decade. *See supra* ¶¶ 49, 62, 104, 108, 113, 122-123. As a direct, proximate, and consequential damage of the result of the predicate acts described UBS has suffered: (1) lost-debt damages for the amount that UBS would have been able to collect from the Judgment Debtors but for Dondero and Ellington's wrongful conduct as set forth above; and (2) separate and independent damages in the nature of collection expense damages for the attorney's fees and other expenses incurred by UBS in connection with its enforcement of its Judgment. *See supra* ¶¶ 48, 98 n.21.

271. Under 18 U.S.C. § 1964(c), UBS has a right to recover threefold the damages it sustained, and the cost of this suit, including reasonable attorney's fees.

III. CLAIM IV: CONSPIRACY TO VIOLATE RICO BY ELLINGTON (18 U.S.C. § 1962(D))

272. UBS repeats and realleges each of the allegations in the preceding paragraphs as if fully set forth here.

273. UBS pleads Claim IV in addition to Ellington's direct liability for violating 18 U.S.C. § 1962(c).

274. Ellington, along with Dondero, willfully conspired, and agreed to conduct and participate, directly or indirectly, in the conduct of the Enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c), thereby violating 18 U.S.C. § 1962(d).

275. Dondero knew of, agreed to, and acted to further the overall objective of the conspiracy by agreeing to and conspiring to use wire communications at the times, places, and circumstances discussed above to transfer assets and valuable rights, titles, and interests from the Judgment Debtors. *See supra* ¶¶ 49-72, 82-87, 90-92, 93-97, 103-112, 113-117, 122-126.

276. Ellington knew of, agreed to, and acted to further the overall objective of the conspiracy by agreeing to and conspiring to use wire communications at the times, places, and circumstances discussed above to transfer assets and valuable rights, titles, and interests from the Judgment Debtors. *See supra* ¶¶ 31 n.4, 49-72, 82-87, 90-92, 93-97, 102-112, 113-117, 122-126.

277. Ellington committed the predicate acts of wire fraud and money laundering and thereby injured UBS in its business and property.

278. As a result of Ellington's assistance in the conspiracy, Dondero could misappropriate assets that would have otherwise been available to satisfy the Judgment.

279. As a result of Ellington's involvement in the conspiracy, UBS expended legal costs in attempts to collect its Judgment, which remains unsatisfied. In addition to its legal costs, UBS has sustained lost-debt damages for the amount that UBS would have been able to collect from the Judgment Debtors but for Ellington's involvement in the conspiracy, including the harm from the fraudulent conveyances and dissipation of assets. Dondero and Ellington's violations have thus damaged UBS.

280. Under 18 U.S.C. § 1964(c), UBS has a right to recover threefold the damages it sustained, and the cost of this suit, including reasonable attorney's fees.

REQUESTS FOR RELIEF

281. Based on the facts and claims set forth above, UBS seeks the following relief:
- i. Under CPLR 5225(b) and the former DCL 270 *et seq.*, to void the fraudulent conveyances of assets from CDO Holding to CLO HoldCo and from the Judgment Debtors to Ellington through Sentinel, and to enter money judgments against CLO Holdco and Ellington for the full value of the transfers;
 - ii. Under CPLR 5225(b) and the current DCL 270 *et seq.*, to void all voidable conveyances from the Judgment Debtors to Mainspring and Montage through Sentinel in 2020 and 2021 and to enter money judgments against Mainspring and Montage for all amounts received in said transfers;

- iii. Under CPLR 5225(b), an order that: (a) CDO Holding at all relevant times was the alter ego of HFP, and is thus jointly and severally liable for the Judgment as against HFP and SOHC; (b) Dondero and Ellington at all relevant times were the alter egos of CDO Fund, SOHC, and HFP and are therefore jointly and severally liable for the Judgment; (c) Dondero at all relevant times was the alter ego of Mainspring and is liable for any turnover order and judgment against Mainspring; and (d) Ellington at all relevant times was the alter ego of Montage and is liable for any turnover order and judgment against Mainspring;
- iv. Under CPLR 6201 *et seq.*, (a) an order of attachment against the Judgment Debtors' assets and/or assets to which UBS has a superior right up to the sum of \$631,658,040.11, including statutory interest for the Judgment against SOHC and HFP, and \$639,138,543.43, including statutory interest for the Judgment against CDO Fund; and (b) a temporary restraining order against the Respondents as to the transfer of the Judgment Debtors' assets and assets to which UBS has a superior right, including, but not limited to, (i) the assets transferred as part of the 2010 fraudulent conveyance to CLO HoldCo, and (ii) the assets transferred to Ellington, Mainspring, and Montage through Sentinel;
- v. Under CPLR 6220 and 408, an order requiring Respondents to make disclosure as to any other assets that may be subject to attachment, and permitting UBS to obtain additional, related disclosure as needed;
- vi. In the alternative to a finding of alter-ego liability under (iii) above and under 18 U.S.C. § 1964(c), an award of threefold lost-debt damages against Dondero and Ellington for the amount that UBS would have been able to collect from the Judgment Debtors but for Dondero and Ellington's wrongful conduct;
- vii. Under the formerly enacted DCL 276-A, which was in effect at the time of the 2010 Fraudulent Conveyance and Ellington Fraudulent Reimbursement, an award of UBS's costs and attorney's fees incurred in connection with the enforcement of the Judgment as to those transfers, to include costs and fees incurred in UBS's investigation of the facts animating the claims set forth above;
- viii. Under the newly enacted DCL 276-A, which was in effect at the time of the April 2020 and January 2021 Dividends, an award of UBS's costs and attorney's fees incurred in connection with the enforcement of the Judgment as to those transfers, to include costs and fees incurred in UBS's investigation of the facts animating the claims set forth above;
- ix. Under 18 U.S.C. § 1964(c), an award of UBS's costs and attorney's fees incurred in connection with UBS's civil RICO claims; and
- x. Such other relief as the Court deems just and proper.

Dated: February 6, 2023
New York, NY

Respectfully submitted,

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Chicago, IL 60611-3695
Phone: (312) 876-7700
Email: kathryn.george@lw.com

*Counsel for Petitioners UBS Securities LLC
and UBS AG London Branch*

* Motion for admission *pro hac vice* forthcoming.

EXHIBIT 2

EXHIBIT 40

From: Isaac Leventon <ILeventon@HighlandCapital.com>
To: JP Sevilla <JSevilla@HighlandCapital.com>
Subject: UBS Settlement Structure (9).pptx
Date: Wed, 19 Apr 2017 14:06:01 -0500
Importance: Normal
Attachments: UBS_Settlement_Structure_(9).pptx

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EXHIBIT 86
 WIT: Leventon
 DATE: 10-10-22
 S. Klinger, RMR-CRR

HCMUBS005251

Settlement Analysis



UBS

VS.



If Highland does not settle...

AND UBS WINS:

1. Highland loses all assets in HFP/CDO Fund (HFP assets include \$32m DAF Note Payable) (*see Slide 9 and Appendix 1*); AND
2. Highland faces years of fraudulent transfer claims throughout Highland structure (*see Slide 9*); AND
3. HCMLP faces clawback of \$9m and liability to backstop HFP/CDO Fund for up to \$1.2b (\$686m principal + \$511m interest back to 2009) (*see Slide 9*); AND
4. Giant PR hit (*see Slide 7*).

OR HIGHLAND WINS:

1. HFP is solvent = reverses 2008's \$257m tax write-off by HCMLP (resulting in \$50m+ in taxes due from HCMLP's partners) (*see Slides 3*); AND
2. UBS appeals, so issue is left unresolved for years (*see Slide 4*); AND
3. Citi has \$34m claim against CDO Fund assets (*see Slides 5, 9*); AND
4. If CDO Fund can't pay Citi \$34m, then HCMLP has to pay the balance (*see Slides 5, 9*).

BOTTOM LINE: There is no upside to going to trial in either matter.

Taxes: If Highland Wins... it Loses

- If Lackey wins at trial = HFP has positive value
- Result: Reverses 2008 HFP tax-write off from 2008
- Resulting Tax Liability:

<p>Dondero: \$50m+</p> <p>*Crusader: \$20m+</p> <p>*Goldman: \$15m+</p> <p>Scott Kavanaugh: \$1.4m</p> <p>*Todd Travers: \$1m</p> <p>John Honis: \$212k</p>	<p>*Pat Daugherty: \$167k</p> <p>Davis Deadman: \$110k</p> <p>Also: Plumer, Paul Kauffman, Borud, Okada, Joe Dougherty, John Morgan</p>
---	---
- Everyone who suffers tax consequences has a litigation claim for mismanagement against HCMLP and Dondero (as decision maker for HFP)

*Red, most likely to assert claims

If Highland does not settle: UBS Appeals

- UBS appeals in NY State Court
- Average time to outcome is 2 years
- \$5m additional legal expenses
- Can be remanded back to trial court to start all over; OR
- Can be reversed and HCM loses

If Highland does not settle: Citi

- Trial in late 2017 or 2018
- Additional PR issues
- Delay repairing trading relationship
- Incur \$3-4m in Lackey fees through trial
- Have to pay for Citi's legal fees under the terms of the contract
- \$24m principal liability + \$10m in Citi's legal fees
- CDO Fund pays, but if it can't, then HCMLP has to pay balance

If Highland Settles...

1. Sentinel controls HFP/CDO Fund assets (currently \$94m) (*see Slide 10*); AND
2. Sentinel and HCMLP can use HFP/CDO Fund assets to generate cash to pay UBS settlement, Citi, and outstanding legal fees (*see Slides 12-16*); AND
3. HCMLP's \$50m+ tax liability is avoided (*see Slides 3, 9*); AND
4. Residual assets (up to \$50m) stay at Sentinel (*see Slide 16*); AND
5. Potential to repair UBS distribution/relationship (*see Slide 7*); AND
6. PR issues resolved (*see Slide 7*); AND
7. Crusader Redeemer Committee remains the stand-alone target (*see Slide 7*).

BOTTOM LINE: Even if UBS and Citi are awarded ZERO damages, settlement still nets \$100m (Avoids \$50m tax liability + keeps \$50m in net HFP/CDO Fund assets)

If Highland Settles: PR

- Amicably and **privately** resolve:
 - Credit Strat
 - UBS
 - Citi
- No more defensive bank-counterparty lawsuits
 - Credit Suisse “offense” is the only remaining story
- Final “Crisis” issue is Crusader (Committee is alone on an island)

UBS Settlement: Structure Summary

Step 1: HFP/CDO Fund buy \$100m ATE policy from Sentinel

ATE premium = all assets in HFP/CDO Fund

Step 2: Negotiate settlement amount with UBS

Step 3: Sentinel generates cash from HFP/CDO Fund Assets

Step 4: Sentinel pays settlement amount to UBS

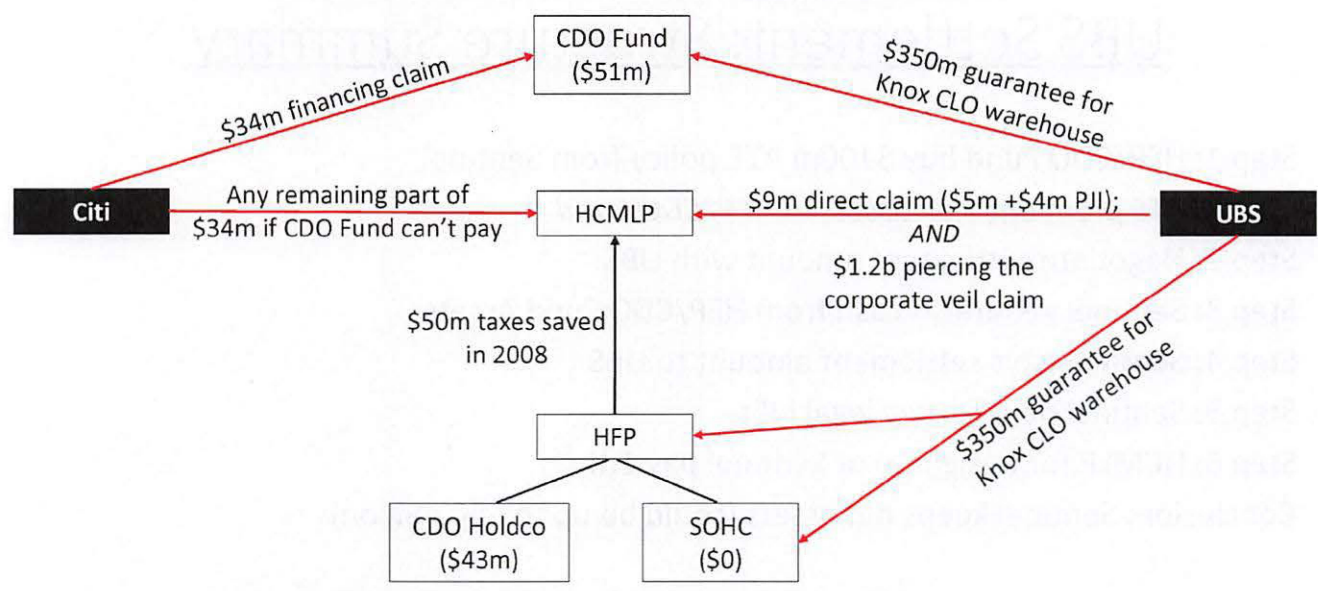
Step 5: Sentinel pays Lackey legal bills

Step 6: HCMLP (or designee) or Sentinel pay Citi

Conclusion: Sentinel keeps net assets (could be up to \$50 million)

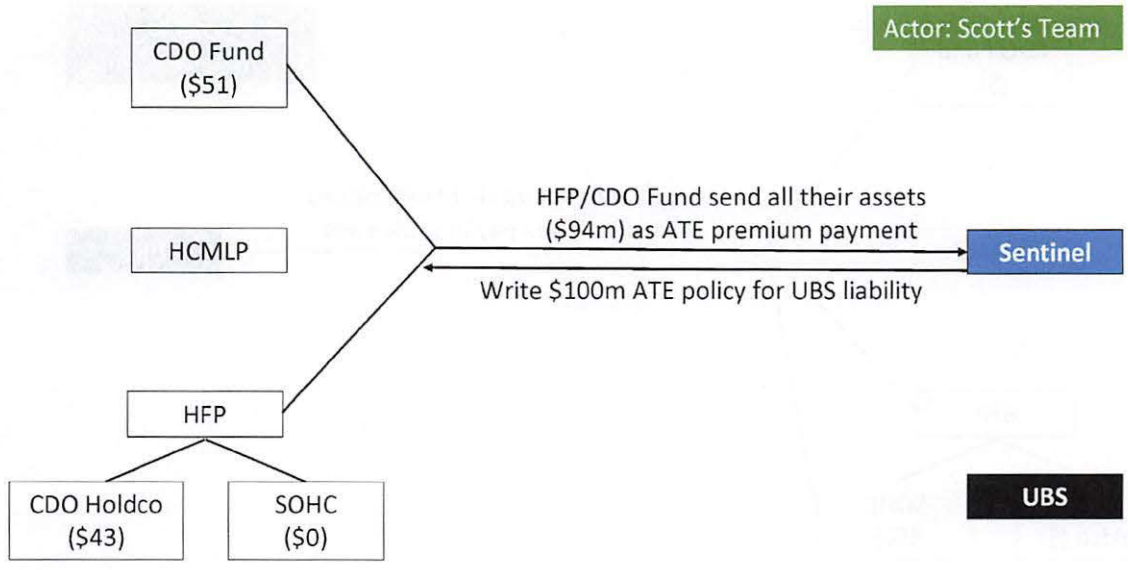
Here is why we should settle...

UBS Settlement: Assets and Liabilities

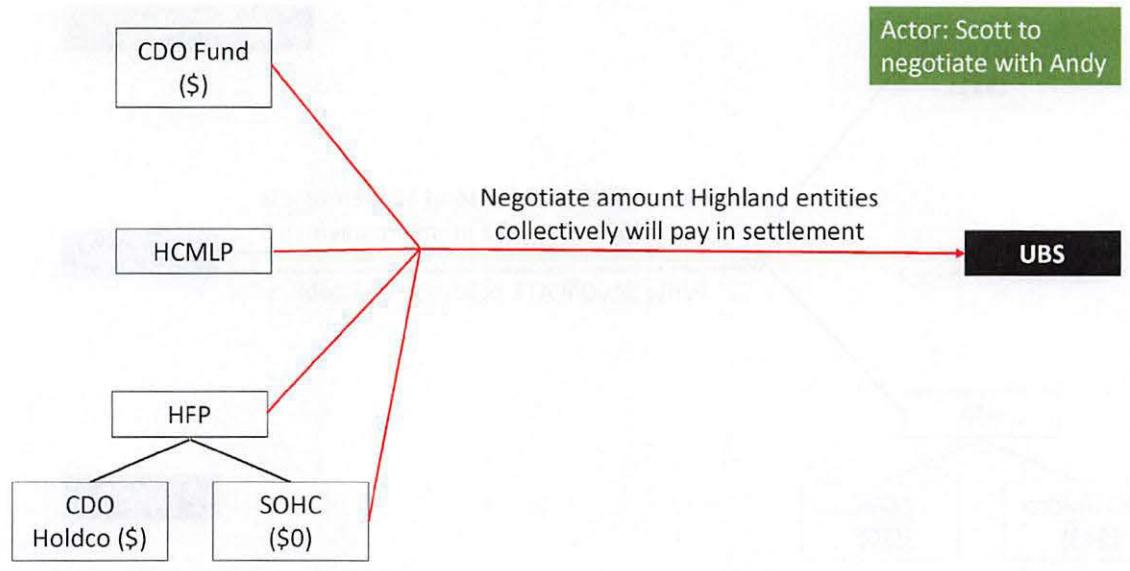


Total Potential Liability
 To UBS: \$1.2b (split among HCMLP, HFP, CDO Fund)
 To Citi: \$34m (split btw. HCMLP and CDO Fund)

UBS Settlement: Step 1 – ATE Policy

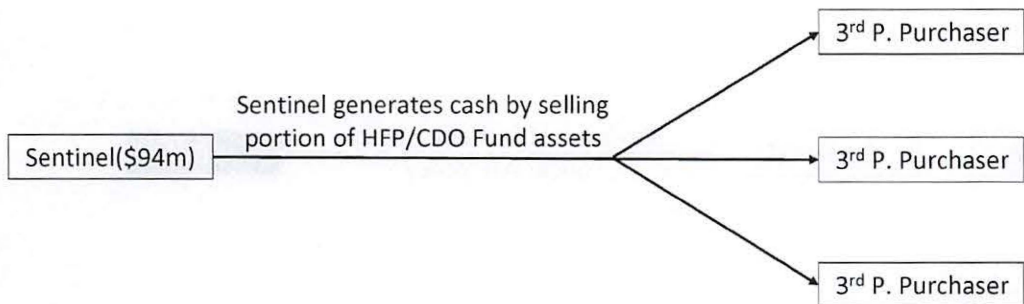


UBS Settlement: Step 2 – Negotiate Settlement Amount



UBS Settlement: Step 3 – Generate Cash

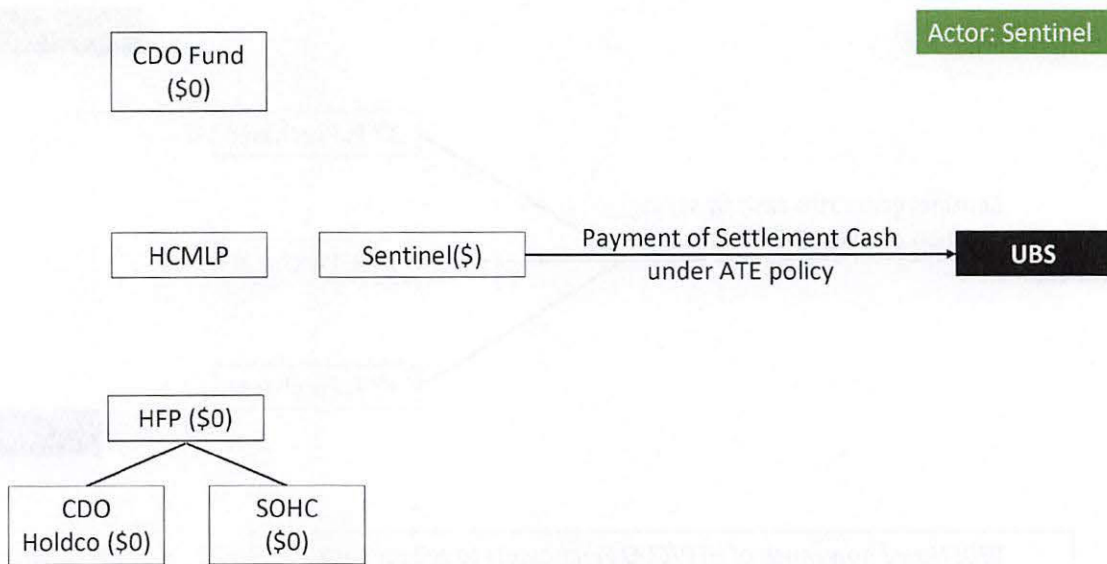
Actor: Sentinel



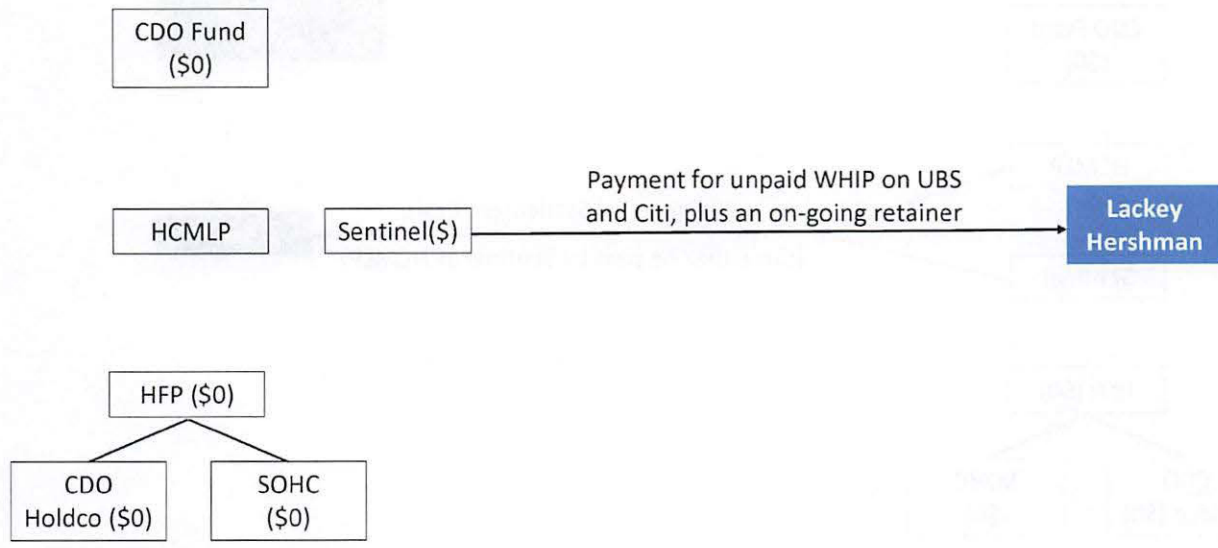
UBS

TBD: How / how much of HFP/CDO Fund assets to sell for cash

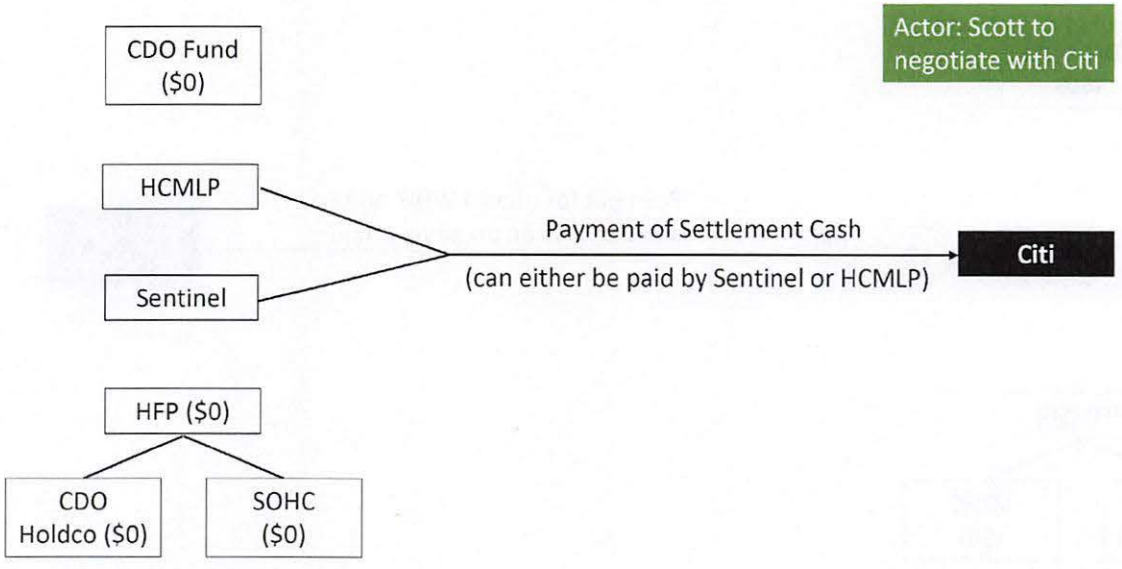
UBS Settlement: Step 4 – Pay UBS



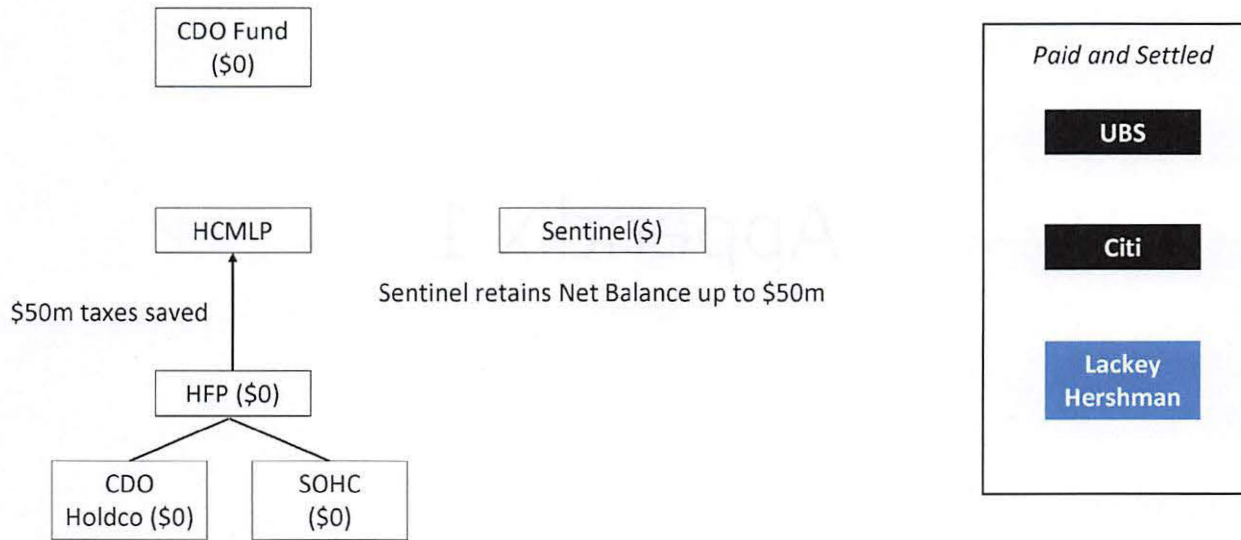
UBS Settlement: Step 5 – Pay Lackey



UBS Settlement: Step 6 – Pay Citi



UBS Settlement: Step 7 – Remainder



Appendix 1

EXHIBIT 3

EXHIBIT 71

From: Helen Kim <HKim@HighlandCapital.com>
To: Isaac Leventon <ILeventon@HighlandCapital.com>
Subject: RE: Highland Entity List
Date: Mon, 23 Sep 2019 09:17:33 -0500

Importance: Normal
Attachments: 0-Legal_Entities_List_(Q2_2019)_9.13.19.xls
Inline-Images: image001.jpg

Attached

From: Isaac Leventon
Sent: Monday, September 23, 2019 9:13 AM
To: Helen Kim
Subject: Highland Entity List

Will you please send me the most recent version?

ISAAC LEVENTON | ASSISTANT GENERAL COUNSEL



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O: 972.628.4100 | D: 972.419.4482 | F: 972.628.4147

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No Images Produced

A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
Name	EIN	Formation Date	Jurisdiction	Foreign Qualification	Category	Owners	Ownership Type	Ownership %	Voting Shares	Director/Manager/Trustee	Officers	Bank Signatory	Fund Contact	Accounting Contact Books & Records	Dissolve (Y/N)	Termination Date	Entity Description (one sentence)	Other Notes	
1																			
2		15 and 17 HoldCo LLC	Texas	N/A	NB	NexBank Capital, Inc.	Member	100					Dierk Hohman	Courtney Burton	Y	3/26/2015	Underlying assets sold on 1/30/2015		
3		2006 Prosper Partners GP, LLC	Texas	N/A	RE	James Dondero	Member	100	n/a	James Dondero Ted Dameris Scott Ellington	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas	Ted Dameris, Chris Wise, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	10/30/2014	This entity is the general partner of a partnership that owns a real estate asset for investment purposes.	FORECLOSED	Dissolve upon distribution of funds
4		2006 Prosper Partners, L.P.	Texas	N/A	RE	2006 Prosper Partners GP, LLC	Class A Limited Partner	0.09	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Clifford Stoops.	Ted Dameris	Drew Wilson	Terminated	10/5/2012	This entity owns a real estate asset for investment purposes.	FORECLOSED	Dissolve upon distribution of funds
5		2006 Prosper Partners, L.P.	Texas	N/A	RE	2006 Prosper Partners GP, LLC	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Clifford Stoops.	Ted Dameris	Drew Wilson	Terminated	10/5/2012	This entity owns a real estate asset for investment purposes.	FORECLOSED	Dissolve upon distribution of funds
6		2006 Prosper Partners, L.P.	Texas	N/A	RE	Third Party Investors	Class B Limited Partner	99.9	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Clifford Stoops.	Ted Dameris	Drew Wilson	Terminated	10/5/2012	This entity owns a real estate asset for investment purposes.	FORECLOSED	Dissolve upon distribution of funds
7		2014 Galveston Jones Drive, LLC	Texas	N/A	REIT	HMCF IB Investors, LLC	Member	42.75	n/a	Rene O. Campos-Manager			Matt McGraner	Brandon Knott	N	2/11/2016	Holds multifamily real property known as "Island Bay" located at 7400 Jones Dr, Galveston, TX 77551	Redeemed 2/11/16	
8		2014 Galveston Jones Drive, LLC	Texas	N/A	REIT	Galveston Jones Drive Member, LLC	Member	57.25	n/a	Rene O. Campos-Manager			Matt McGraner	Brandon Knott	N	2/11/2016	Holds multifamily real property known as "Island Bay" located at 7400 Jones Dr, Galveston, TX 77551	Redeemed 2/11/16	
9		2606 Shelby Avenue, Ltd.	Texas	N/A	RE	HCREH Shelby Townhomes, L.P.	Investor Limited Partner	50	n/a	General Partner	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This is not one of our entities. It is an operating entity in which one of the investment entities is invested.	SOLD AT FORECLOSURE AUCTION IN 2008	
10		2606 Shelby Avenue, Ltd.	Texas	N/A	RE	Third Party Investors	Developer Partner	49	n/a	General Partner	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y			SOLD AT FORECLOSURE AUCTION IN 2008	
11		2606 Shelby Avenue, Ltd.	Texas	N/A	RE	Third Party Investors	General Partner	1	n/a	General Partner	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y			SOLD AT FORECLOSURE AUCTION IN 2008	
12		2747 Camelback, LLC	Delaware	AZ	RE	Biltmore Camelback Investors, LLC	Member	100%	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris	Drew Wilson	Y	3/31/2017	Underlying project is a 4.46 acre site located in Phoenix, AZ, improved with three vacant office buildings that are expected to be demolished for construction of a condo tower upon receipt of amended height restriction.	Dissolution docs sent to DE SOS & AZ SOS on 3.30.17	
13		3500 Beverly, L.P.	Delaware		JD	The Get Good Non-Exempt Trust No. 2	Limited Partner	59	n/a	Strand Advisors VIII, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	12/17/2010	Jim's investment property	SOLD 6/21/10	
14		3500 Beverly, L.P.	Delaware		JD	Strand Advisors VIII, LLC	General Partner	1	n/a	Strand Advisors VIII, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	12/17/2010	Jim's investment property	SOLD 6/21/10	
15		3500 Beverly, L.P.	Delaware		JD	Third Party Investor	Limited Partner	40	n/a	Strand Advisors VIII, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	12/17/2010	Jim's investment property	SOLD 6/21/10	
16		3700 Euclid, L.P.	Delaware		JD	Strand Advisors XII, LLC	General Partner	1	n/a	Strand Advisors XII, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	8/20/2010	Jim's investment property	SOLD 6/8/09	
17		3700 Euclid, L.P.	Delaware		JD	The Get Good Trust	Limited Partner	99	n/a	Strand Advisors XII, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	8/20/2010	Jim's investment property	SOLD 6/8/09	
18		3704 Euclid, L.P.	Delaware		JD	Strand Advisors XIV, LLC	General Partner	1	n/a	Strand Advisors XIV, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	8/20/2010	Jim's investment property	SOLD 6/8/09	
19		3704 Euclid, L.P.	Delaware		JD	The Get Good Trust	Limited Partner	99	n/a	Strand Advisors XIV, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	8/20/2010	Jim's investment property	SOLD 6/8/09	
20		3708 Harvard, L.P.	Delaware		JD	Strand Advisors X, LLC	General Partner	1	n/a	Strand Advisors X, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	8/20/2010	Jim's investment property	SOLD 10/2008	
21		4041 Grassmere, L.P.	Delaware		JD	Strand Advisors VI, LLC	General Partner	1	n/a	Strand Advisors VI, LLC	N/A	James Dondero	Melissa Schroth	Melissa Schroth	Y	12/2/2016	Jim's investment property	Wayne Lewis interest transferred to GGNE#2 in 2011	
22		4041 Grassmere, L.P.	Delaware		JD	The Get Good Non-Exempt Trust No. 2	Limited Partner	99	n/a	Strand Advisors VI, LLC	N/A	James Dondero	Melissa Schroth	Melissa Schroth	Y	12/2/2016	Jim's investment property	Wayne Lewis interest transferred to GGNE#2 in 2011	
23		4201 Versailles, L.P.	Delaware		JD	Strand Advisors VII, LLC	General Partner	1	n/a	Strand Advisors VII, LLC	N/A	James Dondero	Melissa Schroth	Melissa Schroth	Y	4/20/2012	Jim's investment property		
24		4201 Versailles, L.P.	Delaware		JD	The Get Good Trust	Limited Partner	59	n/a	Strand Advisors VII, LLC	N/A	James Dondero	Melissa Schroth	Melissa Schroth	Y	4/20/2012	Jim's investment property		
25		4201 Versailles, L.P.	Delaware		JD	Wayne Lewis	Limited Partner	40	n/a	Strand Advisors VII, LLC	N/A	James Dondero	Melissa Schroth	Melissa Schroth	Y	4/20/2012	Jim's investment property		
26		4223 Bordeaux, L.P.	Delaware		JD	Strand Advisors XI, LLC	General Partner	1	n/a	Strand Advisors XI, LLC	N/A	James Dondero	Melissa Schroth	Melissa Schroth	Y	12/2/2016	Jim's investment property	Wayne Lewis interest transferred to GGT in 2011	2 EINs were obtained for the entity - 20-2197558 is active and 20-3646318 should be terminated
27		4223 Bordeaux, L.P.	Delaware		JD	The Get Good Trust	Limited Partner	99	n/a	Strand Advisors XI, LLC	N/A	James Dondero	Melissa Schroth	Melissa Schroth	Y	12/2/2016	Jim's investment property	Wayne Lewis interest transferred to GGT in 2011	
28		4346 Overhill, L.P.	Delaware		JD	The Get Good Non-Exempt Trust No. 2	Limited Partner	99	n/a	Strand Advisors V, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	8/20/2010	Jim's investment property	SOLD 7/23/09	
29		4346 Overhill, L.P.	Delaware		JD	Strand Advisors V, LLC	General Partner	1	n/a	Strand Advisors V, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	8/20/2010	Jim's investment property	SOLD 7/23/09	
30		78/Kreymer, Ltd.	Texas		JD	The Get Good Non-Exempt Trust No. 1	Shareholder	30.07	n/a	James Dondero-Trustee	James Dondero	James Dondero	Melissa Schroth	Melissa Schroth	N		Jim's investment property		
31		78/Kreymer, Ltd.	Texas		JD	Third Party Investors	Shareholder	69.93	n/a	James Dondero-Trustee	James Dondero	James Dondero	Melissa Schroth	Melissa Schroth	N		Jim's investment property		
32		Acis CLO Opportunity Fund I, L.P.	Delaware	N/A	Hedge	Acis CLO Opportunity Funds GP, LLC	General Partner	TBD	n/a	GP	GP		Hunter Covitz	Kristin Hendrix	Y	12/28/2016			
33		Acis CLO Opportunity Fund I, L.P.	Delaware	N/A	Hedge	Acis CLO Opportunity Funds SLP, LLC	Special LP	TBD	n/a	GP	GP		Hunter Covitz	Kristin Hendrix	Y	12/28/2016			
34		Acis CLO Opportunity Fund II, L.P.	Delaware	N/A	Hedge	Acis CLO Opportunity Funds GP, LLC	General Partner	TBD	n/a	GP	GP		Hunter Covitz	Kristin Hendrix	Y	12/28/2016			
35		Acis CLO Opportunity Fund II, L.P.	Delaware	N/A	Hedge	Acis CLO Opportunity Funds SLP, LLC	Special LP	TBD	n/a	GP	GP		Hunter Covitz	Kristin Hendrix	Y	12/28/2016			
36		Acis CLO Opportunity Fund II, L.P.	Delaware	N/A	Hedge	James Dondero	Initial LP	TBD	n/a	GP	GP		Hunter Covitz	Kristin Hendrix	Y	12/28/2016			
37		Acis CLO Opportunity Fund III, L.P.	Delaware	N/A	Hedge	Acis CLO Opportunity Funds GP, LLC	General Partner	TBD	n/a	GP	GP		Hunter Covitz	Kristin Hendrix	Y	12/28/2016			
38		Acis CLO Opportunity Fund III, L.P.	Delaware	N/A	Hedge	Acis CLO Opportunity Funds SLP, LLC	Special LP	TBD	n/a	GP	GP		Hunter Covitz	Kristin Hendrix	Y	12/28/2016			
39		Acis CLO Value Fund II Investment Team Assets L	Delaware	N/A	Hedge	TBD	Member	TBD	n/a	Manager	Manager	Dondero, Terry, Waterhouse, Stoops, Wise, Chism	Josh Terry	David Willmore	Dissolved	10/17/2013	NOT USED		
40		Acis CLO Value Intermediate Fund, L.P.	Cayman Islands	N/A	Hedge	Acis CLO Value GP, LLC	General Partner	TBD					Josh Terry	Cliff Stoops	Y	12/31/2012	Dissolve		
41		Acis Funding Manager, LLC	Delaware	N/A		Brasilinvest Acis Capital Management, L.P.	Member	100		N/A			Phillip Braner		Y	4/8/2014	Set up in connection with TMRS transaction but will not be used		
42		Acis Funding, LLC	Delaware	N/A		Brasilinvest Acis Funding Manager, LLC	Non-economic Member	0					Phillip Braner		Y	4/8/2014	Set up in connection with TMRS transaction but will not be used		

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
43	Acis Funding, LLC		2/7/2014	Delaware	N/A	Brasilinvest	CLO HoldCo, Ltd	Member	TBD		Acis Funding Manager, LLC (Manager)	TBD		Philip Braner		Y	4/8/2014	Set up in connection with TMRS transaction but will not be used		
44	Acis Funding, LLC		2/7/2014	Delaware	N/A	Brasilinvest	Third Party (Northern Providence)	Member	TBD		Acis Funding Manager, LLC (Manager)	TBD		Philip Braner		Y	4/8/2014	Set up in connection with TMRS transaction but will not be used		
45	AFM Highland Village Partners I, L.P.		5/11/2006	Texas	N/A	RE	HCREA Highland Village, L.P.	Class A Limited Partner	90	n/a	Non HCMLP GP	n/a	Dennis McDaniel	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
46	AFM Highland Village Partners I, L.P.		5/11/2006	Texas	N/A	RE	Third Party Investors	Class B Limited Partner	9.9	n/a	Non HCMLP GP	n/a	Dennis McDaniel	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
47	AFM Highland Village Partners I, L.P.		5/11/2006	Texas	N/A	RE	Third Party Investors	General Partner	0.1	n/a	Non HCMLP GP	n/a	Dennis McDaniel	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
48	Amcast Industrial Corporation		7/26/2005	Delaware		PE	CalPERS	Shareholder	6.33	n/a		Richard Smith-VP-Finance/CFO	Richard Smith-VP-Finance/CFO	Carl Moore	Carl Moore	Y		DELETE PER C. MOORE		
49	Amcast Industrial Corporation		7/26/2005	Delaware		PE	Highland Crusader Offshore Partners, L.P.	Shareholder	14.17	n/a	same	Jeffrey McWilliams-VP-Admin/Secv	same	Carl Moore	Carl Moore	Y		DELETE PER C. MOORE		
50	Amcast Industrial Corporation		7/26/2005	Delaware		PE	Highland Legacy Limited	Shareholder	4.64	n/a	same	same	same	Carl Moore	Carl Moore	Y		DELETE PER C. MOORE		
51	Amcast Industrial Corporation		7/26/2005	Delaware		PE	Pam Capital Funding, L.P.	Shareholder	28.56	n/a	same	same	same	Carl Moore	Carl Moore	Y		DELETE PER C. MOORE		
52	Amcast Industrial Corporation		7/26/2005	Delaware		PE	PamCo Cayman Ltd.	Shareholder	21.59	n/a	same	same	same	Carl Moore	Carl Moore	Y		DELETE PER C. MOORE		
53	Amcast Industrial Corporation		7/26/2005	Delaware		PE	Third Party Investors	Shareholder	24.71	n/a	same	same	same	Carl Moore	Carl Moore	Y		DELETE PER C. MOORE		
54	Andrew Merrick Homes-4301 Bordeaux, L.P.		9/14/2007	Delaware		JD	Strand Advisors XV, LLC	General Partner	1	n/a	Strand Advisors XV, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	1/17/2012	Jim's home building company		
55	Andrew Merrick Homes-4301 Bordeaux, L.P.		9/14/2007	Delaware		JD	The Get Good Trust	Limited Partner	99	n/a	Strand Advisors XV, LLC	N/A	James Dondero	Matt Griffith	Matt Griffith	Y	1/17/2012	Jim's home building company		
56	Appennini, LLC		9/24/2015	Delaware	N/A	JD	The Dugaboy Investment Trust	Member	100	n/a	Grant Scott-Director	Grant Scott-Director	Grant Scott-Director	Mark Patrick	Melissa Schroth	Y	5/27/2016	Investment in Rand PE Fund I, LP - Series 1		
57	Armstrong Loan Funding, Ltd.		2/22/2008	Cayman Islands	N/A	CLO	Highland Credit Opportunities CDO, Ltd.	Class 1 Voting Preferred Shares	19.46	7,500	Maples Finance	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	Hunter Covitz / Edward Leo	N		Issuer for CLO investment structure.	Liquidating	
58	Armstrong Loan Funding, Ltd.		2/22/2008	Cayman Islands	N/A	CLO	Highland Offshore Partners, L.P.	Class 1 Voting Preferred Shares	2.59	1,000	Maples Finance	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	Hunter Covitz / Edward Leo	N		Issuer for CLO investment structure.	Liquidating	
59	Armstrong Loan Funding, Ltd.		2/22/2008	Cayman Islands	N/A	CLO	Tunstall Opportunities Master Fund, L.P.	Class 1 Voting Preferred Shares	2.59	1,000	Maples Finance	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	Hunter Covitz / Edward Leo	N		Issuer for CLO investment structure.	Liquidating	
60	Armstrong Loan Funding, Ltd.		2/22/2008	Cayman Islands	N/A	CLO	CLO HoldCo, Ltd	Class 1 Voting Preferred Shares	8.69	3,350	Maples Finance	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	Hunter Covitz / Edward Leo	N		Issuer for CLO investment structure.	Liquidating	
61	Armstrong Loan Funding, Ltd.		2/22/2008	Cayman Islands	N/A	CLO	Highland Crusader Offshore Partners, LP	Class 2 Voting Preferred Shares	38.52	14,845	Maples Finance	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	Hunter Covitz / Edward Leo	N		Issuer for CLO investment structure.	Liquidating	
62	Armstrong Loan Funding, Ltd.		2/22/2008	Cayman Islands	N/A	CLO	Highland Credit Strategies Master Fund, LP	Class 2 Voting Preferred Shares	28.14	10,845	Maples Finance	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	Hunter Covitz / Edward Leo	N		Issuer for CLO investment structure.	Liquidating	
63	Atascosa Investments LLC		10/22/2004	Delaware	N/A	Hedge Blocker	Highland Crusader Offshore Partners, L.P.	Member	100	n/a	Member	James Dondero-Pres	Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Sub of Crusader		All Crusader-related entities are in wind-down with the Master Partnership
64	Bandera Strategic Credit Partners I GP, LLC (fka Highland Strategic Partners GP, LLC)		1/23/2014	Delaware	TX	I-Fund	Bandera Strategic Credit Partners I SLP, L.P.	Member	100	n/a	Sole member	N/A	Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Trey Parker	Charlie Hoedebeck	Y	8/23/2018	TMRS fund		
65	Bandera Strategic Credit Partners I SLP GP, LLC		4/3/2014	Delaware	N/A	I-Fund	Highland Capital Management, L.P.	Member	100	n/a	Sole member	N/A	Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Trey Parker	Charlie Hoedebeck	Y	8/23/2018	TMRS fund		
66	Bandera Strategic Credit Partners I SLP, L.P.		4/3/2014	Delaware	N/A	I-Fund	Bandera Strategic Credit Partners I SLP GP, LLC	General Partner	50	n/a	GP	GP	Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Trey Parker	Charlie Hoedebeck	Y	8/23/2018	TMRS fund		
67	Bandera Strategic Credit Partners I SLP, L.P.		4/3/2014	Delaware	N/A	I-Fund	Highland Capital Management, L.P.	Initial LP	50	n/a	GP	GP	Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Trey Parker	Charlie Hoedebeck	Y	8/23/2018	TMRS fund		
68	Bandera Strategic Credit Partners I, L.P. (fka Highland Strategic Partners Fund, L.P.)		1/23/2014	Delaware	TX	I-Fund	Bandera Strategic Credit Partners I GP, LLC	General Partner	0	n/a	GP	GP	Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Trey Parker	Charlie Hoedebeck	N	GP/management terminated 5.31.18	TMRS fund		
69	Bandera Strategic Credit Partners I, L.P. (fka Highland Strategic Partners Fund, L.P.)		1/23/2014	Delaware	TX	I-Fund	Highland Capital Management, L.P.	LP	0.35	n/a	GP	GP	Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Trey Parker	Charlie Hoedebeck	N	GP/management terminated 5.31.18	TMRS fund		
70	Bandera Strategic Credit Partners I, L.P. (fka Highland Strategic Partners Fund, L.P.)		1/23/2014	Delaware	TX	I-Fund	Texas Municipal Retirement System	LP	99.65	n/a	GP	GP	Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Trey Parker	Charlie Hoedebeck	N	GP/management terminated 5.31.18	TMRS fund		
71	Bankruptcy Funding, LLC		11/12/2013	Delaware	N/A	Legal	BFC 1, LLC	Member	50	n/a	N/A	James Dondero-Pres Scott Ellington-VP	James Dondero-Pres Scott Ellington-VP	Jason Goldsmith	Katie Irving	Y	3/31/2016			
72	Bankruptcy Funding, LLC		11/12/2013	Delaware	N/A	Legal	BFC 2, LLC	Member	50	n/a	N/A	James Dondero-Pres Scott Ellington-VP	James Dondero-Pres Scott Ellington-VP	Jason Goldsmith	Katie Irving	Y	3/31/2016			
73	Barrier Advisors, Inc.		4/27/2006	Delaware		NB	NexBank Capital, Inc.	Shareholder	100	n/a	John Holt, Mike Rossi, Harrison Price	Harrison Price-Pres Harold Kessler-VP/Treas	Mike Rossi, Lisa Stuart, Harrison Price	Josh Bock	Mike Rossi	Y	Merged into NSI as of 1/1/12	Barrier Advisors is a turnaround, workout, and distressed M&A consulting firm.	Barrier merged with NSI on 1/1/2012, with NSI as the surviving entity	
74	BB Highland Floating Rate Fund I			Dublin		Irish Fund	Highland CDO Opportunity Master Fund, LP.	Member	0	n/a			Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Hunter Covitz	Tom Beauchamp	Y	4/30/2016	Irish sub-fund of BB Unit Trust Ireland, an open-ended umbrella unit trust		
75	BB Highland Floating Rate Fund I			Dublin		Irish Fund	Mark Okada	Member	0	n/a			Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Hunter Covitz	Tom Beauchamp	Y	4/30/2016	Irish sub-fund of BB Unit Trust Ireland, an open-ended umbrella unit trust		
76	BB Highland Floating Rate Fund I			Dublin		Irish Fund	Mark and Pamela Family Trust	Member	0	n/a			Dondero, Okada, Ellington, Parker Waterhouse, Palmer, Stoops, Chism	Hunter Covitz	Tom Beauchamp	Y	4/30/2016	Irish sub-fund of BB Unit Trust Ireland, an open-ended umbrella unit trust		
77	BFC 1, LLC		11/12/2013	Delaware	N/A	Legal	James Dondero	Member	100	n/a	N/A	James Dondero	James Dondero	Jason Goldsmith	Katie Irving	Y	3/31/2016			
78	Biltmore Camelback Investors, LLC		3/20/2007	Delaware	AZ	RE	HE Capital 2747, LLC	Member	100	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Matt McGraner	Nexbank	Y	3/31/2017	Underlying project is a 4.46 acre site located in Phoenix, AZ, improved with three vacant office buildings that are expected to be demolished for construction of a condo tower upon receipt of amended height restriction.	Dissolution docs sent to DE SOS & AZ SOS on 3.30.17	

Table with columns A through X containing entity details, dates, and legal actions. Includes rows for entities like Blackwell BMC, LLC, Bradenton RE Holdings, LLC, and various Canopy Timberlands entities.

Table with columns A through X containing entity names, dates, states, and descriptions. Includes entities like Celina Springs, Ltd., CHG Acquisition, LLC, and various investment funds.

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
	Fanshaw Bay, LLC		12/26/2017	Delaware	N/A	I-Blocker	Highland Dynamic Income Master Fund, L.P.	Member	8.48	N/A		James Dondero-President Mark Okada-EVP Trey Parker-Secy Frank Waterhouse-Treas	James Dondero-President Mark Okada-EVP Trey Parker-Secy Frank Waterhouse-Treas	Jon Poglitsch	Mike Throckmorton	Y	6/12/2019	iHeart blocker		
158	Fanshaw Bay, LLC		12/26/2017	Delaware	N/A	I-Blocker	Longhorn Credit Funding, LLC	Member	30.4	N/A		James Dondero-President Mark Okada-EVP Trey Parker-Secy Frank Waterhouse-Treas	James Dondero-President Mark Okada-EVP Trey Parker-Secy Frank Waterhouse-Treas	Jon Poglitsch	Mike Throckmorton	Y	6/12/2019	iHeart blocker		
159	Fanshaw Bay, LLC		12/26/2017	Delaware	N/A	I-Blocker	PensionDanmark	Member	48.76	N/A		James Dondero-President Mark Okada-EVP Trey Parker-Secy Frank Waterhouse-Treas	James Dondero-President Mark Okada-EVP Trey Parker-Secy Frank Waterhouse-Treas	Jon Poglitsch	Mike Throckmorton	Y	6/12/2019	iHeart blocker		
160	Fanshaw Bay, LLC		12/26/2017	Delaware	N/A	I-Blocker	PensionDanmark	Member	48.76	N/A		James Dondero-President Mark Okada-EVP Trey Parker-Secy Frank Waterhouse-Treas	James Dondero-President Mark Okada-EVP Trey Parker-Secy Frank Waterhouse-Treas	Jon Poglitsch	Mike Throckmorton	Y	6/12/2019	iHeart blocker		
161	Firearms Venture I, LLC		1/11/2008	Delaware	N/A	JD	James Dondero	Member	100	N/A	James Dondero-Member	N/A	James Dondero	Melissa Schroth	Melissa Schroth	Y	12/2/2016	Jim's firearms investment		
162	First Trust/Highland Capital Floating Rate Income Fund II		5/16/2005	Ontario	N/A	Retail	Third Party Investors	Shareholder	100	n/a	Mark Bradley Robert Bredemeier Fraser Howell Ronald McAlister John Szucs Robert Turner	Ronald McAlister-CEO Mark Bradley-CFO Scott Blair-SVP Craig Brown-Secy Lawrence Guy-VP Liberty Rivera-VP	Auth Sigs: Joe Dougherty Matt Okolita Greg Stuecheli Brian Mitts Ethan Powell Manu Gaurtt	Joe Dougherty	Ethan Powell	Y	3/31/2011	FT1 merged with FT2 in 8/18/09	Liquidated 3/31/11	
163	First Trust/Highland Capital Senior Loan Trust		5/16/2005	Ontario	N/A	Retail	Third Party Investors	Shareholder	100	n/a	Mark Bradley Robert Bredemeier Fraser Howell N/A	Ronald McAlister-CEO Mark Bradley-CFO Scott Blair-SVP N/A	Auth Sigs: Joe Dougherty Matt Okolita	Joe Dougherty	Ethan Powell	Y	3/31/2011		Liquidated 3/31/11	
164	Focslc LLC		12/12/2012	Delaware	TX	HCM	Cleat LLC	Sole Member	100	N/A	N/A	N/A	N/A	JP Sevilla	Kristin Hendrix	Y	12/31/2015	Formed to hold Barclays' interest but not used		
165	Foremast LLC		12/12/2012	Delaware	TX	HCM	Highland Capital Management, L.P.	Sole Member	100	N/A	N/A	N/A	N/A	JP Sevilla	Kristin Hendrix	Y	12/31/2015	Formed to hold Barclays' interest but not used		
166	Fountain Hills, LLC		8/11/2004	Arizona	N/A	RE	Ellman Holdings, Inc	Member	10.00%		Bob Kaufman-EVP/Ellman Management Group, Inc.- Manager	Bob Kaufman-EVP/Ellman Management Group, Inc.- Manager	Bob Kaufman-EVP/Ellman Management Group, Inc.- Manager	Ted Dameris/Jim Pfertner		Y	12/30/2009	RE investment portfolio		
167	Fountain Hills, LLC		8/11/2004	Arizona	N/A	RE	Stanfield Capital Partners, LLC	Member	22.50%		Ellman	Ellman	Ellman	Ted Dameris/Jim Pfertner		Y	12/30/2009			
168	Fountain Hills, LLC		8/11/2004	Arizona	N/A	RE	Highland Capital Real Estate Fund, L.P.	Member	22.50%		Ellman	Ellman	Ellman	Ted Dameris/Jim Pfertner		Y	12/30/2009			
169	Fountain Hills, LLC		8/11/2004	Arizona	N/A	RE	Camulous Capital, LP	Member	22.50%		Ellman	Ellman	Ellman	Ted Dameris/Jim Pfertner		Y	12/30/2009			
170	Fountain Hills, LLC		8/11/2004	Arizona	N/A	RE	Credit Suisse Management, LLC	Member	22.50%		Ellman	Ellman	Ellman	Ted Dameris/Jim Pfertner		Y	12/30/2009			
171	FRBH Arbors, LLC		12/10/2013	Texas	N/A	REIT	FRBH C1 Residential, LLC	Member	100		Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts	Brian Mitts	Y	1/14/2014	Dissolve in TX and reform in DE		
172	FRBH Colonial Forest SM, Inc.		8/19/2014	Delaware	N/A	REIT	BH Equities, LLC	Shareholder	100		Brian Mitts-Manager Harry Bookey-Manager Brian Mitts	Brian Mitts-Manager Harry Bookey-Manager Brian Mitts - Secy/auth sig	Brian Mitts	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
173	FRBH Colonial Forest, LLC		6/18/2014	Delaware	FL	REIT	FRBH JAX-TPA, LLC	Member	90	N/A			Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
174	FRBH Colonial Forest, LLC		6/18/2014	Delaware	FL	REIT	Third Party	Member	10	N/A			Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
175	FRBH CP, LLC		12/10/2013	Texas	N/A	REIT	FRBH C1 Residential, LLC	Member	100		Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts	Brian Mitts	Y	1/14/2014	Dissolve in TX and reform in DE		
176	FRBH Eaglecrest, LLC		12/10/2013	Texas	N/A	REIT	FRBH C1 Residential, LLC	Member	100		Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts	Brian Mitts	Y	1/14/2014	Dissolve in TX and reform in DE		
177	FRBH Frederick, LLC		2/18/2014	Delaware	MD	REIT	FRBH C1 Residential, LLC	Member	76.3	N/A	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	12/28/2017			
178	FRBH Frederick, LLC		2/18/2014	Delaware	MD	REIT	Third Party	Member	23.7	N/A	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	12/28/2017			
179	FRBH Meridian, LLC		12/10/2013	Texas	N/A	REIT	FRBH C1 Residential, LLC	Member	100		Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts	Brian Mitts	Y	5/17/2017	Dissolve in TX and reform in DE		
180	FRBH Meridian, LLC		1/3/2014	Delaware	TX	REIT	FRBH C1 Residential, LLC	Member	90	N/A	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
181	FRBH Meridian, LLC		1/3/2014	Delaware	TX	REIT	Third Party	Member	10	N/A	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
182	FRBH Park at Blanding SM, Inc.		8/19/2014	Delaware	N/A	REIT	BH Equities, LLC	Shareholder	100		Brian Mitts	Brian Mitts - Secy/auth sig	Brian Mitts	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
183	FRBH Park at Blanding, LLC		6/24/2014	Delaware	FL	REIT	FRBH JAX-TPA, LLC	Member	90	N/A			Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
184	FRBH Park at Blanding, LLC		6/24/2014	Delaware	FL	REIT	Third Party	Member	10	N/A			Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
185	FRBH Park at Regency SM, Inc.		8/19/2014	Delaware	N/A	REIT	BH Equities, LLC	Shareholder	100		Brian Mitts	Brian Mitts - Secy/auth sig	Brian Mitts	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
186	FRBH Park at Regency, LLC		6/24/2014	Delaware	FL	REIT	FRBH JAX-TPA, LLC	Member	90	N/A			Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
187	FRBH Park at Regency, LLC		6/24/2014	Delaware	FL	REIT	Third Party	Member	10	N/A			Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	5/17/2017		UNDERLYING PROPERTY SOLD	
188	FRBH Silverbrook, LLC		12/10/2013	Texas	N/A	REIT	FRBH C1 Residential, LLC	Member	100		Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts	Brian Mitts	Y	1/14/2014	Dissolve in TX and reform in DE		
189	FRBH Timberglenn, LLC		12/10/2013	Texas	N/A	REIT	FRBH C1 Residential, LLC	Member	100		Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts	Brian Mitts	Y	1/14/2014	Dissolve in TX and reform in DE		
190	FRBH Toscana, LLC		12/10/2013	Texas	N/A	REIT	FRBH C1 Residential, LLC	Member	100		Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts	Brian Mitts	Y	1/14/2014	Dissolve in TX and reform in DE		
191	FRBH Toscana, LLC		1/3/2014	Delaware	TX	REIT	FRBH C1 Residential, LLC	Member	100	N/A	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts-Manager Harry Bookey-Manager	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/31/2018			

Table with columns A through X containing financial and legal data for various entities like FRBH Toscana, LLC, Freedom BBY 22401, LLC, etc.

Table with columns A through X containing entity names, dates, states, and various financial and legal details. Includes rows for entities like Gardens of Denton, L.P., Geneve Corporation, Goldfield Preserve Development, LLC, Granite Bay Long/Short Credit Fund, L.P., and HBI Asset Management Gestora de Recursos, LTDA.

Table with columns A through X containing entity details such as name, date, state, type, and ownership percentages. Includes entities like HCM Holdco, LLC, HCRE Canyon Falls GP, LLC, and HCRE Cornerstone, LP.

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
326	HCREA Indian Creek, L.P.		7/19/2006	Texas	N/A	RE	HCREA Indian Creek GP, LLC	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		Interest being sold - upon notification from Isaac, can be dissolved
327	HCREA Indian Creek, L.P.		7/19/2006	Texas	N/A	RE	Highland Capital Management, L.P.	Class B Limited Partner	19.99	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		Interest being sold - upon notification from Isaac, can be dissolved
328	HCREA Indian Creek, L.P.		7/19/2006	Texas	N/A	RE	Highland Capital Real Estate Fund, L.P.	Class A Limited Partner	52.93	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		Interest being sold - upon notification from Isaac, can be dissolved
329	HCREA Indian Creek, L.P.		7/19/2006	Texas	N/A	RE	Third Party Investors	Class A Limited Partner	27.07	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		Interest being sold - upon notification from Isaac, can be dissolved
330	HCREA Kings Wood GP, LLC		1/4/2006	Texas	N/A	RE	James Dondero	Member	100	n/a	James Dondero Ted Dameris Scott Ellington	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas	Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris/ Jim Pfterner	Drew Wilson	Y	12/31/2012	This entity is the general partner of a limited partnership that is a limited partner of a partnership that owns a real estate asset for investment purposes.	Investment property foreclosed	
331	HCREA Kings Wood, L.P.		1/6/2006	Texas	N/A	RE	HCREA Kings Wood GP, LLC	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris/ Jim Pfterner	Drew Wilson	Y	12/31/2012	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.	Investment property foreclosed	
332	HCREA Kings Wood, L.P.		1/6/2006	Texas	N/A	RE	Highland Capital Management, L.P.	Class B Limited Partner	19.99	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris/ Jim Pfterner	Drew Wilson	Y	12/31/2012	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.	Investment property foreclosed	
333	HCREA Kings Wood, L.P.		1/6/2006	Texas	N/A	RE	Highland Capital Real Estate Fund, L.P. (sold)	Class A Limited Partner	80	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris/ Jim Pfterner	Drew Wilson	Y	12/31/2012	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.	Investment property foreclosed	
334	HCREA Lockhill Retail GP, LLC		3/20/2006	Texas	N/A	RE	HCREA Lockhill Retail GP, LLC	Member	100	n/a	James Dondero Ted Dameris Scott Ellington	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2016	This entity is the general partner of a limited partnership that is a limited partner of a partnership that owns a real estate asset for investment purposes.		
335	HCREA Lockhill Retail LP		3/20/2006	Texas	N/A	RE	HCREA Lockhill Retail GP, LLC	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/29/2016	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
336	HCREA Lockhill Retail LP		3/20/2006	Texas	N/A	RE	HCREA Lockhill Retail GP, LLC	Class B Limited Partner	19.99	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/29/2016	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
337	HCREA Lockhill Retail LP		3/20/2006	Texas	N/A	RE	Gunwale, LLC	Class A Limited Partner	46.74	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/29/2016	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
338	HCREA Lockhill Retail LP		3/20/2006	Texas	N/A	RE	HCREA Lockhill Retail GP, LLC	Class A Limited Partnership	33.26	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/29/2016	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
339	HCREA Nolen Drive GP, LLC		7/17/2006	Texas	N/A	RE	Highland Capital Management, L.P.	Member	100	n/a	James Dondero Ted Dameris Scott Ellington	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the general partner of a limited partnership that is a limited partner of a partnership that owns a real estate asset for investment purposes.		
340	HCREA Nolen Drive, L.P.		7/17/2006	Texas	N/A	RE	HCREA Nolen Drive GP, LLC	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
341	HCREA Nolen Drive, L.P.		7/17/2006	Texas	N/A	RE	Highland Capital Management, L.P.	Class B Limited Partner	24.99	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
342	HCREA Nolen Drive, L.P.		7/17/2006	Texas	N/A	RE	Highland Capital Real Estate Fund, L.P.	Class B Limited Partner	10	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
343	HCREA Nolen Drive, L.P.		7/17/2006	Texas	N/A	RE	Third Party	Class A Limited Partner	31.2	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
344	HCREA Nolen Drive, L.P.		7/17/2006	Texas	N/A	RE	Highland Capital Management, L.P.	Class A Limited Partner	33.8	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
345	HCREA Pilot Point Land GP, LLC		7/26/2006	Texas	N/A	RE	Highland Capital Management, L.P.	Member	100	n/a	James Dondero Ted Dameris Scott Ellington	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/20/2010	This entity is the general partner of a limited partnership that is a limited partner of a partnership that owns a real estate asset for investment purposes.		
346	HCREA Pilot Point Land, L.P.		7/26/2006	Texas	N/A	RE	HCREA Pilot Point Land GP, LLC	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/20/2010	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
347	HCREA Pilot Point Land, L.P.		7/26/2006	Texas	N/A	RE	Highland Capital Management, L.P.	Class B Limited Partner	19.99	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/20/2010	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
348	HCREA Pilot Point Land, L.P.		7/26/2006	Texas	N/A	RE	Highland Capital Real Estate Fund, L.P.	Class A Limited Partner	80	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/20/2010	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
349	HCREA Princeton 380 GP, LLC		3/6/2006	Texas	N/A	RE	James Dondero	Member	100	n/a	James Dondero Ted Dameris Scott Ellington	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	10/30/2014	This entity is the general partner of a limited partnership that is a limited partner of a partnership that owns a real estate asset for investment purposes.	Investment property foreclosed	Dissolve upon distribution of funds
350	HCREA Princeton 380 L.P.		3/6/2006	Texas	N/A	RE	HCREA Princeton 380 GP, LLC	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	4/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.	Investment property foreclosed	Dissolve upon distribution of funds
351	HCREA Princeton 380 L.P.		3/6/2006	Texas	N/A	RE	Highland Capital Management, L.P.	Class B Limited Partner	19.99	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	4/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.	Investment property foreclosed	Dissolve upon distribution of funds
352	HCREA Princeton 380 L.P.		3/6/2006	Texas	N/A	RE	Highland Capital Real Estate Fund, L.P.	Class A Limited Partner	80	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	4/30/2014	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.	Investment property foreclosed	Dissolve upon distribution of funds
353	HCREA Prosper Crossing East GP, LLC		4/9/2007	Texas	N/A	RE	Highland Capital Management, L.P.	Member	100	n/a	James Dondero Ted Dameris Scott Ellington	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/27/2010	This entity is the general partner of a limited partnership that is a limited partner of a partnership that owns a real estate asset for investment purposes.		
354	HCREA Prosper Crossing East, LP		4/9/2007	Texas	N/A	RE	HCREA Prosper Crossing East GP, LLC	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/27/2010	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
355	HCREA Prosper Crossing East, LP		4/9/2007	Texas	N/A	RE	Highland Capital Management, L.P.	Class B Limited Partner	19.99	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/27/2010	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		
356	HCREA Prosper Crossing East, LP		4/9/2007	Texas	N/A	RE	Highland Capital Real Estate Fund, L.P.	Class A Limited Partner	80	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/27/2010	This entity is the limited partner of a partnership that owns a real estate asset for investment purposes.		

Table with columns A through X containing entity information, dates, percentages, and legal descriptions. Rows include entities like HCREA Prosper Crossing West GP, LLC, HCREA Terrell Land GP, LLC, HCREA The Tribute GP, LLC, and HCREA Wilcox 190 GP, LLC.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
394	HCSLR Camelback Investors, LLC		7/14/2016	Delaware	N/A	RE Blocker	HCSLR Camelback Investors (Cayman), Ltd.	Member	0	9,104	Scott Ellington-Manager Isaac Leventon-Manager	n/a	Scott Ellington-Manager Isaac Leventon-Manager	Matt McGraner	Nexbank	Y	12/26/2018	All assets distributed to HCSLR Camelback, LLC						
395	HCSLR Camelback Investors, LLC		7/14/2016	Delaware	N/A	RE Blocker	Longhorn Credit Funding, LLC	Member	0	896	Scott Ellington-Manager Isaac Leventon-Manager	n/a	Scott Ellington-Manager Isaac Leventon-Manager	Matt McGraner	Nexbank	Y	12/26/2018	All assets distributed to HCSLR Camelback, LLC						
396	HE 1001 West Loop Holdings GP, LLC		12/13/2007	Texas	N/A	RE	HE 1001 West Loop Project, LLC	Member	100.00%	n/a	Member	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y		Underlying property is a 228,820 sf B+ multi-tenant office building in Houston, TX.						Dissolve upon distribution of funds
397	HE 1001 West Loop Holdings LP, LLC		12/4/2007	Delaware	N/A	RE	HE 1001 West Loop Project, LLC	Member	100.00%	n/a	Member	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	1/30/2017	Underlying property is a 228,820 sf B+ multi-tenant office building in Houston, TX.						Dissolve upon distribution of funds
398	HE 1001 West Loop Project, LLC		12/6/2007	Delaware	TX	RE	Highland Credit Strategies Holding Corporation	Member	97.50%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	1/30/2017	Underlying property is a 228,820 sf B+ multi-tenant office building in Houston, TX.						Dissolve upon distribution of funds
399	HE 1001 West Loop Project, LLC		12/6/2007	Delaware	TX	RE	HE CLO Holdco, LLC	Member	2.50%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	1/30/2017	Underlying property is a 228,820 sf B+ multi-tenant office building in Houston, TX.						Dissolve upon distribution of funds
400	HE 1001 West Loop, LP		12/13/2007	Texas	N/A	RE	HE 1001 West Loop Holdings LP, LLC	LP	99.00%	n/a	GP	GP	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y		Underlying property is a 228,820 sf B+ multi-tenant office building in Houston, TX.						Dissolve upon distribution of funds
401	HE 1001 West Loop, LP		12/13/2007	Texas	N/A	RE	HE 1001 West Loop Holdings GP, LLC	GP	1.00%	n/a	GP	GP	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y		Underlying property is a 228,820 sf B+ multi-tenant office building in Houston, TX.						Dissolve upon distribution of funds
402	HE 2425 West Loop Holdings GP, LLC		12/6/2007	Texas	N/A	RE	HE 2425 West Loop Project, LLC	Member	100.00%	n/a	Member	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y		Underlying property is a 281,590 sf B+ multi-tenant office building in Houston, TX.						
403	HE 2425 West Loop Holdings LP, LLC		12/4/2007	Delaware	N/A	RE	HE 2425 West Loop Project, LLC	Member	100.00%	n/a	Member	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	1/30/2017	Underlying property is a 281,590 sf B+ multi-tenant office building in Houston, TX.						
404	HE 2425 West Loop Project, LLC		12/4/2007	Delaware	TX	RE	Highland Credit Strategies Holding Corporation	Member	97.50%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	1/30/2017	Underlying property is a 281,590 sf B+ multi-tenant office building in Houston, TX.						
405	HE 2425 West Loop Project, LLC		12/4/2007	Delaware	TX	RE	HE CLO Holdco, LLC	Member	2.50%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	1/30/2017	Underlying property is a 281,590 sf B+ multi-tenant office building in Houston, TX.						
406	HE 2425 West Loop, LP		12/6/2007	Texas	N/A	RE	HE 2425 West Loop Holdings LP, LLC	LP	99.00%	n/a	GP	GP	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y		Underlying property is a 281,590 sf B+ multi-tenant office building in Houston, TX.						
407	HE 2425 West Loop, LP		12/6/2007	Texas	N/A	RE	HE 2425 West Loop Holdings GP, LLC	GP	1.00%	n/a	GP	GP	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y		Underlying property is a 281,590 sf B+ multi-tenant office building in Houston, TX.						
408	HE Capital 2747, LLC		8/15/2007	Delaware	AZ	RE	Gunwale, LLC	Member	13.89%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	3/31/2017	Underlying project is a 4.46 acre site located in Phoenix, AZ, improved with three vacant office buildings that are expected to be demolished for construction of a condo tower upon receipt of amended height restriction.						Dissolution docs sent to DE SOS & AZ SOS on 3.30.17
409	HE Capital 2747, LLC		8/15/2007	Delaware	AZ	RE	Highland Crusader Holding Corporation	Member	55.83%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	3/31/2017	Underlying project is a 4.46 acre site located in Phoenix, AZ, improved with three vacant office buildings that are expected to be demolished for construction of a condo tower upon receipt of amended height restriction.						Dissolution docs sent to DE SOS & AZ SOS on 3.30.17
410	HE Capital 2747, LLC		8/15/2007	Delaware	AZ	RE	Highland Credit Opportunities Holding Corporation	Member	13.89%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	3/31/2017	Underlying project is a 4.46 acre site located in Phoenix, AZ, improved with three vacant office buildings that are expected to be demolished for construction of a condo tower upon receipt of amended height restriction.						Dissolution docs sent to DE SOS & AZ SOS on 3.30.17
411	HE Capital 2747, LLC		8/15/2007	Delaware	AZ	RE	Highland Credit Strategies Holding Corporation	Member	13.89%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	3/31/2017	Underlying project is a 4.46 acre site located in Phoenix, AZ, improved with three vacant office buildings that are expected to be demolished for construction of a condo tower upon receipt of amended height restriction.						Dissolution docs sent to DE SOS & AZ SOS on 3.30.17
412	HE Capital 2747, LLC		8/15/2007	Delaware	AZ	RE	HE CLO Holdco, LLC	Member	2.50%	n/a	HCMLP-Manager	HCMLP-Manager	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Drew Wilson	Y	3/31/2017	Underlying project is a 4.46 acre site located in Phoenix, AZ, improved with three vacant office buildings that are expected to be demolished for construction of a condo tower upon receipt of amended height restriction.						Dissolution docs sent to DE SOS & AZ SOS on 3.30.17
413	HE Sugar Land Buildings, LP		7/2/2007	Texas	N/A	RE	HE Sugar Land Holdings LP, LLC	LP	99	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						Investment property foreclosed
414	HE Sugar Land Buildings, LP		7/2/2007	Texas	N/A	RE	HE Sugar Land Holdings GP, LLC	GP	1	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						Investment property foreclosed
415	HE Sugar Land Development, LP		7/16/2007	Texas	N/A	RE	HE Sugar Land Holdings LP, LLC	LP	99	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						
416	HE Sugar Land Development, LP		7/16/2007	Texas	N/A	RE	HE Sugar Land Holdings GP II, LLC	GP	1	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						
417	HE Sugar Land Holdings GP II, LLC		7/16/2007	Texas	N/A	RE	HE Sugar Land Project, LLC	Member	100	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						
418	HE Sugar Land Holdings GP, LLC		6/29/2007	Texas	N/A	RE	HE Sugar Land Project, LLC	Member	100	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						Investment property foreclosed
419	HE Sugar Land Holdings LP, LLC		6/26/2007	Delaware	N/A	RE	HE Sugar Land Project, LLC	Member	100	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						
420	HE Sugar Land Project, LLC		6/19/2007	Delaware	N/A	RE	Highland Capital Real Estate Fund, L.P.	Member	39.22%	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						
421	HE Sugar Land Project, LLC		6/19/2007	Delaware	N/A	RE	Highland Employee Retention Assets LLC	Member	58.28%	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						
422	HE Sugar Land Project, LLC		6/19/2007	Delaware	N/A	RE	HE CLO Holdco, LLC	Member	2.50%	n/a	HCMLP-Manager	HCMLP-Manager	HCMLP-Manager	Ted Dameris/Jim Pfertner	Jim Pfertner	Y	12/31/2012	Underlying project is a 528,857 sf single tenant A- office building in Sugar Land, TX.						
423	Headquarters, LP		10/10/2003	Texas	N/A	JD	Texas Land Management, LLC	General Partner	0	n/a	Texas Land Management, LLC	N/A	Texas Land Management, LLC	Melissa Schroth	Melissa Schroth	Y		SOLD 7/29/2010						
424	Headquarters, LP		10/10/2003	Texas	N/A	JD	The Get Good Trust	Limited Partner	8.75	n/a	Texas Land Management, LLC	N/A	Texas Land Management, LLC	Melissa Schroth	Melissa Schroth	Y		SOLD 7/29/2010						

Table with columns A through X containing financial and legal data for various entities and funds, including dates, percentages, and descriptions.

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
465	Highland Capital Healthcare Partners, Ltd. (fka Cummings Bay Healthcare Fund, Ltd.)		2/1/2011	Cayman Islands	N/A	Hedge	Highland Capital Healthcare Advisors, L.P.	Shareholder	0	1	James Dondero Mark Okada	N/A	Dondero, Okada, Waterhouse, Stoops, Palmer, Chism	Michael Gregory	David Willmore	Y	10/12/2016	Name change filed 2/28/14		
466	Highland Capital Management Europe, Limited		6/21/2001	United Kingdom	N/A	HCM	Highland Capital Management, L.P.	Shareholder	100	n/a	Dondero, Okada, McAuliffe	Authorized Sigs: Dondero, Okada, McAuliffe	Dondero, Okada	Frank Waterhouse	Frank Waterhouse	Y	12/31/2013	HCMLP's Europe office.	In dissolution	
467	Highland Capital Management Partners Charitable Trust #1		12/29/2005	Texas	N/A	JD	Highland Capital Management, L.P.	Settlor	100	n/a	Grant Scott-Trustee	Grant Scott-Trustee	Grant Scott-Trustee	Mark Patrick	Melissa Schroth	Y	12/29/2015	10-year trust	Trust expired as of 12/29/2015	
468	Highland Capital Management Partners Charitable Trust #1		12/29/2005	Texas	N/A	JD	Highland Dallas Foundation, Inc.	Remainder Beneficiary	100	n/a	Grant Scott-Trustee	Grant Scott-Trustee	Grant Scott-Trustee	Mark Patrick	Melissa Schroth	Y	12/29/2015	10-year trust	Trust expired as of 12/29/2015	
469	Highland Capital Management Partners Charitable Trust #2		11/30/2006	Texas	N/A	JD	James Dondero	Settlor	100	n/a	Grant Scott - Trustee	Grant Scott - Trustee	Grant Scott - Trustee	Frank Waterhouse	Frank Waterhouse	Y	12/1/2011	Terminated and all assets transferred to Charitable DAF HoldCo, Ltd. then to Charitable DAF Fund, LP		
470	Highland Capital Management, LTD.		6/21/2000	Bermuda	N/A	HCM	Mark Okada	Shareholder	25	n/a	James Dondero Mark Okada	James Dondero-Pres Mark Okada-VP	Dondero, Okada	Frank Waterhouse	Kristin Hendrix	Y	2/6/2017			
471	Highland Capital Management, LTD.		6/21/2000	Bermuda	N/A	HCM	James Dondero	Shareholder	75	n/a	James Dondero Mark Okada	James Dondero-Pres James Dondero-Pres Mark Okada-VP Loran Phillis-Secv	Dondero, Okada	Frank Waterhouse	Kristin Hendrix	Y	2/6/2017			
472	Highland Capital Multi-Strategy Fund		5/23/2007	Delaware	N/A	Retail								Joe Dougherty		Y	5/14/2010	Deregistered on 12/18/08		
473	Highland Capital Real Estate Holdings, LLC		8/25/2005	Delaware	N/A	RE	Highland Capital Management, L.P.	Member	100	n/a	Member	Member	Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris/ Jim Pflertner	Cliff Stoops	Y	5/25/2012			
474	Highland Capital SLS, LLC		4/1/2007	Delaware	TX	HCM	Highland Capital Management, L.P.	Member	100	n/a	Member	Member	Chris Halpin, Jason Post, Cliff Stoops	Chris Halpin	Frank Waterhouse	Y	8/20/2010	Insurance related entity. Established in case Highland wanted to buy policies directly from sellers.		
475	Highland Capital Terrell Investment Partners, L.P.		5/18/2005	Texas	CO	RE	Highland Capital Real Estate Fund GP, LLC	General Partner	1	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	4/30/2014	This entity owns a real estate asset for investment purposes.		
476	Highland Capital Terrell Investment Partners, L.P.		5/18/2005	Texas	CO	RE	Highland Capital Real Estate Fund, L.P.	Limited Partner	99	n/a	General Partner	n/a	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	4/30/2014	This entity owns a real estate asset for investment purposes.		
477	Highland CLO Intermediate Holdings I, LLC		10/19/2017	Delaware	N/A	I-Fund	Highland HCF Advisor Ltd.	Managing Member	0	0 economic/ 100 voting	Managing Member	N/A	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	Hunter Covitz	Mike Throckmorton	Y	5/22/2019	Highland CLO risk retention C-MOA fund		
478	Highland CLO Intermediate Holdings I, LLC		10/19/2017	Delaware	N/A	I-Fund	Highland CLO Intermediate Holdings II, LLC	Non-voting Member	100	100 economic/ 0 voting	Managing Member	N/A	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	Hunter Covitz	Mike Throckmorton	Y	5/22/2019	Highland CLO risk retention C-MOA fund		
479	Highland CLO Intermediate Holdings II, LLC		10/19/2017	Delaware	N/A	I-Fund	Highland CLO Management Holdings, L.P.	Member	100		Sole Member	N/A	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	Hunter Covitz	Mike Throckmorton	Y	5/22/2019	Highland CLO risk retention C-MOA fund		
480	Highland CLO Management GP, LLC		10/19/2017	Delaware	Cayman Islands	I-Fund	Highland HCF Advisor Ltd.	Member	100		Sole Member	N/A	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	Hunter Covitz	Mike Throckmorton	Y	7/9/2019	Highland CLO risk retention C-MOA fund		
481	Highland CLO Management Holdings, L.P.		10/20/2017	Cayman Islands	N/A	I-Fund	Highland CLO Management GP, LLC	General Partner	0		General Partner	N/A	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	Hunter Covitz	Mike Throckmorton	Y	6/21/2019	Highland CLO risk retention C-MOA fund		
482	Highland CLO Management Holdings, L.P.		10/20/2017	Cayman Islands	N/A	I-Fund	Highland HCF Advisor Ltd.	Class A LP	50.1		General Partner	N/A	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	Hunter Covitz	Mike Throckmorton	Y	6/21/2019	Highland CLO risk retention C-MOA fund		
483	Highland CLO Management Holdings, L.P.		10/20/2017	Cayman Islands	N/A	I-Fund	Highland HCF Advisor, Ltd, as Trustee for and on behalf of Highland CLO Trust, as nominee for and on behalf of Highland CLO	Class B LP	49.9		General Partner	N/A	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	Hunter Covitz	Mike Throckmorton	Y	6/21/2019	Highland CLO risk retention C-MOA fund		
484	Highland CLO Management, LLC		10/19/2017	Delaware	N/A	Relying Advisor	Highland CLO Management Holdings I, LLC	Management Series/ EU Originator US Retention Series	100		Don Puglisi-Independent Manager	James Dondero-Pres Mark Okada-EVP Scott Ellington-Secy	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	JP Sevilla	Kristin Hendrix	Y	5/22/2019	Relying adviser to Highland CLO risk retention C-MOA fund		
485	Highland CLO Management, LLC		10/19/2017	Delaware	N/A	Relying Advisor	Highland CLO Management Holdings, L.P.	EU Originator US Retention Series	100		Don Puglisi-Independent Manager	James Dondero-Pres Mark Okada-EVP Scott Ellington-Secy	Dondero, Okada, Ellington, Waterhouse, Stoops, Ringheimer, Willmore	JP Sevilla	Kristin Hendrix	Y	5/22/2019	Relying adviser to Highland CLO risk retention C-MOA fund		
486	Highland CLO Value Fund (Bermuda), L.P.		9/30/2008	Bermuda	N/A	Hedge	Third Party Investors (Arizona PPSRS Trust)	Limited Partner	100	n/a	GP	N/A	Chris Halpin, Jason Post, Cliff Stoops	Gibran Mahmud	Cliff Stoops	Y	12/16/2010	CLO Value offshore fund	Liquidated as of 11/23/09 - in process of dissolving	
487	Highland CLO Value Fund GP, LLC		8/12/2008	Delaware	TX	Hedge	Highland Capital Management, L.P.	Member	100	n/a	Member	N/A	Chris Halpin, Jason Post, Cliff Stoops	Gibran Mahmud	Cliff Stoops	Y	11/17/2010	GP to CLO Value	Liquidated as of 11/23/09 - in process of dissolving	
488	Highland CLO Value Fund, L.P.		8/12/2008	Delaware	TX	Hedge	Highland Capital Management, L.P.	Limited Partner	100	n/a	GP	N/A	Chris Halpin, Jason Post, Cliff Stoops	Gibran Mahmud	Cliff Stoops	Y	11/17/2010	Onshore CLO Value fund	Liquidated as of 11/23/09 - in process of dissolving	
489	Highland CLO Value Intermediate Fund, L.P.		9/30/2008	Bermuda	N/A	Hedge	Highland CLO Value Fund (Bermuda), L.P.	Limited Partner	100	n/a	GP	N/A	Chris Halpin, Jason Post, Cliff Stoops	Gibran Mahmud	Cliff Stoops	Y	12/16/2010	Offshore intermediate fund	Liquidated as of 11/23/09 - in process of dissolving	
490	Highland CLO Value Master Fund, L.P.		9/30/2008	Bermuda	N/A	Hedge	Highland CLO Value Intermediate Fund, L.P.	Limited Partner	82	n/a	GP	N/A	Chris Halpin, Jason Post, Cliff Stoops	Gibran Mahmud	Cliff Stoops	Y	12/16/2010	Master fund	Liquidated as of 11/23/09 - in process of dissolving	
491	Highland CLO Value Master Fund, L.P.		9/30/2008	Bermuda	N/A	Hedge	Highland CLO Value Fund, L.P.	Limited Partner	18	n/a	GP	N/A	Chris Halpin, Jason Post, Cliff Stoops	Gibran Mahmud	Cliff Stoops	Y	12/16/2010	Master fund	Liquidated as of 11/23/09 - in process of dissolving	
492	Highland Commingled Holding Company		9/22/2008	Delaware	N/A	I-Blocker	Highland Offshore Partners, L.P.	Shareholder	100	n/a	Dondero, Okada	Dondero-Pres Okada-EVP Ellington-Secy Parker-Asst Secy	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Hunter Covitz	Taylor Colbert	Y	5/30/2018	Onshore blocker for Diversified Credit (fka Comingled Loan)		
493	Highland Core Equity Fund, Ltd.		12/19/2005	Bermuda	N/A	Hedge	Highland Capital Management, L.P.	Shareholder	100	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP Penny Cornell-Secy MQ Services-Asst Secy	Dondero, Okada, Britain, Ellington, Boyce, Terry, Waterhouse,Wise, Stoops, Chism	James Dondero	Chris Dunn	Y	2/6/2014	Select offshore fund (fka Highland Select Equity Fund, Ltd.) BMA deregistered as of 10/18/13		
494	Highland Core Equity Intermediate Fund, L.P.		6/26/2008	Bermuda	N/A	Hedge	Highland Select Equity Fund GP, LLC	General Partner	50	n/a	GP	N/A	Chris Halpin, Jason Post, Cliff Stoops	Dondero/Chris Colvin	Cliff Stoops	Y	3/1/2010	Dissolved 3/1/10		
495	Highland Core Equity Intermediate Fund, L.P.		6/26/2008	Bermuda	N/A	Hedge	Highland Core Equity Fund, Ltd.	Limited Partner	50	n/a	GP	N/A	Chris Halpin, Jason Post, Cliff Stoops	Dondero/Chris Colvin	Cliff Stoops	Y	3/1/2010	Dissolved 3/1/10		

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
496	Highland Credit Opportunities CDO Asset Holdings Ltd.		3/31/2009	Cayman Islands	N/A	Hedge	Highland Credit Opportunities CDO Holdings, Ltd.	Shareholder	100	n/a	Walkers SPV: Rachel Rankin Otelia Scott	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	David Willmore	Y	7/15/2014	Credit Ops Sub-holding fund		
497	Highland Credit Opportunities CDO Holdings, Ltd.		3/31/2009	Cayman Islands	N/A	Hedge	Highland Credit Opportunities CDO, Ltd.	Shareholder	100	n/a	Walkers SPV: David Lloyd Feron Bartley-Davis	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	David Willmore	Y	7/15/2014	Credit Ops Sub-holding fund		
498	Highland Credit Opportunities Master Assets Holdings Ltd.		4/16/2009	Cayman Islands	N/A	Hedge	Highland Credit Opportunities CDO, L.P.	Shareholder	100	n/a	James Dondero Mark Okada	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	David Willmore	Y	7/15/2014	Credit Ops Sub-holding fund		
499	Highland Crusader Fund GP, L.P.		10/20/2005	Delaware	N/A	Hedge	Highland Capital Management, L.P.	Limited Partner	99	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
500	Highland Crusader Fund GP, L.P.		10/20/2005	Delaware	N/A	Hedge	Highland Crusader GP, LLC	General Partner	1	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
501	Highland Crusader Fund II, Ltd.		1/21/2002	Bermuda	N/A	Hedge	Third Party Investors	Shareholder	90.45	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP Penny Cornell-Secy MQ Services-Asst Secy	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
502	Highland Crusader Fund II, Ltd.		1/21/2002	Bermuda	N/A	Hedge	Highland Capital Management (401(k) Plan)	Shareholder	0.04	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP Penny Cornell-Secy MQ Services-Asst Secy	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
503	Highland Crusader Fund II, Ltd.		1/21/2002	Bermuda	N/A	Hedge	Highland Capital Management, L.P.	Shareholder	4.14	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP Penny Cornell-Secy	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
504	Highland Crusader Fund II, Ltd.		1/21/2002	Bermuda	N/A	Hedge	Highland Capital Management, Ltd. (Deferred Fees)	Shareholder	4.08	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP Penny Cornell-Secy	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
505	Highland Crusader Fund II, Ltd.		1/21/2002	Bermuda	N/A	Hedge	Highland Capital Management Services, Inc.	Shareholder	1.29	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP Penny Cornell-Secy	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
506	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	Dallas Police and Fire	Limited Partner	11.17	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
507	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.	Limited Partner	4.78	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
508	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	Highland Crusader Fund GP, L.P.	General Partner	0	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
509	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	Highland Capital Management Services, Inc.	Limited Partner	3.24	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
510	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	Highland Capital Management, L.P.	Limited Partner	5.71	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
511	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	Barclays (Eames, Ltd.)	Limited Partner	27.19	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
512	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	James Dondero	Limited Partner	0.04	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
513	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	Mark Okada	Limited Partner	0.61	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
514	Highland Crusader Fund, L.P.		7/10/2000	Delaware	TX	Hedge	Third Party Investors	Limited Partner	47.27	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
515	Highland Crusader Fund, Ltd.		8/1/2000	Bermuda	N/A	Hedge	Highland Capital Management, Ltd. (Deferred Fees)	Shareholder	7.60	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP Penny Cornell-Secy	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
516	Highland Crusader Fund, Ltd.		8/1/2000	Bermuda	N/A	Hedge	Third Party Investors	Shareholder	92.40	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
517	Highland Crusader GP, LLC		10/20/2005	Delaware	N/A	Hedge	Highland Capital Management, L.P.	Member	100	n/a	Member	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
518	Highland Crusader Holding Corporation		3/20/2006	Delaware	N/A	Hedge	Highland Crusader Offshore Partners, L.P.	Shareholder	100	n/a	James Dondero	Dondero-Pres Okada-EVP	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08	fka Highland Crusader Real Estate Holding Corp.	
519	Highland Crusader Offshore Partners, L.P.		7/10/2000	Bermuda	N/A	Hedge	Highland Crusader Fund GP, L.P.	General Partner	0	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
520	Highland Crusader Offshore Partners, L.P.		7/10/2000	Bermuda	N/A	Hedge	Highland Crusader Fund II, Ltd.	Limited Partner	77.96	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
521	Highland Crusader Offshore Partners, L.P.		7/10/2000	Bermuda	N/A	Hedge	Highland Crusader Fund, L.P.	Limited Partner	18.10	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
522	Highland Crusader Offshore Partners, L.P.		7/10/2000	Bermuda	N/A	Hedge	Highland Crusader Fund, Ltd.	Limited Partner	3.94	n/a	GP	N/A	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA TERMINATED	8/4/2016	Winding down as of 11/15/08		
523	Highland Debt Dislocation Fund (Cayman), L.P.		2/22/2016	Cayman Islands	N/A	Hedge	Highland Debt Dislocation Fund GP, LLC	General Partner					Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	David Willmore	Y	6/30/2017			
524	Highland Debt Dislocation Fund (Cayman), L.P.		2/22/2016	Cayman Islands	N/A	Hedge	James Dondero	Limited Partner					Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	David Willmore	Y	6/30/2017			
525	Highland Debt Dislocation Fund GP, LLC		2/12/2016	Delaware	N/A	Hedge	Highland Capital Management, L.P.	Member	100	n/a			Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	David Willmore	Y	4/20/2017			
526	Highland Debt Dislocation Fund SLP, LLC		2/12/2016	Delaware	N/A	Hedge	Highland Capital Management, L.P.	Member	100	n/a			Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	David Willmore	Y	4/20/2017			
527	Highland Debt Dislocation Fund, L.P.		3/1/2016	Delaware	N/A	Hedge	Highland Debt Dislocation Fund GP, LLC	General Partner					Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	David Willmore	Y	4/20/2017			
528	Highland Debt Dislocation Master Fund, L.P.		2/22/2016	Cayman Islands	N/A	Hedge	Highland Debt Dislocation Fund GP, LLC	General Partner					Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	David Willmore	Y	6/30/2017			

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	
529	Highland Debt Dislocation Master Fund, L.P.		2/22/2016	Cayman Islands	N/A	Hedge	James Dondero	Limited Partner									Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	David Willmore	Y	6/30/2017				
530	Highland Diversified Credit Fund GP, L.P.		10/20/2005	Delaware	N/A	I-Fund	Highland Capital Management, L.P.	Limited Partner	99	n/a	GP		N/A				Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	Taylor Colbert	Y	2/12/2018	GP of Diversified Credit (fka Commingled Loan)	fka Highland Commingled Loan Fund GP, L.P.		
531	Highland Diversified Credit Fund GP, L.P.		10/20/2005	Delaware	N/A	I-Fund	Highland Diversified Credit GP, LLC	General Partner	1	n/a	GP		N/A				Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	Taylor Colbert	Y	2/12/2018				
532	Highland Diversified Credit Fund, L.P.		11/19/1999	Delaware	TX	I-Fund	Highland Diversified Credit Fund GP, L.P.	General Partner	0	n/a	GP		N/A				Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	Taylor Colbert	Y	2/12/2018	Onshore feeder	fka Highland Commingled Loan Fund, L.P.		
533	Highland Diversified Credit Fund, L.P.		11/19/1999	Delaware	TX	I-Fund	Highland Capital Management, L.P.	Limited Partner	100.00%	n/a	GP		N/A				Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	Taylor Colbert	Y	2/12/2018				
534	Highland Diversified Credit Fund, Ltd.		11/11/2000	Bermuda	N/A	Hedge	Third Party Investors	Shareholder	100	n/a	James Dondero, Roderick Forrest, Nicholas Hoskins	James Dondero-Pres Roderick Forrest-VP Penny Cornell-Secy N/A	Dondero, Okada, Britain, Ellington, Boyce, Terry, Waterhouse,Wise, Stoops, Chism	Josh Terry	Chris Dunn	Y	12/3/2013	fka Highland Commingled Loan Fund, Ltd.				BMA deregistered as of 10/23/13			
535	Highland Diversified Credit GP, LLC		10/20/2005	Delaware	N/A	I-Fund	Highland Capital Management, L.P.	Member	100	n/a	Member						Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Trey Parker	Taylor Colbert	Y	2/12/2018	GP of Diversified Credit (fka Commingled Loan)	fka Highland Commingled Loan GP, LLC		
536	Highland Dividend Equity Fund		10/31/2011	Massachusetts	N/A	Retail	Third Party Investors	Common	99.42	1,623,120.50	Independent Trustees: Dr. Bob Froehlich, Bryan Ward, Tim Hui,	Ethan Powell-EVP/PEO F. Waterhouse-Treas Dustin Norris-A. Treas	Ethan Powell-EVP/PEO F. Waterhouse-Treas Dustin Norris-A. Treas	Dustin Norris	James Palmer	Y	Terminated 2/23/16	Series of trust of Highland-Funds II				HCMFA - advisor, Brookmont capital - Subadvisor			
537	Highland Employee Retention Assets II LLC		3/16/2016	Delaware	N/A	HCM	N/A	N/A	N/A	N/A								Thomas Surgent	Kristin Hendrix	Y	2/24/2017	Liquidated as of 1/25/16 DID NOT LAUNCH			
538	Highland Equity Focus Fund GP, L.P.		10/20/2005	Delaware	N/A	Private Fund	Highland Capital Management, L.P.	Limited Partner	99	n/a	GP		N/A				Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Palmer, Stoops, Chism	James Dondero	Taylor Colbert	Y	4/26/2016	GP of Equity Focus			
539	Highland Equity Focus Fund GP, L.P.		10/20/2005	Delaware	N/A	Private Fund	Highland Equity Focus GP, LLC	General Partner	1	n/a	GP		N/A				Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Palmer, Stoops, Chism	James Dondero	Taylor Colbert	Y	4/26/2016	GP of Equity Focus			
540	Highland Equity Focus Fund, L.P.		8/1/2002	Delaware	TX	Private Fund	Highland Equity Focus Fund GP, L.P.	General Partner	0	n/a	GP		N/A				Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Palmer, Stoops, Chism	James Dondero	Taylor Colbert	Y	4/26/2016				
541	Highland Equity Focus Fund, L.P.		8/1/2002	Delaware	TX	Private Fund	Neutra Ltd.	Limited Partner	99.57	n/a	GP		N/A				Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Palmer, Stoops, Chism	James Dondero	Taylor Colbert	Y	4/26/2016				
542	Highland Equity Focus Fund, L.P.		8/1/2002	Delaware	TX	Private Fund	Mark Okada	Limited Partner	0.43	n/a	GP		N/A				Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Palmer, Stoops, Chism	James Dondero	Taylor Colbert	Y	4/26/2016				
543	Highland Equity Focus GP, LLC		10/20/2005	Delaware	N/A	Private Fund	Highland Capital Management, L.P.	Member	100	n/a	Member		N/A				Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Palmer, Stoops, Chism	James Dondero	Taylor Colbert	Y	4/26/2016	GP of Equity Focus			
544	Highland Event Driven Fund		7/20/2007	Delaware	N/A	Retail												Joe Dougherty	Brian Mitts	Y	3/29/2010	Never launched;			
545	Highland Financial Real Estate Corporation		3/15/2006	Maryland	N/A	HFP	Highland Capital Management, L.P.	Shareholder	49	51	Jim Dondero	Jim Dondero-Pres Cliff Stoops-Secy & Interim	Jim Dondero / Cliff Stoops	Philip Braner	Cliff Stoops	Y	12/31/2009								
546	Highland Financial Real Estate Corporation		3/15/2006	Maryland	N/A	HFP	Highland Financial Partners, L.P.	Shareholder	51	49	Jim Dondero	Jim Dondero-Pres Cliff Stoops-Secy & Interim	Jim Dondero / Cliff Stoops	Philip Braner	Cliff Stoops	Y	12/31/2009								
547	Highland Financial Real Estate TRS, Inc.		7/19/2007	Delaware	N/A	HFP	Highland Financial Real Estate Corporation	Shareholder	100	100	Jim Dondero	Jim Dondero-Pres Cliff Stoops-Secy & Interim	Jim Dondero / Cliff Stoops	Philip Braner	Cliff Stoops	Y	12/31/2009								
548	Highland Financial Solutions, LLC		5/24/2007	Delaware	N/A	Retail	Highland Distressed Opportunities, Inc.	Member	100									Joe Dougherty		Y	1/14/2010				
549	Highland Floating Rate Advantage Fund		11/26/2007	Delaware		Retail		Common-Class Z	0	41,459	Trustees: Bryan Ward, Scott Kavanaugh, James Leary,	Dougherty-Pres/CEO Powell-Sec Mitts-Treas	Dougherty-Pres/CEO Powell-Sec Mitts-Treas	Joe Dougherty	Brian Mitts	Terminated	6/13/2011	Assets acquired by Highland Floating Rate Opportunities Fund							
550	Highland Floating Rate Fund		11/26/2007	Delaware		Retail	HCMLP 401(k) & DBP Plans	Common-Class Z	0.01	74,810	Trustees: Bryan Ward, Scott Kavanaugh, James Leary,	Dougherty-Pres/CEO Powell-Sec Mitts-Treas	Dougherty-Pres/CEO Powell-Sec Mitts-Treas	Joe Dougherty	Ethan Powell	Terminated	6/13/2011	Assets acquired by Highland Floating Rate Opportunities Fund							
551	Highland Floating Rate Opportunities Fund		1/13/2000	Delaware	N/A	Retail	Highland Capital Management, L.P.	Common	0.10%	99,428.54	Independent Trustees: Dr. Bob Froehlich	Brad Ross-Pres/PEO Trey Parker-EVP	Brad Ross-Pres/PEO Trey Parker-EVP	Dustin Norris	James Palmer/Austin Spence	Y		Acquired assets from Highland Floating Rate Advantage Fund & Highland Floating Rate Fund on							
552	Highland Floating Rate Opportunities Fund		1/13/2000	Delaware	N/A	Retail	Highland 401(k) Plan	Common	0.20%	189,390.96	Independent Trustees: Dr. Bob Froehlich	Brad Ross-Pres/PEO Trey Parker-EVP	Brad Ross-Pres/PEO Trey Parker-EVP	Dustin Norris	James Palmer/Austin Spence	Y		Acquired assets from Highland Floating Rate Advantage Fund & Highland Floating Rate Fund on							
553	Highland Floating Rate Opportunities Fund		1/13/2000	Delaware	N/A	Retail	James Dondero and Mark Okada	Common	0.04%	41,480.19	Independent Trustees: John Honis	F. Waterhouse-Brad Ross-Pres/PEO Trey Parker-EVP	F. Waterhouse-Brad Ross-Pres/PEO Trey Parker-EVP	Dustin Norris	James Palmer/Austin Spence	Y		Acquired assets from Highland Floating Rate Advantage Fund & Highland Floating Rate Fund on							
554	Highland Floating Rate Opportunities Fund		1/13/2000	Delaware	N/A	Retail	Third Party Investors	Common	99.66%	#####	Independent Trustees: Dr. Bob Froehlich John Honis Timothy Hui Bryan A. Ward	Trey Parker-EVP F. Waterhouse-Treas/PAO/PFO Cliff Stoops-A. Treas	F. Waterhouse-Treas/PAO/PFO Cliff Stoops-A. Treas	Dustin Norris	James Palmer/Austin Spence	Y		Acquired assets from Highland Floating Rate Advantage Fund & Highland Floating Rate Fund on							
554	Highland Gemini Program (Castor), L.P.		11/14/2016	Delaware		Hedge	Highland Gemini Program GP, LLC	General Partner										Trey Parker	Chris Dunn	Y	11/29/2017				
555	Highland Gemini Program (Castor), L.P.		11/14/2016	Delaware		Hedge	James Dondero	Initial LP											Trey Parker	Chris Dunn	Y	11/29/2017			
556	Highland Gemini Program (Pollux), L.P.		11/15/2016	Cayman Islands		Hedge	Highland Gemini Program GP, LLC	General Partner											Trey Parker	Chris Dunn	Y	11/16/2017			
557	Highland Gemini Program (Pollux), L.P.		11/15/2016	Cayman Islands		Hedge	James Dondero	Initial LP											Trey Parker	Chris Dunn	Y	11/16/2017			
558	Highland Gemini Program , L.P.		11/15/2016	Cayman Islands		Hedge	Highland Gemini Program GP, LLC	General Partner											Trey Parker	Chris Dunn	Y	11/16/2017			
559	Highland Gemini Program , L.P.		11/15/2016	Cayman Islands		Hedge	James Dondero	Initial LP											Trey Parker	Chris Dunn	Y	11/16/2017			
560	Highland Gemini Program GP, LLC		11/14/2016	Delaware		Hedge	Highland Capital Management, L.P.	Member	100										Trey Parker	Chris Dunn	Y	11/29/2017			
561	Highland Global Equity Fund		Acquired by HCM on 2/18/11.	Massachusetts		Retail	Third Party Investors	Common	0	0	Trustees: Tim Hui, Bryan Ward, Scott Kavanaugh, Ethan	Powell-EVP/Sec Mitts-Treas	Powell-EVP/Sec Mitts-Treas	Brian Mitts	Brian Mitts	N	9/2014	Series of trust of Highland-Funds II				HCMFA - advisor, GEAM - Subadvisor	Merged into Highland Global Allocation Fund in 9/2014		
562																									

Table with columns A through X containing financial and legal data for various entities like Highland Goldfield Preserve Holding II, LLC, Highland HFR Equity Hedge ETF, Highland International Equity Fund, etc.

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
595	Highland Purchased Holdings GP, LLC		8/2/2012	Delaware	N/A	Hedge	Highland Capital Management, L.P.	Member	100	N/A	Sole Member - HCMLP	N/A	Dondero, Okada, Britain, Ellington, Boyce, Terry, Waterhouse,Wise, Stoops, Chism	Mark Patrick	Frank Waterhouse	Y	2/11/2013	NOT USED		
596	Highland Residential Trust I, Inc.		6/26/2014	Maryland	N/A	REIT	NexPoint Real Estate Opportunities, LLC (fka Shareholder Freedom REIT LLC)		100		NexPoint Advisors, LP-Manager	Brian Mitts-Pres/Treas Matt McGraner-Secy	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/30/2019			
597	Highland RT Corporation		10/8/2008	Delaware	N/A	Hedge	Highland Capital Management, L.P.	Shareholder	100	n/a	Dondero, Okada	Dondero, Okada, Colvin, Boyce	Dondero, Okada, Dougherty, Boyce, Colvin, Kauffman, Halpin, Post, Stoops, Chism	Dondero/Okada		Y	12/20/2010	Served as Noteholders Agent on HFP Note transaction		
598	Highland S&P AAA CLO ETF					Retail										Y	4/11/2016	Series of trust of Highland Funds I	NEVER LAUNCHED	
599	Highland Special Situations Fund		4/12/2005	Delaware	N/A	Retail	Highland Capital Management, L.P.	Common	n/a	n/a	Trustees: Tim Hui, Dr. Bob Froehlich, Bryan Ward	Ethan Powell-EVP/Sec Brian Mitts-Treas Dustin Norris-A. Treas	Ethan Powell-EVP/Sec Brian Mitts-Treas Dustin Norris-A. Treas	Dustin Norris	James Palmer	Y	6/20/2016	Privately offered closed-end fund with Highland as only shareholder. Fka Restoration Opportunities Fund	Deregistered with SEC on 3.25.2015	
600	Highland Special Situations Fund		4/12/2005	Delaware	N/A	Retail	Third Party Investors	Common	n/a	n/a	Trustees: Tim Hui, Dr. Bob Froehlich, Bryan Ward	Ethan Powell-EVP/Sec Brian Mitts-Treas Dustin Norris-A. Treas	Ethan Powell-EVP/Sec Brian Mitts-Treas Dustin Norris-A. Treas	Dustin Norris	James Palmer	Y	6/20/2016		Deregistered with SEC on 3.25.2015	
601	Highland Special Situations Fund		4/12/2005	Delaware	N/A	Retail	Internal Investors	Preferred	n/a	n/a	Trustees: Tim Hui, Dr. Bob Froehlich, Bryan Ward	Ethan Powell-EVP/Sec Brian Mitts-Treas Dustin Norris-A. Treas	Ethan Powell-EVP/Sec Brian Mitts-Treas Dustin Norris-A. Treas	Dustin Norris	James Palmer	Y	6/20/2016	Redeemed in 2010		Deregistered with SEC on 3.25.2015
602	Highland Special Situations Fund		4/12/2005	Delaware	N/A	Retail	Third Party Investors	Preferred	n/a	n/a	Trustees: Tim Hui, Dr. Bob Froehlich, Bryan Ward	Ethan Powell-EVP/Sec Brian Mitts-Treas Dustin Norris-A. Treas	Ethan Powell-EVP/Sec Brian Mitts-Treas Dustin Norris-A. Treas	Dustin Norris	James Palmer	Y	6/20/2016	Redeemed in 2010		Deregistered with SEC on 3.25.2015
603	Highland Special Situations Fund II		6/5/2008	Delaware	N/A	Retail	-	-	-	-	Trustees: Tim Hui, Scott Kavanaugh, James Leary, Bryan Ward,	Dustin Norris-A. Treas Dougherty-Pres/CEO Borud-EVP	Dustin Norris-A. Treas Dougherty-Pres/CEO Borud-EVP	Joe Dougherty	Jason Blackburn	Y	3/29/2010			
604	Highland Trend Following Fund		3/31/2009	Massachusetts	N/A	Retail	Third Party Investors	Common	0	0	Trustees: Tim Hui, Bryan Ward, Scott Kavanaugh, Ethan HCMLP-Manager	Blackburn-Sec/Treas Powell-EVP/Sec Mitts-Treas	Blackburn-Sec/Treas Powell-EVP/Sec Mitts-Treas	Brian Mitts	Brian Mitts	Y	Liquidated	Series of trust of Highland Funds II	HCMAFA - advisor, Incline capital -Subadvisor	
605	Highland Westgate Investments Holding II, LLC		3/23/2007	Delaware	N/A	Hedge	HWIH II A Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
606	Highland Westgate Investments Holding II, LLC		3/23/2007	Delaware	N/A	Hedge	HWIH II B Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
607	Highland Westgate Investments Holding II, LLC		3/23/2007	Delaware	N/A	Hedge	HWIH II C Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
608	Highland Westgate Investments Holding II, LLC		3/23/2007	Delaware	N/A	Hedge	HWIH II D Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
609	Highland Westgate Investments Holding II, LLC		3/23/2007	Delaware	N/A	Hedge	HWIH II E Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
610	Highland Westgate Investments Holding II, LLC		3/23/2007	Delaware	N/A	Hedge	HWIH II F Inc.	Member	1	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
611	Highland Westgate Investments Holding II, Ltd.		9/7/2006	Cayman Islands	N/A	Hedge	Highland Crusader Offshore Partners, L.P.	Shareholder	100	N/A	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	12/1/2014	Sub of Crusader	CAN BE DISSOLVED	
612	Highland Westgate Investments Holding, LLC		3/28/2007	Delaware	N/A	Hedge	HWIH A Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
613	Highland Westgate Investments Holding, LLC		3/28/2007	Delaware	N/A	Hedge	HWIH B Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
614	Highland Westgate Investments Holding, LLC		3/28/2007	Delaware	N/A	Hedge	HWIH C Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
615	Highland Westgate Investments Holding, LLC		3/28/2007	Delaware	N/A	Hedge	HWIH D Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
616	Highland Westgate Investments Holding, LLC		3/28/2007	Delaware	N/A	Hedge	HWIH E Inc.	Member	19.8	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
617	Highland Westgate Investments Holding, LLC		3/28/2007	Delaware	N/A	Hedge	HWIH F Inc.	Member	1	N/A	HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
618	Highland Westgate Investments Holding, Ltd.		8/9/2006	Cayman Islands	N/A	Hedge	Highland Credit Strategies Master Fund, L.P.	Shareholder	100	N/A	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	12/1/2014	Sub of Credit Strat	CAN BE DISSOLVED	
619	Highland/U.S. Global Infrastructure Fund		8/4/2008	Delaware	N/A	Retail	-	Common	-	-				Joe Dougherty	Jason Blackburn	Y	3/29/2010			
620	Highlander Equity Holdings III, Ltd.		1/15/2013	Cayman Islands	N/A	Euro CLO	Maples	Initial Subscriber	100	1	Maples-Wendy Ebanks, Laura Chisholm	Maples Secretaries (Cayman) Limited -		Josh Terry	Hunter Covitz / Edward Leo	N		Highlander III Repack		
621	Highlander Equity Holdings, Ltd.		12/12/2012	Cayman Islands	N/A	Euro CLO	Maples	Initial Subscriber	100	1	Maples-Christopher Watler, Wendy Ebanks	Maples Secretaries (Cayman) Limited -		Josh Terry	Hunter Covitz / Edward Leo	N		Highlander II Repack		
622	Highlander Euro CDO (Cayman) Ltd.		4/29/2004	Cayman Islands	N/A	CLO	Third Party Investors	Common Shareholder	100		Maples	Maples	Maples	Josh Terry	Hunter Covitz / Edward Leo	Sold to Carlyle	2/28/2012	Issuer for CLO investment structure.	Sold to Carlyle on 2/28/2012	Sold to Carlyle
623	Highlander Euro CDO II (Cayman) Ltd.		6/7/2006	Cayman Islands	N/A	CLO	Third Party Investors	Common Shareholder	100		Maples	Maples	Maples	Josh Terry	Hunter Covitz / Edward Leo	Sold to Carlyle	2/28/2012	Issuer for CLO investment structure.	Sold to Carlyle on 2/28/2012	
624	Highlander Euro CDO II, B.V.		6/7/2006	Netherlands	N/A	Euro CLO	Highlander Equity Holdings, Ltd.	Class F-2 Primary Subordinated	51	35,700,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms.	Carlyle	Carlyle	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlyle	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlyle on 2/28/2012	

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
625	Highlander Euro CDO II, B.V.		6/7/2006	Netherlands	N/A	Euro CLO	Third Party Investors	Class F-1 Secondary Subordinated Notes	49	34,300,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms. Th.F.C. Wijnen	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
626	Highlander Euro CDO III, B.V.		9/13/2006	Netherlands	N/A	Euro CLO	Highlander Equity Holdings III, Ltd.	Class F-1 Secondary Subordinated Notes	11.25	9,000,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms. Th.F.C. Wijnen	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
627	Highlander Euro CDO III, B.V.		9/13/2006	Netherlands	N/A	Euro CLO	Highlander Equity Holdings III, Ltd.	Class F-2 Primary Subordinated Notes	27.25	21,800,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms. Th.F.C. Wijnen	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
628	Highlander Euro CDO III, B.V.		9/13/2006	Netherlands	N/A	Euro CLO	Third Party Investors	Subordinated Notes	61.5	49,200,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms. Th.F.C. Wijnen	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
629	Highlander Euro CDO IV, B.V.		12/11/2006	Netherlands	N/A	Euro CLO	Highland Crusader Offshore Partners, LP	Class F-2 Subordinated Notes	19.92	14,140,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms. Th.F.C. Wijnen	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
630	Highlander Euro CDO IV, B.V.		12/11/2006	Netherlands	N/A	Euro CLO	Highland Credit Strategies Master Fund, LP	Class F-2 Subordinated Notes	14.08	10,000,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms. Th.F.C. Wijnen	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
631	Highlander Euro CDO IV, B.V.		12/11/2006	Netherlands	N/A	Euro CLO	CLO HoldCo, Ltd	Class F-2 Subordinated Notes	51	36,210,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms. Th.F.C. Wijnen	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
632	Highlander Euro CDO IV, B.V.		12/11/2006	Netherlands	N/A	Euro CLO	Third Party Investors	Common Shareholder	15	10,650,000	M.C. van der Sluijs-Plantz, Mr. H.P.C. Mourits, Ms. Th.F.C. Wijnen	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
633	Highlander Euro CDO, B.V.		4/29/2004	Netherlands	N/A	Euro CLO	CLO HoldCo, Ltd	Class F-2 Primary Subordinated Notes	68	34,000,000	Ms. M.C. van der Sluijs-Plantz, Ms. Th.F.C. Wijnen,	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
634	Highlander Euro CDO, B.V.		4/29/2004	Netherlands	N/A	Euro CLO	Third Party Investors	Class F-1 Secondary	32	16,000,000	Ms. M.C. van der Sluijs-Plantz, Ms. Th.F.C. Wijnen,	Carlye	Carlye	Josh Terry	Hunter Covitz / Edward Leo	Servicing contract sold to Carlye	2/28/2012	invest in various products, such as loans, bonds, sfo, synthetics	Servicing contract sold to Carlye on 2/28/2012	
635	Hillcrest IV, LLC		10/17/2011	Delaware	N/A	Retail	Highland Credit Strategies Fund	Member	50	N/A	Member Managed	Member Managed	Powell-EVP/Sec Mitts-Treas Head-CCO/AMLO	Brian Mitts	Brian Mitts	Dissolved	7/12/2013	Assignee of Highland Funds' claims against CBRE and CS re LLV loans		
636	Hillcrest IV, LLC		10/17/2011	Delaware	N/A	Retail	Highland Floating Rate Opportunites Fund	Member	50	N/A	Member Managed	Member Managed	Powell-EVP/Sec Mitts-Treas Head-CCO/AMLO	Brian Mitts	Brian Mitts	Dissolved	7/12/2013	Assignee of Highland Funds' claims against CBRE and CS re LLV loans		
637	Hills of Kings Wood, L.P.		1/3/2006	Texas	N/A	RE	HCREA Kings Wood, L.P.	Limited Partner	50.52	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
638	Hills of Kings Wood, L.P.		1/3/2006	Texas	N/A	RE	Third Party Investors	General Partner	0	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
639	Hills of Kings Wood, L.P.		1/3/2006	Texas	N/A	RE	Third Party Investors	Limited Partner	49.48	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
640	HKW Land Holdings, L.P.		1/3/2006	Texas	N/A	RE	HCREA Kings Wood, L.P.	Limited Partner	50.58	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
641	HKW Land Holdings, L.P.		1/3/2006	Texas	N/A	RE	Third Party Investors	General Partner	0	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
642	HKW Land Holdings, L.P.		1/3/2006	Texas	N/A	RE	Third Party Investors	Limited Partner	49.42	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris/ Jim Pflertner	Drew Wilson	Y	12/31/2012	This entity owns a real estate asset for investment purposes.	Investment property foreclosed	
643	HMCF IB Investors, LLC		6/4/2014	Delaware	N/A	REIT	NexPoint Real Estate Capital, LLC	Member	100	n/a	Member Managed	Member Managed	James Dondero-Pres/PEO Brian Mitts-EVP/PFO/PAO Frank Waterhouse-Treas	Matt McGraner	Brandon Knott	Y	1/31/2018			
644	HMCF RV Investors, LLC		8/7/2014	Delaware	N/A	REIT	NexPoint Real Estate Capital, LLC	Member	100	n/a	Member Managed	Member Managed	James Dondero-Pres/PEO Brian Mitts-EVP/PFO/PAO Frank Waterhouse-Treas	Matt McGraner	Brandon Knott	Y	1/31/2018			
645	Home Interiors & Gifts		3/10/1999	Delaware		PE	Atascosa Investments LLC	Shareholder	0.33	n/a	Joe Colonnetta Barbara Hammond Christina Carter Urschel	Michael Lohner-Pres/CEO Kenneth Cichocki-SVP/CFO/Secy	Michael Lohner-Pres/CEO Kenneth Cichocki-SVP/CFO/Secy Eugenia Price-SVP	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
646	Home Interiors & Gifts		3/10/1999	Delaware		PE	Burnet Partners, LLC	Shareholder	0.38	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
647	Home Interiors & Gifts		3/10/1999	Delaware		PE	Gillespie Income Fund, LLC	Shareholder	0.33	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
648	Home Interiors & Gifts		3/10/1999	Delaware		PE	Highland Crusader Offshore Partners, L.P.	Shareholder	46.31	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
649	Home Interiors & Gifts		3/10/1999	Delaware		PE	Highland Legacy Limited	Shareholder	3.76	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
650	Home Interiors & Gifts		3/10/1999	Delaware		PE	Highland Special Situations Fund	Shareholder	3.27	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
651	Home Interiors & Gifts		3/10/1999	Delaware		PE	Hopkins Capital Partners, LLC	Shareholder	0.33	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
652	Home Interiors & Gifts		3/10/1999	Delaware		PE	Milam High Yield Fund, LLC	Shareholder	0.41	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
653	Home Interiors & Gifts		3/10/1999	Delaware		PE	Navarro Investment Partners, LLC	Shareholder	0.41	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
654	Home Interiors & Gifts		3/10/1999	Delaware		PE	Pam Capital Funding, L.P.	Shareholder	12.09	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
655	Home Interiors & Gifts		3/10/1999	Delaware		PE	Third Party Investors	Shareholder	32.38	n/a	same	same	same	Carl Moore	Clay Callan	Y		NO EQUITY HOLDING		
656	Hopkins Capital Partners, LLC		10/22/2004	Delaware	N/A	Hedge Blocker CLO	Highland Crusader Offshore Partners, L.P.	Member	100	n/a	Member	James Dondero-Pres	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Matt Jameson	James Palmer	CRUSADER IMA	8/4/2016	Sub of Crusader		
657	Hoss I, LLC		5/14/2008	Delaware	N/A	Hedge Blocker CLO	Highland Loan Funding V, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		
658	Hoss II, LLC		5/14/2008	Delaware	N/A	Hedge Blocker CLO	Rockwall CDO, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		
659	Hoss III, LLC		5/14/2008	Delaware	N/A	Hedge Blocker CLO	Grayson CLO, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		
660	Hoss IV, LLC		5/14/2008	Delaware	N/A	Hedge Blocker CLO	Brentwood CLO, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
661	Hoss IX, LLC		5/14/2008	Delaware	N/A	CLO Blocker	Greenbriar CLO, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		
662	Hoss V, LLC		5/14/2008	Delaware	N/A	CLO Blocker	Eastland CLO, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		
663	Hoss VI, LLC		5/14/2008	Delaware	N/A	CLO Blocker	Rockwall CDO II, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		
664	Hoss VII, LLC		5/14/2008	Delaware	N/A	CLO Blocker	Westchester CLO, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		
665	Hoss VIII, LLC		5/14/2008	Delaware	N/A	CLO Blocker	Stratford CLO, Ltd.	Shareholder	100		James Dondero-Manager	N/A	James Dondero-Manager	Josh Terry	Hunter Covitz / Edward Leo	Y	6/18/2012	Conduit entity related to Marcal restructure - provided funds to Outland 77, LLC		
666	HRT Aspen Grove, LLC		7/21/2014	Delaware	N/A	REIT	Freedom REIT LLC	Member	100	n/a			Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/11/2016			
667	HRTBH Arbors, LLC		8/18/2014	Delaware	GA	REIT	HRTBH North Atlanta, LLC	Member	100	n/a	Member Managed	Member Managed	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/31/2018			
668	HRTBH Aspen Grove Owner, LLC		10/9/2014	Delaware	CO	REIT	HRTBH Aspen Grove, LLC	Member	100	n/a	Sole Member	Sole Member	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/11/2016			
669	HRTBH Aspen Grove, LLC		7/21/2014	Delaware	N/A	REIT	BH Equities, LLC	Managing Member	0.1	n/a	Authorized Signatories Brian Mitts Harry Bookey Nicholas H. Roby	Authorized Signatories Brian Mitts Harry Bookey Nicholas H. Roby	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/11/2016			
670	HRTBH Aspen Grove, LLC		7/21/2014	Delaware	N/A	REIT	BH Aspen Grove, LLC	Member	9.9	n/a	Auth Sigs	Auth Sigs	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/11/2016			
671	HRTBH Aspen Grove, LLC		7/21/2014	Delaware	N/A	REIT	HRT Aspen Grove, LLC	Member	90	n/a	Auth Sigs	Auth Sigs	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/11/2016			
672	HRTBH Knolls, LLC		8/18/2014	Delaware	GA	REIT	HRTBH North Atlanta, LLC	Member	100	n/a	Member Managed	Member Managed	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/31/2018			
673	HRTBH Wood Bridge, LLC		8/18/2014	Delaware	GA	REIT	HRTBH North Atlanta, LLC	Member	100	n/a	Member Managed	Member Managed	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/31/2018			
674	HRTBH Wood Station, LLC		8/18/2014	Delaware	GA	REIT	HRTBH North Atlanta, LLC	Member	100	n/a	Member Managed	Member Managed	Brian Mitts Matt McGraner	Matt McGraner	Brandon Knott	Y	1/31/2018			
675	HSMEP Tulsa Plaza, LP					JD	James Dondero	Limited Partner	6.76	as of 12/31/08		N/A		Melissa Schroth	Melissa Schroth	Written off	7/1/2011	Jim's investment property		
676	HSMEP Tulsa Plaza, LP					JD	Third Party Investors	Limited Partner	93.24	as of 12/31/08		N/A		Melissa Schroth	Melissa Schroth	Written off	7/1/2011	Jim's investment property		
677	HT Cornerstone Limited Partnership		1/31/2006	Texas	N/A	RE	HCREA Cornerstone, L.P.	Limited Partner	50	n/a	General Partner	N/A	Davis Deadman, Mike Rossi, Lisa Stuart	Ted Dameris	Tanya Massie	Y	1/9/2009			SOLD TO RREEF IN 2007
678	HT Cornerstone Limited Partnership		1/31/2006	Texas	N/A	RE	Third Party Investors	General Partner	1	n/a	General Partner	n/a	Davis Deadman, Mike Rossi, Lisa Stuart	Ted Dameris	Tanya Massie	Y	1/9/2009			SOLD TO RREEF IN 2007
679	HT Cornerstone Limited Partnership		1/31/2006	Texas	N/A	RE	Third Party Investors	Limited Partner	0.3	n/a	General Partner	n/a	Davis Deadman, Mike Rossi, Lisa Stuart	Ted Dameris	Tanya Massie	Y	1/9/2009			SOLD TO RREEF IN 2007
680	HT Cornerstone Limited Partnership		1/31/2006	Texas	N/A	RE	Third Party Investors	Limited Partner	48.7	n/a	General Partner	n/a	Davis Deadman, Mike Rossi, Lisa Stuart	Ted Dameris	Tanya Massie	Y	1/9/2009			SOLD TO RREEF IN 2007
681	HTT Advisors, AG		7/7/2010	Switzerland	N/A	HCM	Highland Capital Management, AG	Shareholder	100	100,000		N/A	James Dondero Philip Braner	Philip Braner	Gabi Gonzales	Y		New Swiss advisory entity to assist in the management of the Swiss healthcare platform		In liquidation - initial share capital being returned to Dugaboy
682	Hukill REO LLC			Texas		NB	NCI Assets Holding	Member	100					Dierk Hohman	Courtney Burton	Y	8/12/2016			
683	Hutchins Truck Service Partners, L.P.		3/31/2006	Texas	N/A	RE	HCREA Hutchins Truck Service, LP	Limited Partner	90	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.		SOLD AT FORECLOSURE AUCTION IN 2009
684	Hutchins Truck Service Partners, L.P.		3/31/2006	Texas	N/A	RE	Third Party Investors	General Partner	0	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.		SOLD AT FORECLOSURE AUCTION IN 2009
685	Hutchins Truck Service Partners, L.P.		3/31/2006	Texas	N/A	RE	Third Party Investors	Limited Partner	10	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.		SOLD AT FORECLOSURE AUCTION IN 2009
686	HWHI A Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat		CAN BE DISSOLVED
687	HWHI B Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat		CAN BE DISSOLVED
688	HWHI C Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat		CAN BE DISSOLVED

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
689	HWHI D Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
690	HWHI E Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
691	HWHI F Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	Will Mabry	Y	4/8/2014	Sub of Credit Strat	CAN BE DISSOLVED	
692	HWHI II A Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding II, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
693	HWHI II B Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding II, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
694	HWHI II C Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding II, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
695	HWHI II D Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding II, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
696	HWHI II E Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding II, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
697	HWHI II F Inc.		3/23/2007	Delaware	N/A	Hedge	Highland Westgate Investment Holding II, Ltd.	Shareholder	100	n/a	James Dondero	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism	Dondero/Okada	James Palmer	Y	4/8/2014	Sub of Crusader	CAN BE DISSOLVED	
698	Hwy 80 Terrell Partners, Ltd.		8/11/2005	Texas	N/A	RE	HCREA Terrell Land, L.P. (SOLD)	Class A Limited Partner	98.99	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	SOLD	This entity owns a real estate asset for investment purposes.	SOLD	Remove once funds distributed
699	Hwy 80 Terrell Partners, Ltd.		8/11/2005	Texas	N/A	RE	TGDD Terrell Partners, LLC (GP transferred to Third Party)	General Partner	0.01	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	SOLD	This entity owns a real estate asset for investment purposes.	SOLD	Remove once funds distributed
700	Hwy 80 Terrell Partners, Ltd.		8/11/2005	Texas	N/A	RE	Third Party Investors	Class B Limited Partner	1	n/a	General Partner	n/a	Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	SOLD	This entity owns a real estate asset for investment purposes.	SOLD	Remove once funds distributed
701	HySky Communications LLC		11/17/2006	Delaware	N/A	PE	Highland Capital Management, L.P.	Member	84.35	n/a	Gustavo Prilick, Charles McQueary, Joseph Andruslis	HySky CFO, Kevin Van de Grift	HySky CFO, Kevin Van de Grift	Carl Moore	Clay Callan	Y	12/31/2010	Dissolve		Discharged in bankruptcy
702	HySky Communications LLC		11/17/2006	Delaware	N/A	PE	Highland Crusader Fund, L.P.	Member	9.31	n/a	same	same	same	Carl Moore	Clay Callan	Y	12/31/2010	Dissolve		Discharged in bankruptcy
703	HySky Communications LLC		11/17/2006	Delaware	N/A	PE	Highland Capital Management Services	Member	6.34	n/a	same	same	same	Carl Moore	Clay Callan	Y	12/31/2010	Dissolve		Discharged in bankruptcy
704	Indian Creek Development GP, LLC		2/9/2011	Texas	N/A	RE	Highland Capital Management, L.P.	Member	100	n/a	James Dondero Ted Dameris Scott Ellington Manager - Complete Wellness Solutions, LLC	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas Manager - Complete Wellness Solutions, LLC	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the general partner of a partnership that owns a real estate asset for investment purposes.	GP to LW Indian Creek Dev. LP	Dissolve once LP sale finalizes (Isaac)
705	Integrated Wellness Pharmacy, LLC		4/5/2012	Texas	N/A	JD	Complete Wellness Solutions, LLC	Sole Member	100	n/a	James Dondero	James Dondero	James Dondero	Melissa Schroth	Melissa Schroth	Y	11/7/2013	Jim's pharmaceutical investment		
706	KD Rocky Creek, L.P.		8/18/2006	Texas	N/A	RE	Highland Capital Real Estate Fund, L.P.	Class A Limited Partner	89.9	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y		This entity owns a real estate asset for investment purposes.		LP interest abandoned
707	KD Rocky Creek, L.P.		8/18/2006	Texas	N/A	RE	Third Party Investors	Class B Limited Partner	10	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y		This entity owns a real estate asset for investment purposes.		LP interest abandoned
708	KD Rocky Creek, L.P.		8/18/2006	Texas	N/A	RE	Third Party Investors	General Partner	0.1	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y		This entity owns a real estate asset for investment purposes.		LP interest abandoned
709	Keegans Glen Apartments, Ltd.		2/16/2007	Texas	N/A	RE	HCREA Court Glen, LP	Class A Limited Partner	90	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.		LP interest abandoned
710	Keegans Glen Apartments, Ltd.		2/16/2007	Texas	N/A	RE	Third Party Investors	Class B Limited Partner	9.9	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.		LP interest abandoned
711	Keegans Glen Apartments, Ltd.		2/16/2007	Texas	N/A	RE	Third Party Investors	General Partner	0.1	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.		LP interest abandoned
712	Keel LLC		12/12/2012	Delaware	TX	HCM	Foremast LLC	Sole Member	100	N/A	N/A	N/A		JP Sevilla	Kristin Hendrix	Y	12/31/2015	Formed to hold Barclays' interest but not used		
713	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Third Party Investors	Shareholder	50	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		
714	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	The Get Good Non-Exempt Trust No. 1	Shareholder	5.53	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		
715	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Todd Travers	Shareholder	1.37	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		
716	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Mark Okada	Shareholder	2.77	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		
717	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Highland Capital Real Estate Fund, L.P.	Shareholder	9.67	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		
718	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Pat Daugherty	Shareholder	1.37	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		
719	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Kurt Plumer	Shareholder	0.7	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		
720	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Joe Dougherty	Shareholder	0.7	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		
721	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Davis Deadman	Shareholder	1.37	as of 12/31/08	Texas Land Management, LLC, Mark R. Smith Company, Inc.			Melissa Schroth	Melissa Schroth	N		Jim's property investment		

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
722	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Paul Kauffman	Shareholder		0.7 as of 12/31/08	Keller Land Management, LLC, Mark R. Smith Company, Inc.						Melissa Schroth	Melissa Schroth	N			Jim's property investment		
723	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	John Morgan	Shareholder		0.7 as of 12/31/08	Keller Land Management, LLC, Mark R. Smith Company, Inc.						Melissa Schroth	Melissa Schroth	N			Jim's property investment		
724	Keller 1709 Land, Ltd.		1/30/2004	Texas	N/A	JD	Maso Properties, Ltd.	Shareholder		25.13 as of 12/31/08	Keller Land Management, LLC, Mark R. Smith Company, Inc.						Melissa Schroth	Melissa Schroth	N			Jim's property investment		
725	Knobkerrie, LLC		10/28/2009	Texas	N/A		Oil&Gas/Casey PetroCap Management Company LLC	Manager & Member		100	PetroCap Management Company LLC			Richard Rinehart-Manager			Lane Britain	Marc Manzo	Y	8/24/2010		Shell entity - holds no interest		
726	Larkspur, LLC		7/2/2013	Delaware	N/A	HCM	TBD										Isaac Leventon		N			Blocker to hold CS litigation assignment	No assignment yet	
727	LF GrayWest CLO Holdings, LLC		1/15/2010	Delaware	N/A	CLO	Loan Funding VII LLC	Member	34	n/a	HCMLP-Manager	N/A		Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism		Matthew Gray	Ed Leo	Y	4/8/2014		DE blocker to hold Panda Hereford assets			
728	LF GrayWest CLO Holdings, LLC		1/15/2010	Delaware	N/A	CLO	Grayson CLO, Ltd.	Member	33	n/a	HCMLP-Manager	N/A		Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism		Matthew Gray	Ed Leo	Y	4/8/2014		DE blocker to hold Panda Hereford assets			
729	LF GrayWest CLO Holdings, LLC		1/15/2010	Delaware	N/A	CLO	Westchester CLO, Ltd.	Member	33	n/a	HCMLP-Manager	N/A		Dondero, Okada, Britain, Ellington, Terry, Waterhouse,Wise, Stoops, Chism		Matthew Gray	Ed Leo	Y	4/8/2014		DE blocker to hold Panda Hereford assets			
730	Life Settlements Prospects GP, LLC		9/22/2008	Delaware	N/A	Hedge	Highland Capital Management, L.P.	Member	100	n/a	Member	Dondero-Pres Okada-EVP Ellington-Secy		Dondero, Okada, Ellington, Waterhouse, Palmer, Stoops, Chism		Matt Jameson	Tom Beauchamp	Y	8/4/2016		Sub of Crusader	All Crusader-related entities are in wind-down with the Master Partnership		
731	Life Settlements Prospects, L.P.		9/22/2008	Delaware	N/A	Hedge	Highland Crusader Holding Corporation	LP	100	n/a	GP	N/A		Dondero, Okada, Ellington, Waterhouse, Palmer, Stoops, Chism		Matt Jameson	Tom Beauchamp	Y	8/4/2016		Sub of Crusader	All Crusader-related entities are in wind-down with the Master Partnership		
732	LM Houston Apartments, LLC		11/20/2014	Texas	N/A	REIT	Freedom La Mirage, LLC	Member	76.09		Knightvest 2014, LLC (Manager)	Knightvest 2014, LLC (Manager)		Brian Mitts		Matt McGraner	Brandon Knott	N	Dec-17		sold 12/2017			
733	LM Houston Apartments, LLC		11/20/2014	Texas	N/A	REIT	Knightvest La Mirage, LLC	Member	23.91		Knightvest 2014, LLC (Manager)	Knightvest 2014, LLC (Manager)		Brian Mitts		Matt McGraner	Brandon Knott	N	Dec-17		sold 12/2017			
734	Loan Funding IV LLC (Bristol Bay)		9/17/2003	Delaware	N/A	CLO	Citibank, N.A.	Member	100	n/a	Rick Caplan, Doug Warren, Summit Roy,	N/A		Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism		Hunter Covitz	Robert Hill/ Brandon Wurz	Terminated	12/29/2015		Issuer for CLO investment structure.	Assets transferred to Bristol Bay		
735	Loan Funding VII LLC (Valhalla)		4/6/2004	Delaware	N/A	CLO	Citibank, N.A.	Member	100	n/a	Rick Caplan, Doug Warren,	N/A		Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism		Hunter Covitz	Robert Hill/ Brandon	Terminated	7/25/2016		Issuer for CLO investment structure.	Assets transferred to Valhalla		
736	Loan Star State Trust		6/30/2004	Cayman Islands	N/A	Sep Acct	The Norinchuin Bank	Shareholder	100	N/A	Bank of New York Mellon	N/A		Dondero, Okada, Dougherty, Boyce, Colvin, Kauffman, Gilchrist, Post, Stoops, Chism		Paul Kauffman	Jack Bateman	Terminated	1/13/2011		Highland managed separate account for Norinchukin Bank. Management terminated			
737	Lockhill Partners, Ltd.		10/31/2005	Texas	N/A	RE	HCREA Lockhill Retail LP (SOLD)	Limited Partner	50	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y			This entity owns a real estate asset for investment purposes.	SOLD		
738	Lockhill Partners, Ltd.		10/31/2005	Texas	N/A	RE	Third Party Investors	General Partner	1	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y			This entity owns a real estate asset for investment purposes.	SOLD		
739	Lockhill Partners, Ltd.		10/31/2005	Texas	N/A	RE	Third Party Investors	Limited Partner	49	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y			This entity owns a real estate asset for investment purposes.	SOLD		
740	LW Indian Creek Development, L.P.		7/14/2006	Texas	MS	RE	HCREA Indian Creek, L.P. (SOLD)	Class A Limited Partner	89.9	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y	12/30/2014		This entity owns a real estate asset for investment purposes.	Being sold	Can be removed once Isaac finalizes sale	
741	LW Indian Creek Development, L.P.		7/14/2006	Texas	MS	RE	Third Party Investors	Class B Limited Partner	10	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y	12/30/2014		This entity owns a real estate asset for investment purposes.	Being sold	Can be removed once Isaac finalizes sale	
742	LW Indian Creek Development, L.P.		7/14/2006	Texas	MS	RE	Third Party Investors	Class C Limited Partner	0.1	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y	12/30/2014		This entity owns a real estate asset for investment purposes.	Being sold	Can be removed once Isaac finalizes sale	
743	LW Indian Creek Development, L.P.		7/14/2006	Texas	MS	RE	Indian Creek Development GP, LLC	General Partner	0	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y	12/30/2014		This entity owns a real estate asset for investment purposes.	Being sold	Can be removed once Isaac finalizes sale	
744	LW Indian Creek Land, L.P.		7/14/2006	Texas	MS	RE	HCREA Indian Creek, L.P. (SOLD)	Class A Limited Partner	89.9	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y	SOLD		This entity owns a real estate asset for investment purposes.	Sold		
745	LW Indian Creek Land, L.P.		7/14/2006	Texas	MS	RE	Third Party Investors	Class B Limited Partner	10	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y	SOLD		This entity owns a real estate asset for investment purposes.	Sold		
746	LW Indian Creek Land, L.P.		7/14/2006	Texas	MS	RE	Third Party Investors	General Partner	0.1	n/a	Non HCMLP GP	n/a		General Partner Controlled		Ted Dameris	Drew Wilson	Y	SOLD		This entity owns a real estate asset for investment purposes.	Sold		
747	MA Boerne Partners, LP		6/15/2006	Texas	N/A	RE	NexBank Capital, Inc.	Class A Limited Partner	15	n/a	Non HCMLP GP	N/A		N/A		Ted Dameris/ Jim Pfertner	Drew Wilson	Y	SOLD		MA Boerne Partners is a passive investment. NexBank Capital, Inc. ("NBI") received a profits interest, but we don't serve as GP or hold any officer positions in the	Transferred/sold in settlement w/ Terry Gwin Group		
748	MA Boerne Partners, LP		6/15/2006	Texas	N/A	RE	Third Party Investors	Class A Limited Partner	50	n/a	Non HCMLP GP	N/A		N/A		Ted Dameris/ Jim Pfertner	Drew Wilson	Y	SOLD		same	Transferred/sold in settlement w/ Terry Gwin Group		
749	MA Boerne Partners, LP		6/15/2006	Texas	N/A	RE	Third Party Investors	Class B Limited Partner	34.9	n/a	Non HCMLP GP	N/A		N/A		Ted Dameris/ Jim Pfertner	Drew Wilson	Y	SOLD		same	Transferred/sold in settlement w/ Terry Gwin Group		
750	MA Boerne Partners, LP		6/15/2006	Texas	N/A	RE	Third Party Investors	General Partner	0.1	n/a	Non HCMLP GP	N/A		N/A		Ted Dameris/ Jim Pfertner	Drew Wilson	Y	SOLD		same	Transferred/sold in settlement w/ Terry Gwin Group		
751	Mansard Holdings LLC		4/27/2016	Texas	N/A	JD	Highland Capital Management Services, Inc.	Member	100	n/a				JP Sevilla		Melissa Schroth		Y	5/8/2017					
752	McGinnis Land Partners I, L.P.		3/20/2005	Texas	N/A	RE	HCREA Canyon Falls L.P.	Class A Limited Partner	50	n/a	James Dondero	n/a		Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.		Ted Dameris/ Jim Pfertner	Drew Wilson	Y	12/30/2014		This entity owns a real estate asset for investment purposes.	Investment property foreclosed		
753	McGinnis Land Partners I, L.P.		3/20/2005	Texas	N/A	RE	Third Party Investors	Class B Limited Partner	49.9	n/a	James Dondero	n/a		Ted Dameris, Patrick Boyce, Chris Wise, Carter Chism, Clifford Stoops.		Ted Dameris/ Jim Pfertner	Drew Wilson	Y	12/30/2014		This entity owns a real estate asset for investment purposes.	Investment property foreclosed		

Table with columns A through X containing financial and legal data for various entities like McGinnis Land Partners, Merchant Ventures, MF 380 Tollway, Milam High Yield Fund, etc.

Table with columns A through X containing company names, dates, states, and various financial/legal details. Includes entries for North Texas Certified Development Corp, NREA Casa Investors, LLC, NREC AA Investors, LLC, and Pacific East Flamingo, LLC.

Table with columns A through X containing entity details such as name, date, state, type, and financial information.

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
885	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Highland Loan Funding V, Ltd.	Member	7.4	7.40		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
886	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Jasper CLO, Ltd.	Member	1.81	1.81		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
887	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Liberty CLO, Ltd.	Member	5.42	5.42		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
888	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Loan Funding IV LLC	Member	1.81	1.81		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
889	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Loan Funding VII LLC	Member	3.16	3.16		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
890	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Red River CLO, Ltd.	Member	5.42	5.42		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
891	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)						Rockwall CDO, Ltd.	Member	7.04	7.04				Carl Moore	Shawn Lederman	Y	12/14/2012			
892	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Rockwall CDO II, Ltd.	Member	6.23	6.23		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
893	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Southfork CLO, Ltd.	Member	1.81	1.81		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
894	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	Stratford CLO, Ltd.	Member	10.56	10.56		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
895	Slater Drive Property, LLC (f/k/a Marcal Paper Warehouse, LLC)		3/24/2008	Delaware	NJ	PE	westchester CLO, Ltd.	Member	4.69	4.69		HCMLP - Manager	Authorized Sigs: Lane Britain Shawn Lederman	Carl Moore	Shawn Lederman	Y	12/17/12-DE/ 1/24/13-NJ			
896	Solstice Neurosciences Inc.		8/29/2003	Delaware	N/A	PE	Highland CDO Opportunity Master Fund, L.P.	Shareholder	4.3	n/a	Shawn Patrick O'Brien Douglas Fambrough Fazle Husain Liza Page Nelson James Thomas Brett Pope Nathan Hukill Brian Galleher	Shawn O'Brien-President/ CEO Michael Pagnotta Michael Abraham Randall Mastrangeto Dee Grosso	Carl Moore	Carl Moore	Y	8/6/2010	SOLD - DELETE PER C. MOORE			
897	Solstice Neurosciences Inc.		8/29/2003	Delaware	N/A	PE	Highland Credit Opportunities CDO, L.P.	Shareholder	2.4	n/a	same	same	same	Carl Moore	Carl Moore	Y	8/6/2010	SOLD - DELETE PER C. MOORE		
898	Solstice Neurosciences Inc.		8/29/2003	Delaware	N/A	PE	Highland Credit Strategies Master Fund, L.P.	Shareholder	5.4	n/a	same	same	same	Carl Moore	Carl Moore	Y	8/6/2010	SOLD - DELETE PER C. MOORE		
899	Solstice Neurosciences Inc.		8/29/2003	Delaware	N/A	PE	Highland Crusader Offshore Partners, L.P.	Shareholder	12.9	n/a	same	same	same	Carl Moore	Carl Moore	Y	8/6/2010	SOLD - DELETE PER C. MOORE		
900	Solstice Neurosciences Inc.		8/29/2003	Delaware	N/A	PE	Third Party Investors	Shareholder	75	n/a	same	same	same	Carl Moore	Carl Moore	Y		SOLD - DELETE PER C. MOORE		
901	Sterling Capital Long/Short Equity Fund						Sep Acct Sterling Capital Funds (Third Party)	Trust	100	2,391,465	Sterling Capital Funds - Trust / Sterling Capital			Jonthan Lamensdorf	James Palmer/ Austin Spence	Y	1/26/2018	HCHA sub-advised / Subadvisory Agmt as of 12/10/13		
902	Strand Advisors II, Inc.		3/11/1996	Delaware	TX	JD	James Dondero	Shareholder	100	n/a	James Dondero	James Dondero-Pres/Secy Mark Okada-EVP	James Dondero-Pres/Secy Mark Okada-EVP	Melissa Schroth	Melissa Schroth	Y	12/15/2016	Formerly served as GP to Financial Computer Software, LP (FCS)		
903	Strand Advisors VI, LLC		12/22/2004	Delaware	N/A	JD	James Dondero	Member	100	n/a	James Dondero	James Dondero-Pres/Secy	James Dondero-Pres/Secy	Melissa Schroth	Melissa Schroth	Y	12/2/2016	GP to Jim's investment property - 4041 Grassmere		
904	Strand Advisors VII, LLC		12/22/2004	Delaware	N/A	JD	James Dondero	Member	100	n/a	James Dondero	James Dondero-Pres/Secy	James Dondero-Pres/Secy	Melissa Schroth	Melissa Schroth	Y	4/20/2012	GP to Jim's investment property - 4201 Versailles		
905	Strand Advisors VIII, LLC		2/15/2005	Delaware	N/A	JD	James Dondero	Member	100	n/a	James Dondero	James Dondero-Pres/Secy	James Dondero-Pres/Secy	Matt Griffith	Matt Griffith	Y	12/20/2010	GP to Jim's investment property - 3500 Beverly		
906	Strand Advisors X, LLC		8/1/2005	Delaware	N/A	JD	James Dondero	Member	100	n/a	James Dondero	James Dondero-Pres/Secy	James Dondero-Pres/Secy	Matt Griffith	Matt Griffith	Y	12/20/2010	GP to Jim's investment property - 3708 Harvard		
907	Strand Advisors XI, LLC		9/27/2005	Delaware	TX	JD	James Dondero	Member	100	n/a	James Dondero	James Dondero-Pres/Secy	James Dondero-Pres/Secy	Melissa Schroth	Melissa Schroth	Y	12/2/2016	GP to Jim's investment property - 4223 Bordeaux		
908	Strand Advisors XII, LLC		1/17/2006	Delaware	N/A	JD	James Dondero	Member	100	n/a	James Dondero	James Dondero-Pres/Secy	James Dondero-Pres/Secy	Matt Griffith	Matt Griffith	Y	12/20/2010	GP to Jim's investment property - 3700 Euclid		
909	Strand Advisors XIV, LLC		5/26/2006	Delaware	N/A	JD	James Dondero	Member	100	n/a	James Dondero	James Dondero-Pres/Secy	James Dondero-Pres/Secy	Matt Griffith	Matt Griffith	Y	12/20/2010	GP to Jim's investment property - 3704 Euclid		
910	Strand Advisors XV, LLC		5/26/2006	Delaware	N/A	JD	James Dondero	Member	100	n/a	James Dondero	James Dondero-Pres/Secy	James Dondero-Pres/Secy	Matt Griffith	Matt Griffith	Y	1/15/2012	GP to Jim's investment property - Andrew Merrick Homes-4301 Bordeaux		
911	Stratford Cayman Holdings, Ltd.		1/7/2009	Cayman Islands	N/A	CLO Blocker	Stratford CLO, Ltd.	Shares	100	100	Maples Finance	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Hunter Covitz	Brandon Wurz	Y		Blocker 100% owned by the CLO to hold ownership interest in real estate/real property foreclosures	To be dissolved	
912	Stream Asset Secured Income Fund, LP (Forest Hills)		1/8/2007		JD		The Get Good Non-Exempt Trust No. 1	Limited Partner	8.6	as of 5/31/09	N/A	Investment Manager: Stream Capital Management	Investment Manager: Stream Capital Management	Melissa Schroth	Melissa Schroth	Redeemed	2012		Scott E. Johnson @ Stream Capital Management 2200 Ross Ave, 54th Fl.	

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	X
	Stream Asset Secured Income Fund, LP (Forest Hills)		1/8/2007			JD	Third Party Investors	Limited Partners	91.4	as of 5/31/09	N/A	Investment Manager: Stream Capital Management	Investment Manager: Stream Capital Management	Melissa Schroth	Melissa Schroth	Redeemed	2012			
913																				
914	Sur Mer Phase II Holdings LLC		12/18/2008	Delaware	N/A	RE								Ted Dameris	Ted Dameris	N		Per Ted Dameris, this entity was created not by nor for Highland in connection with a CS loan transaction but was not used.	This is not a Highland affiliate and Highland is not responsible in anyway	
915	Sur Mer Phase II Member LLC		12/18/2008	Delaware	N/A	RE								Ted Dameris	Ted Dameris	N		Per Ted Dameris, this entity was created not by nor for Highland in connection with a CS loan transaction but was not used.	This is not a Highland affiliate and Highland is not responsible in anyway	
916	SV TIC Residential Partners, LLC		1/11/2016	Delaware	TX	REIT-JD	201 Tarrant Partners, LLC	Member	100	n/a	Sole Member	James Dondero Matt McGraner		Matt McGraner	Melissa Schroth	Y	12/26/2018			
917	Tesoro Golf Holdings LLC		12/18/2008	Delaware	FL	PE	G-LA Resorts Holdings LLC	Member	100		Ted Dameris	Member	Member	Ted Dameris	Ted Dameris	Y	5/27/2016		Dallas, TX 75201	
918	TGDD Terrell Partners, LLC		10/26/2005	Texas	N/A	RE	James Dondero	Member	100	n/a	James Dondero Ted Dameris Scott Ellington	James Dondero-Pres Ted Dameris-VP Scott Ellington -Secy/Treas	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	10/30/2014	This entity is the general partner of a partnership that owns a real estate asset for investment purposes (HWY 80 Terrell Partners, Ltd)	INTEREST SOLD	sjohnson@streamsc.com DISSOLVE
919	The Canis Major Trust		8/31/2005	Texas	N/A	JD	James Dondero	Grantor/ Beneficiary	100	n/a	James Dondero-Trustee	James Dondero-Trustee	James Dondero-Trustee	Matt Griffith	Matt Griffith	Terminated	8/31/2010	All assets transferred to JD personally due to the outstanding payables due to JD		
920	The Canis Minor Trust		11/29/2002	Texas	N/A	JD	James D. Dondero Descendants	Grantor/ Beneficiary	100	n/a	James Dondero-Trustee	James Dondero-Trustee	James Dondero-Trustee	Melissa Schroth	Melissa Schroth	Terminated	11/30/2007	All assets transferred to The Get Good Non-Exempt Trust No. 2		
921	The Dugaboy Trust		9/26/2008	Delaware	N/A	JD	James Dondero	Family Trustee	100	n/a	James Dondero-Trustee	James Dondero-Trustee	James Dondero-Trustee	Matt Griffith	Matt Griffith	Terminated	11/16/2010	All assets transferred to The Dugaboy Investment Trust		
922	The Get Better Trust		6/10/2002	Texas	N/A	JD	James D. Dondero Descendants	Grantor/ Beneficiary	100	n/a	James Dondero-Trustee	James Dondero-Trustee	James Dondero-Trustee	Melissa Schroth	Melissa Schroth	Terminated	6/11/2007	All assets transferred to The Get Good Non-Exempt Trust No. 1		
923	The Mooreland Fund III 380 Comm Office, L.P.		12/13/2005	Texas	N/A	RE	Mooreland Fund General Parnter, Inc.	General Partner	0	-	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Drew Wilson	Y	FORECLOSED		write off	
924	The Mooreland Fund III 380 Comm Office, L.P.		12/13/2005	Texas	N/A	RE	Highland Capital Real Estate Fund, L.P.	Partnership Interest Member	100	1,063,694	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Drew Wilson	Y	FORECLOSED		write off	
925	The Tutwiler Hotel LLC			Delaware	NB		NexBank Capital, Inc.	Member	100					Dierk Hohman	Courtney Burton	Y	9/25/2015			
926	Tollway East GP, LLC		2/11/2010	Texas	N/A	RE	Highland Capital Management, L.P.	Member	100		Managers: Dondero, Dameris, Ellington	N/A	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/27/2010	New GP of MF 380 Tollway East, LP		
927	Tollway West GP, LLC		2/11/2010	Texas	N/A	RE	Highland Capital Management, L.P.	Member	100		Managers: Dondero, Dameris, Ellington	N/A	Ted Dameris, Patrick Boyce, Clint Gilchrist, Jason Post, Clifford Stoops.	Ted Dameris	Tanya Massie	Y	12/27/2010	New GP of MF 380 Tollway West, LP		
928	Tribute Management GP, LLC		1/7/2009	Texas	N/A	RE	James Dondero	Sole Member	100	n/a	Non HCMLP GP	James Dondero-Pres	Ted Dameris, Chris Wise, Carter Chism,	Ted Dameris	Drew Wilson	Y	12/30/2014	This entity is the general partner of a partnership that owns a real estate asset for investment purposes.	Investment property	Dissolve once Tribute
929	Triden Village Holding, LP		4/4/2006	Texas	N/A	RE	HCREA Trimarchi of North Dallas, LP	Limited Partner	90	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Drew Wilson	Y	FORECLOSED	This entity owns a real estate asset for investment purposes.	FORECLOSED	Remove once Trimarchi
930	Triden Village Holding, LP		4/4/2006	Texas	N/A	RE	Third Party Investors	General Partner	1	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Drew Wilson	Y	FORECLOSED	This entity owns a real estate asset for investment purposes.	FORECLOSED	Remove once Trimarchi
931	Triden Village Holding, LP		4/4/2006	Texas	N/A	RE	Third Party Investors	Limited Partner	9	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Drew Wilson	Y	FORECLOSED	This entity owns a real estate asset for investment purposes.	FORECLOSED	Remove once Trimarchi
932	Triden Village, L.P.		4/5/2006	Texas	N/A	RE	HCREA Trimarchi of North Dallas, LP	Limited Partner	90	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Drew Wilson	Y	FORECLOSED	This entity owns a real estate asset for investment purposes.	FORECLOSED	Remove once Trimarchi
933	Triden Village, L.P.		4/5/2006	Texas	N/A	RE	Third Party Investors	General Partner	1	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Drew Wilson	Y	FORECLOSED	This entity owns a real estate asset for investment purposes.	FORECLOSED	Remove once Trimarchi
934	Triden Village, L.P.		4/5/2006	Texas	N/A	RE	Third Party Investors	Limited Partner	9	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Drew Wilson	Y	FORECLOSED	This entity owns a real estate asset for investment purposes.	FORECLOSED	Remove once Trimarchi
935	Triple R Eastwood Holdings, LLC		9/2/2010	Delaware	N/A	CLO	Brentwood CLO, Ltd.	Member	37.5	n/a	HCMLP-Manager	n/a	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Carl Moore	Brandon Wurz	Y	12/27/2018	CLO blocker to hold Medical Staffing equity interest		
936	Triple R Eastwood Holdings, LLC		9/2/2010	Delaware	N/A	CLO	Eastland CLO, Ltd.	Member	18.75	n/a	HCMLP-Manager	n/a	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Carl Moore	Brandon Wurz	Y	12/27/2018	CLO blocker to hold Medical Staffing equity interest		
937	Triple R Eastwood Holdings, LLC		9/2/2010	Delaware	N/A	CLO	Red River CLO, Ltd.	Member	6.25	n/a	HCMLP-Manager	n/a	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Carl Moore	Brandon Wurz	Y	12/27/2018	CLO blocker to hold Medical Staffing equity interest		
938	Triple R Eastwood Holdings, LLC		9/2/2010	Delaware	N/A	CLO	Rockwall CDO, Ltd.	Member	25	n/a	HCMLP-Manager	n/a	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Carl Moore	Brandon Wurz	Y	12/27/2018	CLO blocker to hold Medical Staffing equity interest		
939	Triple R Eastwood Holdings, LLC		9/2/2010	Delaware	N/A	CLO	Rockwall CDO II, Ltd.	Member	12.5	n/a	HCMLP-Manager	n/a	Dondero, Okada, Ellington, Parker, Waterhouse, Palmer, Stoops, Chism	Carl Moore	Brandon Wurz	Y	12/27/2018	CLO blocker to hold Medical Staffing equity interest		
940	Tunstall Capital Management GP, LLC		12/16/2009	Delaware	TX	Institutional I Advisor	Highland Capital Management Services, Inc.	Sole Member	100	n/a	Sole Member - HCMSI	Dondero-Pres/Sec Okada-VP Waterhouse-Treas	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Frank Waterhouse	Frank Waterhouse	Y	11/21/2014	GP of a new RIA - fka Higland Capital Management Services CDO GP, LLC - name changed 2/10/10	In wind down	
941	Tunstall Capital Management, L.P.		12/16/2009	Delaware	TX	Institutional I Advisor	Tunstall Capital Management GP, LLC	GP	1	n/a	GP	GP	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Frank Waterhouse	Frank Waterhouse	Y	11/21/2014	New RIA for new Tunstall funds - fka Highland Capital Management Services CDO, LP - name changed 2/10/10	In wind down	
942	Tunstall Capital Management, L.P.		12/16/2009	Delaware	TX	Institutional I Advisor	James Dondero	LP	99	n/a	GP	GP	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Frank Waterhouse	Frank Waterhouse	Y	11/21/2014		In wind down	
943	Tunstall Diversified Opportunities Fund, L.P.		8/10/2010	Delaware	N/A	Hedge	Tunstall GP, LLC	General Partner	100	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Kristin Hendrix	Y	11/21/2014		In wind down	
944	Tunstall GP, LLC		2/4/2009	Delaware	TX	Hedge	Tunstall Capital Management, L.P.	Member	100	n/a	N/A	Dondero-Pres/Sec Okada-VP	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/21/2014		In wind down	
945	Tunstall Opportunities Fund, L.P.		2/4/2009	Delaware	TX	Hedge	Highland Capital Management Services, Inc.	Limited Partner	2.53%	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/21/2014		In wind down	
946	Tunstall Opportunities Fund, L.P.		2/4/2009	Delaware	TX	Hedge	Tunstall Capital Management, L.P.	Limited Partner	0	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/21/2014		In wind down	

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
947	Tunstall Opportunities Fund, L.P.		2/4/2009	Delaware	TX	Hedge	Cornerstone Healthcare Group Holding, Inc.	Limited Partner	97.47%	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/21/2014						In wind down	
948	Tunstall Opportunities Fund, L.P.		2/4/2009	Delaware	TX	Hedge	Trussway Holdings, Inc.	Limited Partner	0	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/21/2014						In wind down	
949	Tunstall Opportunities Fund, L.P.		2/4/2009	Delaware	TX	Hedge	Tunstall GP, LLC	General Partner	0	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/21/2014						In wind down	
950	Tunstall Opportunities Fund, Ltd.		12/16/2009	Cayman Islands	N/A	Hedge	Tunstall GP, LLC	Shareholder	100	1	James Dondero	James Dondero-Director	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	James Palmer	Dissolved	8/17/2012							
951	Tunstall Opportunities Master Fund, L.P.		2/23/2010	Cayman Islands	N/A	Hedge	Tunstall GP, LLC	General Partner	0	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/20/2014						In wind down	
952	Tunstall Opportunities Master Fund, L.P.		2/23/2010	Cayman Islands	N/A	Hedge	Tunstall Opportunities Fund, L.P.	Limited Partner	100	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/20/2014						In wind down	
953	Tunstall Opportunities Master Fund, L.P.		2/23/2010	Cayman Islands	N/A	Hedge	Tunstall Opportunities Fund, Ltd.	Limited Partner	0	n/a	GP	N/A	Dondero, Okada, Waterhouse, Wise, Stoops, Chism	Dondero	Will Mabry	Y	11/20/2014						In wind down	
954	USA Grand Prairie Truck Service Partners, L.P.		3/13/2006	Texas	N/A	RE	HCREA Grand Prairie Truck Service, L.P.	Limited Partner	90	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.					SOLD TO PRIME WEST IN 2007	
955	USA Grand Prairie Truck Service Partners, L.P.		3/13/2006	Texas	N/A	RE	Third Party Investors	General Partner	0	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.					SOLD TO PRIME WEST IN 2007	
956	USA Grand Prairie Truck Service Partners, L.P.		3/13/2006	Texas	N/A	RE	Third Party Investors	Limited Partner	10	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.					SOLD TO PRIME WEST IN 2007	
957	Van Alstyne 386, L.P.			Texas	N/A	RE	Mark Okada	Limited Partner	3.3	as of 12/31/08	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y	7/29/2010	This entity owns a real estate asset for investment purposes.					LP interest abandoned	
958	Van Alstyne 386, L.P.			Texas	N/A	RE	The Get Good Trust	Limited Partner	5.5	as of 12/31/08	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y	7/29/2010	This entity owns a real estate asset for investment purposes.					LP interest abandoned	
959	Van Alstyne 386, L.P.			Texas	N/A	RE	Todd and Kim Travers	Limited Partner	2.2	as of 12/31/08	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y	7/29/2010	This entity owns a real estate asset for investment purposes.					LP interest abandoned	
960	Van Alstyne 386, L.P.			Texas	N/A	RE	David Smith	Limited Partner	16.5	as of 12/31/08	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y	7/29/2010	This entity owns a real estate asset for investment purposes.					LP interest abandoned	
961	Van Alstyne 386, L.P.			Texas	N/A	RE	Highland Real estate Fund 2002-A	Limited Partner	22	as of 12/31/08	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y	7/29/2010	This entity owns a real estate asset for investment purposes.					LP interest abandoned	
962	Van Alstyne 386, L.P.			Texas	N/A	RE	Third Party Investors	General Partner	50.5	as of 12/31/08	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Donna Engstrom	Y	7/29/2010	This entity owns a real estate asset for investment purposes.					LP interest abandoned	
963	W/J Tribute, Ltd.		12/14/2005	Texas	N/A	RE	Tribute Management GP, LLC	General Partner	0	n/a	General Partner	N/A	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	SOLD	This entity owns a real estate asset for investment purposes.					SOLD	Remove once Tribute funds distributed and dissolved
964	W/J Tribute, Ltd.		12/14/2005	Texas	N/A	RE	HCREA The Tribute, L.P.	Limited Partner	97	n/a	General Partner	N/A	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	SOLD	This entity owns a real estate asset for investment purposes.					SOLD	Remove once Tribute funds distributed and dissolved
965	W/J Tribute, Ltd.		12/14/2005	Texas	N/A	RE	Third Party Investors	Limited Partner	3	n/a	General Partner	N/A	Ted Dameris, Chris Wise, Carter Chism, Clifford Stoops.	Ted Dameris	Drew Wilson	Y	SOLD	This entity owns a real estate asset for investment purposes.					SOLD	Remove once Tribute funds distributed and dissolved
966	WAICCS Recovery Partners, LLC		3/17/2015	Delaware	N/A	CLO Blocker	TBD	Members						Isaac Leventon	Jon Reiter	Y	5/18/2016	Blocker to hold CLOs assets in WAICCS but was not used					Can be dissolved per Isaac	
967	WDS 190, L.P.		8/10/2006	Texas	N/A	RE	HCREA Wilcox 190, L.P.	Class A Limited Partner	80	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.					LP interest abandoned	
968	WDS 190, L.P.		8/10/2006	Texas	N/A	RE	Third Party Investors	Class B Limited Partner	19.9	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.					LP interest abandoned	
969	WDS 190, L.P.		8/10/2006	Texas	N/A	RE	Third Party Investors	General Partner	0.1	n/a	Non HCMLP GP	n/a	General Partner Controlled	Ted Dameris	Tanya Massie	Y		This entity owns a real estate asset for investment purposes.					LP interest abandoned	
970	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Brentwood CLO, Ltd.	Members	5.77		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	3/5/2016	CLO blocker to hold J Hotel equity interest				Tax to get clearance to dissolve from Comptroller		
971	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Eastland CLO, Ltd.	Members	15.38		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
972	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Gleneagles CLO, Ltd.	Members	5.77		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
973	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Grayson CLO, Ltd.	Members	13.46		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
974	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Greenbriar CLO, Ltd.	Members	9.62		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
975	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Highland Loan Funding V, Ltd.	Members	3.85		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
976	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Jasper CLO, Ltd.	Members	7.69		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
977	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Liberty CLO, Ltd.	Members	9.62		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
978	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Loan Funding IV LLC	Members	1.92		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
979	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Loan Funding VII LLC	Members	3.85		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
980	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Red River CLO, Ltd.	Members	3.85		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						
981	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Rockwall CDO, Ltd.	Members	3.85		HCMLP-Manager	N/A	Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest						

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
982	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO Blocker	Rockwall CDO II, Ltd.	Members	1.92				HCMLP-Manager	N/A			Dondero, Okada, Britain, Ellington, Terry, Waterhouse, Palmer, Stoops, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest		
983	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO	Southfork CLO, Ltd.	Members	5.77				HCMLP-Manager	N/A			Dondero, Okada, Britain, Ellington, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest		
984	West 22nd Street Luxury Resort, LLC		10/22/2010	Texas	N/A	CLO	Westchester CLO, Ltd.	Members	7.69				HCMLP-Manager	N/A			Dondero, Okada, Britain, Ellington, Chism	Ted Dameris	Jon Reiter	Y	Mar-16	CLO blocker to hold J Hotel equity interest		
	Westgate Investments, LLC		4/7/2005	Delaware	N/A	RE	Ellman	Class A Member	54.58%				Bob Kaufman-EVP/Ellman Management Group, Inc.-Manager	Bob Kaufman-EVP/Ellman Management Group, Inc.-Manager	Ellman		Bob Kaufman-EVP/Ellman Management Group, Inc.-Manager	Ted Dameris/Jim Pflertner	Jim Pflertner	Written off	Jan-12	RE investment portfolio	Investment foreclosed 2012	
985	Westgate Investments, LLC		4/7/2005	Delaware	N/A	RE	Highland Credit Strategies Fund	Class B-1 Member	0.76%				Ellman	Ellman	Ellman		Ellman	Ted Dameris/Jim Pflertner	Jim Pflertner	Written off	Jan-12	RE investment portfolio	Investment foreclosed 2012	
986	Westgate Investments, LLC		4/7/2005	Delaware	N/A	RE	Highland Westgate Investment Holding II, LLC	Class B-1 Member	3.74%				Ellman	Ellman	Ellman		Ellman	Ted Dameris/Jim Pflertner	Jim Pflertner	Written off	Jan-12	RE investment portfolio	Investment foreclosed 2012	
987	Westgate Investments, LLC		4/7/2005	Delaware	N/A	RE	Highland Westgate Investment Holding, LLC	Class B-1 Member	3.03%				Ellman	Ellman	Ellman		Ellman	Ted Dameris/Jim Pflertner	Jim Pflertner	Written off	Jan-12	RE investment portfolio	Investment foreclosed 2012	
988	Westgate Investments, LLC		4/7/2005	Delaware	N/A	RE	Camulous Capital, LP	Class B-1 Member	5.05%				Ellman	Ellman	Ellman		Ellman	Ted Dameris/Jim Pflertner	Jim Pflertner	Written off	Jan-12	RE investment portfolio	Investment foreclosed 2012	
989	Westgate Investments, LLC		4/7/2005	Delaware	N/A	RE	Stanfield Capital Partners, LLC	Class B-1 Member	12.63%				Ellman	Ellman	Ellman		Ellman	Ted Dameris/Jim Pflertner	Jim Pflertner	Written off	Jan-12	RE investment portfolio	Investment foreclosed 2012	
990	Westgate Investments, LLC		4/7/2005	Delaware	N/A	RE	Credit Suisse Management, LLC	Class B-1 Member	5.05%				Ellman	Ellman	Ellman		Ellman	Ted Dameris/Jim Pflertner	Jim Pflertner	Written off	Jan-12	RE investment portfolio	Investment foreclosed 2012	
991	Westgate Investments, LLC		4/7/2005	Delaware	N/A	RE	Credit Suisse Securities (USA) LLC	Class B-2 Member	15.16%				Ellman	Ellman	Ellman		Ellman	Ted Dameris/Jim Pflertner	Jim Pflertner	Written off	Jan-12	RE investment portfolio	Investment foreclosed 2012	
992	Willoughby McCabe and Co., L.P.		1/11/2008	Delaware	N/A	JD	Firearms Venture I, LLC	General Partner	1	n/a			General Partner	N/A	General Partner		General Partner	Melissa Schroth	Melissa Schroth	Y	12/2/2016			
993	Willoughby McCabe and Co., L.P.		1/11/2008	Delaware	N/A	JD	Patrick Willoughby-McCabe	Limited Partner	10	n/a			General Partner	N/A	General Partner		General Partner	Melissa Schroth	Melissa Schroth	Y	12/2/2016			
994	Willoughby McCabe and Co., L.P.		1/11/2008	Delaware	N/A	JD	The Get Good Trust	Limited Partner	89	n/a			General Partner	N/A	General Partner		General Partner	Melissa Schroth	Melissa Schroth	Y	12/2/2016			
995	Wilmington Multi-Manager Alternative Fund					Sep Acct							Wilmington					Michael Gregory/ Jonathan Lamensdorf	James Palmer	N	1/12/2017	HCHA/HCMFA sub-advised	Sub-advisory terminated on 1.12.2017	
996	Windana GP, LLC		2/5/2009	Delaware	N/A	JD	James Dondero	Member	100				James Dondero	N/A	N/A		N/A	Melissa Schroth	Melissa Schroth	Y	12/2/2016	Not Used		
997	Windana, L.P.		2/5/2009	Delaware	N/A	JD	Windana GP, LLC	General Partner	100				Windana GP, LLC	N/A	N/A		N/A	Melissa Schroth	Melissa Schroth	Y	12/2/2016	Not Used		
998	Withers REO LLC			Texas		NB	NCI Assets Holding	Member	100									Dierk Hohman	Courtney Burton	Y	8/12/2016			
999	Woori Highland Healthcare Private Equity Fund I																							
1000	Wynwood Peninsula Venture		1/3/2007	Texas	N/A	RE	Third Party Investors	Managing JV Partner	50	n/a			Non HCMLP Managing JV	n/a	Non HCMLP Managing JV		Non HCMLP Managing JV	Ted Dameris	Drew Wilson	Y	SOLD	This entity is the general partner of a partnership that owns a real estate asset for investment purposes.	INTEREST SOLD IN JV	Remove once Tribute funds distributed and dissolved
1001	Wynwood Peninsula Venture		1/3/2007	Texas	N/A	RE	W/J Tribute, Ltd. (SOLD)	Joint Venture Partner	50	n/a			Non HCMLP Managing JV	n/a	Non HCMLP Managing JV		Non HCMLP Managing JV	Ted Dameris	Drew Wilson	Y	SOLD	This entity is the general partner of a partnership that owns a real estate asset for investment purposes.	INTEREST SOLD IN JV	Remove once Tribute funds distributed and dissolved
1002	Granite Bay Advisors GP, LLC		7/22/2010	Delaware	TX	I-Advisor	Mark Okada	Member	100	n/a	N/A		Mark Okada-Pres Trey Parker-Secy F. Waterhouse-Treas GP	Okada, Parker, Waterhouse, Stoops, Palmer, Chism	Okada, Parker, Waterhouse, Stoops, Palmer, Chism	Jon Poglitsch	Melissa Schroth	Y	8/29/2019	GP of a new RIA - fka Kiyoshi Capital Management GP, LLC - name changed 8/13/10				
1003	Granite Bay Advisors, L.P.		7/22/2010	Delaware	TX	I-Advisor	Granite Bay Advisors GP, LLC	GP	0.1	n/a	GP		Okada, Parker, Waterhouse, Stoops, Palmer, Chism	Okada, Parker, Waterhouse, Stoops, Palmer, Chism	Jon Poglitsch	Kristin Hendrix	Y	8/29/2019	New RIA for proposed new long/short healthcare funds - fka Kiyoshi Capital Management, LP - name changed 8/13/10					
1004	Granite Bay Advisors, L.P.		7/22/2010	Delaware	TX	I-Advisor	Mark Okada	LP	69.9	n/a	GP		Okada, Parker, Waterhouse, Stoops, Palmer, Chism	Okada, Parker, Waterhouse, Stoops, Palmer, Chism	Jon Poglitsch	Kristin Hendrix	Y	8/29/2019						
1005	Granite Bay Advisors, L.P.		7/22/2010	Delaware	TX	I-Advisor	James Dondero	LP	30.0	n/a	GP		Okada, Parker, Waterhouse, Stoops, Palmer, Chism	Okada, Parker, Waterhouse, Stoops, Palmer, Chism	Jon Poglitsch	Kristin Hendrix	Y	8/29/2019						
1006																								
1007	MAR Quail Landing, LLC		10/3/2016	Delaware	OK	REIT-DST	SE Quail Landing, LLC	Member	100									Matt McGraner	Bonner McDermett		2019	Project Unicorn - Quail Landing	SOLD BEGINNING OF 2019	

	A	B	C	D	E	F	G	H	I	J	O	P	Q	R	S	T	U	V	W	
	Name	EIN	Formation Date	Jurisdiction	Foreign Qualification	Category	Owners	Ownership Type	Ownership %	Voting Shares	Director/Manager/Trustee	Officers	Bank Signatory	Fund Contact	Accounting Contact Books & Records	Dissolve (Y/N)	Termination Date	Entity Description (one sentence)	Other Notes	
1	Acis CLO Value Fund II Charitable DAF Ltd.		2/5/2013	Cayman Islands	N/A	DAF	Charitable DAF Fund, L.P.	Shareholder	100	n/a	Grant Scott (Maples)	Grant Scott	Grant Scott	Mark Patrick	Taylor Colbert	N				
2	Charitable DAF Fund, L.P.		10/28/2011	Cayman Islands	N/A	DAF	Charitable DAF GP, LLC	GP	1	n/a	Grant Scott (Intertrust)	GP	Grant Scott	Mark Patrick	Taylor Colbert	N				
3	Charitable DAF Fund, L.P.		10/28/2011	Cayman Islands	N/A	DAF	Charitable DAF HoldCo, Ltd.	LP	99	n/a	Grant Scott (Intertrust)	GP	Grant Scott	Mark Patrick	Taylor Colbert	N				
4	Charitable DAF GP, LLC		10/25/2011	Delaware	N/A	DAF	Grant Scott	Managing Member	100	n/a	Grant Scott-Managing Member	n/a	Grant Scott	Mark Patrick	Taylor Colbert	N			Grant Scott became managing member as of 1/1/2012	
5	Charitable DAF HoldCo, Ltd		10/27/2011	Cayman Islands	N/A	DAF	Grant Scott	Management Shares	0	100	Grant Scott (Intertrust)	n/a	Grant Scott	Mark Patrick	Taylor Colbert	N				
6	Charitable DAF HoldCo, Ltd		10/27/2011	Cayman Islands	N/A	DAF	Highland Dallas Foundation, Inc.	Participation Shares	32.786885	100	Grant Scott (Intertrust)	n/a	Grant Scott	Mark Patrick	Taylor Colbert	N				
7	Charitable DAF HoldCo, Ltd		10/27/2011	Cayman Islands	N/A	DAF	Highland Kansas City Foundation, Inc.	Participation Shares	32.786885	100	Grant Scott (Intertrust)	n/a	Grant Scott	Mark Patrick	Taylor Colbert	N				
8	Charitable DAF HoldCo, Ltd		10/27/2011	Cayman Islands	N/A	DAF	Highland Santa Barbara Foundation, Inc.	Participation Shares	32.786885	100	Grant Scott (Intertrust)	n/a	Grant Scott	Mark Patrick	Taylor Colbert	N				
9	Charitable DAF HoldCo, Ltd		10/27/2011	Cayman Islands	N/A	DAF	Highland Capital Management, LP Charitable Fund	Participation Shares	1.6393443	5	Grant Scott (Intertrust)	n/a	Grant Scott	Mark Patrick	Taylor Colbert	N				
10	CLO HoldCo, Ltd.		12/13/2010	Cayman Islands	N/A	DAF	Charitable DAF Fund, L.P.	Shareholder	100	1	Grant Scott (Intertrust)	n/a	Grant Scott	Mark Patrick	Taylor Colbert	N				
11	Empower Dallas Foundation, Inc.		2/10/2015	Delaware	N/A	JD	The Dallas Foundation	Institutional Member	66.67	2	Institutional Directors: Gary Garcia/Mary Jalonick Individual Director: Grant Scott	Grant Scott-Chair/Pres Mary Jalonick-VP/CFO Gary Garcia-Secy	Mark Patrick	Melissa Schroth	N			Charitable giving set up with The Dallas Foundation		
12	Empower Dallas Foundation, Inc.		2/10/2015	Delaware	N/A	JD	Grant Scott	Individual Member	33.33	1	Institutional Directors: Gary Garcia/Mary Jalonick Individual Director: Grant Scott	Grant Scott-Chair/Pres Mary Jalonick-VP/CFO Gary Garcia-Secy	Mark Patrick	Melissa Schroth	N			Charitable giving set up with The Dallas Foundation		
13	HCT Holdco 2, Ltd.		12/29/2010	Cayman Islands	N/A	DAF	CLO HoldCo, Ltd.	Shareholder	100	N/A	Grant Scott (Intertrust)	N/A	Grant Scott	Mark Patrick	Taylor Colbert	N				
14	Highland Dallas Foundation, Inc.		11/22/2011	Delaware	N/A	DAF	The Dallas Foundation (third party)	Shareholder	100	100	James Dondero Grant Scott Mary M. Jalonick	James Dondero - Pres Grant Scott - Secy/Treas Mary M. Jalonick - VP James Dondero - Pres Grant Scott - Secy/Treas	Mark Patrick	Taylor Colbert	N			Charitable giving set up with The Dallas Foundation		
15	Highland Kansas City Foundation, Inc.		11/23/2011	Delaware	N/A	DAF	Greater Kansas City Community Foundation (third party)	Shareholder	100	100	James Dondero Grant Scott Debbie Wilkerson	James Dondero - Pres Grant Scott - Secy/Treas Ronald Gallo - VP	Mark Patrick	Taylor Colbert	N			Charitable giving set up with The Dallas Foundation		
16	Highland Santa Barbara Foundation, Inc.		11/22/2011	Delaware	N/A	DAF	Santa Barbara Foundation (third party)	Shareholder	100	100	James Dondero Grant Scott Arnold Brier Ronald Gallo	James Dondero - Pres Grant Scott - Secy/Treas Ronald Gallo - VP	Mark Patrick	Taylor Colbert	N			Charitable giving set up with The Dallas Foundation		
17	Liberty CLO Holdco, Ltd.		6/6/2012	Cayman Islands	N/A	DAF	CLO HoldCo, Ltd	Shareholder	100.00	1	Grant Scott (Intertrust)	N/A	Grant Scott	Mark Patrick	Taylor Colbert	N				
18	Liberty Sub, Ltd.		4/12/2018	Cayman Islands	N/A	DAF	Liberty CLO Holdco, Ltd.	Shareholder	100.00	1	Grant Scott (Intertrust)	N/A	Grant Scott	Carl Moore	David Willmore	N			Hold Tandem interest	
19	MGM Studios HoldCo, Ltd.		11/12/2014	Cayman Islands	N/A	DAF	CLO HoldCo, Ltd	Shareholder	100	1	Grant Scott - Director (Intertrust)	N/A	Grant Scott	Mark Patrick	Taylor Colbert	N				
20	BVP Property, LLC		1/4/2012	Delaware	N/A	NB	Liberty CLO Holdco, Ltd.	Member	100		Member Managed	Member Managed		John Holt	Taylor Colbert	N				
21	NCI Apache Trail LLC		5/23/2014	Texas	N/A	NB	Liberty CLO Holdco, Ltd.	Member	100		Member Managed	Member Managed		John Holt	Taylor Colbert	N				
22	NCI Fort Worth Land LLC		5/23/2014	Texas	N/A	NB	Liberty CLO Holdco, Ltd.	Member	100		Member Managed	Member Managed		John Holt	Taylor Colbert	N				
23	NCI Royse City Land LLC		5/23/2014	Texas	N/A	NB	Liberty CLO Holdco, Ltd.	Member	100		Member Managed	Member Managed		John Holt	Taylor Colbert	N				
24	NCI Stewart Creek LLC		5/23/2014	Texas	N/A	DAF	Liberty CLO Holdco, Ltd.	Member	100		Member Managed	Member Managed				N				
25	NLA Assets LLC		12/9/2014	Texas	N/A	NB	Liberty CLO Holdco, Ltd.	Member	100		Member Managed	Member Managed		John Holt	Taylor Colbert	N				
26																				

EXHIBIT 4



WebCivil Supreme - Appearance Detail

Court: New York Supreme Court
Index Number: 650744/2023
Case Name: UBS Securities LLC et al vs. Dondero, James et al
Case Type: Comm-Other
Track: Standard

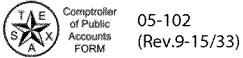
Appearance Information:

Appearance Date	Time	Court Date Purpose	Fully Virtual	Court Date Type	Outcome Type	Justice Part	Remarks	Motion Seq
09/22/2025	09:30 AM	Motion-Notice of Petition	Yes	Remote		Crane, Hon. Melissa A. 60M	ORAL ARGUMENT - REMOTE	2
05/14/2025	09:30 AM	Motion-Notice of Petition	No	Administrative - No Appearance Required	Adjourned	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	SO ORDERED. NYSCEF DOC. #446.	2
04/16/2025	12:00 PM	Conference-Status	Yes	Remote	Held	Crane, Hon. Melissa A. 60		
04/02/2025	11:00 AM	Conference-Status	Yes	Remote	Held	Crane, Hon. Melissa A. 60	MS TEAMS	
07/08/2024	02:15 PM	Motion-Notice of Motion	Yes	Remote	Fully Submitted	Crane, Hon. Melissa A. 60M	ORAL ARGUMENT - REMOTE PRIOR DATE AND TIME CHANGED PER PART'S REQUEST	11
07/08/2024	02:15 PM	Motion-Notice of Motion	Yes	Remote	Fully Submitted	Crane, Hon. Melissa A. 60M	ORAL ARGUMENT - REMOTE PRIOR DATE AND TIME CHANGED PER PART'S REQUEST.	12
07/08/2024	02:15 PM	Motion-Notice of Motion	Yes	Remote	Fully Submitted	Crane, Hon. Melissa A. 60M	ORAL ARGUMENT - REMOTE PRIOR DATE AND TIME CHANGED PER PART'S REQUEST.	13
06/28/2024	09:30 AM	Motion-Notice of Petition	No	Administrative - No Appearance Required	Adjourned	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	SO ORDERED. NYSCEF DOC. #208. MOTION DECIDED	2
05/17/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS	15
05/17/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS	16
05/17/2024	10:30 AM	Conference-Preliminary	Yes	Remote	Held	Crane, Hon. Melissa A. 60	VIA MS TEAMS	
05/15/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS	14
05/09/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Adjourned	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS NO APPEARANCE NECESSARY	11
05/09/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Adjourned	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS NO APPEARANCE NECESSARY	12
05/09/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Adjourned	Crane, Hon. Melissa A.	ROOM 130 SUBMISSIONS NO APPEARANCE NECESSARY	13

						SUBMISSION - NO APPEARANCE		
02/16/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS	10
02/14/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS NO APPEARANCE NECESSARY	6
02/14/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS NO APPEARANCE NECESSARY	7
02/14/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS NO APPEARANCE NECESSARY	8
02/14/2024	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS NO APPEARANCE NECESSARY	9
04/28/2023	09:30 AM	Motion-Notice of Petition	No	Administrative - No Appearance Required	Adjourned	Lebovits, Hon. Gerald SUBMISSION - NO APPEARANCE	PER SO-ORDERED STIP DOC#175/ROOM 130 SUBMISSIONS	2
03/24/2023	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS	4
03/24/2023	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Crane, Hon. Melissa A. SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS	5
03/24/2023	09:30 AM	Motion-Notice of Petition	No	Administrative - No Appearance Required	Adjourned	Lebovits, Hon. Gerald SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS	2
03/24/2023	09:30 AM	Motion-Notice of Motion	No	Administrative - No Appearance Required	Fully Submitted - No Opposition	Lebovits, Hon. Gerald SUBMISSION - NO APPEARANCE	ROOM 130 SUBMISSIONS	3
03/20/2023	02:15 PM	Motion-Order to Show Cause (Returnable)	No	Administrative - No Appearance Required	Fully Submitted	Crane, Hon. Melissa A. 60M	ORAL ARGUMENT VIA MICROSOFT TEAMS - NO PERSONAL APPEARANCE	1

Close

EXHIBIT 5



Texas Franchise Tax Public Information Report

To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP), Professional Associations (PA) and Financial Institutions

■ **Tcode** 13196 Franchise

■ Taxpayer number **3 2 0 7 8 0 8 0 1 5 0** ■ Report year **2 0 2 4**

You have certain rights under Chapter 552 and 559, Government Code, to review, request and correct information we have on file about you. Contact us at 1-800-252-1381.

Taxpayer name **SKYVIEW GROUP, INC.** Blacken circle if the mailing address has changed.

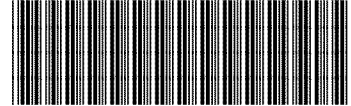
Mailing address **2101 CEDAR SPRINGS RD STE 1200** Secretary of State (SOS) file number or Comptroller file number **0803967249**

City **DALLAS** State **TX** ZIP code plus 4 **75201**

● Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office **2101 CEDAR SPRINGS ROAD STE 1200, DALLAS, TX, 75201**

Principal place of business **2101 CEDAR SPRINGS ROAD STE 1200, DALLAS, TX, 75201**



1000000000015

You must report officer, director, member, general partner and manager information as of the date you complete this report.

Please sign below! This report must be signed to satisfy franchise tax requirements.

SECTION A Name, title and mailing address of each officer, director, member, general partner or manager.

Name SCOTT ELLINGTON	Title DIRECTOR	Director <input checked="" type="radio"/> YES	Term expiration m m d d y y
Mailing address 2101 CEDAR SPRINGS RD STE 1200	City DALLAS	State TX	ZIP Code 75201
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP Code

SECTION B Enter information for each corporation, LLC, LP, PA or financial institution, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership

SECTION C Enter information for each corporation, LLC, LP, PA or financial institution, if any, that owns an interest of 10 percent or more in this entity.

Name of owned (parent) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
--	--------------------	-------------------------------	-------------------------

Registered agent and registered office currently on file (see instructions if you need to make changes)

Agent: **CT CORPORATION SYSTEM** You must make a filing with the Secretary of State to change registered agent, registered office or general partner information.

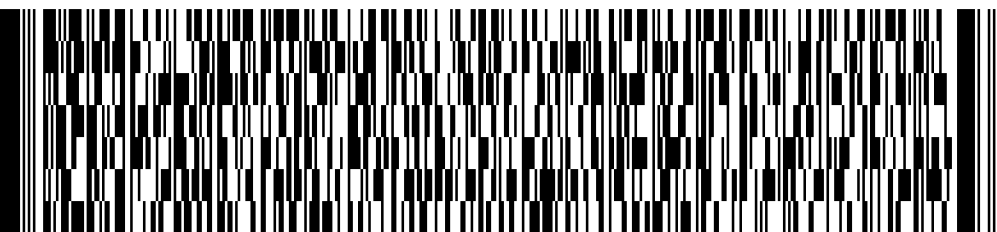
Office: **1999 BRYAN ST STE 900** City **DALLAS** State **TX** ZIP Code **75201**

The information on this form is required by Section 171.203 of the Tax Code for each corporation, LLC, LP, PA or financial institution that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director, member, general partner or manager and who is not currently employed by this or a related corporation, LLC, LP, PA or financial institution.

sign here **FRANK WATERHOUSE** Title **TREASURER** Date **11/04/2024** Area code and phone number **(214) 550 - 4500**

Texas Comptroller Official Use Only



VE/DE PIR IND



EXHIBIT 6

DATED 11 JULY 2025

(1) CROSSVINE LITIGATION FUNDING, LLC

**(2) MARGOT MACINNIS AND SANDIPAN BHOWMIK OF GRANT THORNTON SPECIALIST
SERVICES (CAYMAN) LIMITED IN THEIR CAPACITY AS JOINT OFFICIAL
LIQUIDATORS OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)**

FUNDING AGREEMENT OF JOINT OFFICIAL LIQUIDATORS

Ogier

FUNDING AGREEMENT

DATED 11 JULY 2025

BETWEEN

- (1) **Crossvine Litigation Funding, LLC** of c/o CO Services Cayman Limited Willow House, Cricket Square Cayman Islands (the **Funder**)
- (2) **Margot MacInnis** and **Sandipan Bhowmik** in their capacity as the joint official liquidators of Charitable DAF HoldCo, Ltd (In Official Liquidation), of Grant Thornton Specialist Services (Cayman) Limited, 2nd Floor, Century Yard, Cricket Square PO Box 1044, Grand Cayman, Cayman Islands, KY1-1102 (together and each of them severally the **JOLs**).

(together the **Parties** and each individually a **Party**)

RECITALS:

- A **WHEREAS**, the JOLs were appointed as official liquidators of Charitable DAF HoldCo, Ltd (In Official Liquidation) (the **Company**) pursuant to an order of Justice Jalil Asif KC of the Grand Court of the Cayman Islands dated 6 May 2025
- B **WHEREAS**, the Company was previously the sole limited partner of Charitable DAF Fund, LP (the **Fund**), a Cayman Islands exempted limited partnership. The Company's valuable interest in the Fund was transferred to a third party in December 2024 (the **Disposal**)
- C **WHEREAS**, following the Disposal, the Company is believed to have no, or very limited, liquid assets
- D **WHEREAS**, the JOLs require funding to, among other things meet the Remuneration and Expenses incurred by the JOLs up to and including Effective Date (defined below) in connection with: (i) the conduct of the liquidation of the Company; (ii) pursuing proceedings in the Cayman Islands for and on behalf of the Company against the Company's former directors and entities under their control in connection with the Disposal (the **Claim**); and (iii) obtain ancillary relief in the United States in support of the Claim, and the Funder desires to extend limited funding to the JOLs for these purposes on the terms below
- E **NOW, THEREFORE**, in consideration for the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

AGREED TERMS

1 CONSTRUCTION

- 1.1 For purposes of this Agreement, capitalised terms shall have the meanings set forth herein and in Section 2 below.

- 1.2 Headings are for information only and do not form part of the operative provisions of this Agreement.
- 1.3 References to this Agreement include references to the Recitals.
- 1.4 In this Agreement, unless a clear contrary intention appears:
- (a) words denoting the singular include the plural and vice versa;
 - (b) words denoting any gender include all genders;
 - (c) all references to "\$" or dollars shall mean U.S. Dollars;
 - (d) the word "or" shall include both the conjunctive and the disjunctive meaning thereof; and
 - (e) the words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation."
- 1.5 The terms of this Agreement have been negotiated between the Parties in an arms' length transaction with the advice of counsel and shall not be construed for or against either Party by reason of the drafting or preparation hereof.

2 DEFINITIONS

The following terms shall have the meanings given below:

- 2.1 **"Agreement"** means, collectively, this Agreement, together with all exhibits, schedules and amendments hereto, including all documents expressly incorporated herein by reference.
- 2.2 **"Affiliate"** means as to any Person (i) any other Person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person or its respective successors or (ii) if such Person is an individual, a spouse, parent, sibling, or descendant of such Person, or a trust over which such Person has sole investment and dispositive power for the benefit of such Person, spouse, parent, sibling, or descendant. The term "control" including the terms "controlling," "controlled by," and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting shares, by contract, or otherwise. Affiliates include such entities whether now existing or later established by investment, merger, or otherwise, including the successors and assigns of such Person.
- 2.4 **"Business Day"** means any day except any Saturday, any Sunday, and any day that is a federal legal holiday in the United States and any public holiday in the Cayman Islands.

- 2.5 **"Counsel"** means any barrister(s) who have been or are to be instructed to represent the JOLs in respect of the Claim, or such other barrister or barristers as may be instructed in respect of the Claim from time to time.
- 2.6 **"Court"** means the Grand Court of the Cayman Islands.
- 2.7 **"Defendant(s)"** means any Person against which Litigation is brought or threatened.
- 2.8 **"Documents"** means documents in the possession of the JOLs arising in and relating to the Claim and includes without limitation copies of:-
- (i) pleadings, orders, judgments, disclosure lists, disclosed documents, witness statements, affidavits, written submissions, notes of oral submissions, and costs schedules;
 - (ii) correspondence passing between the JOLs and/or the Legal Practitioner (on the one hand) and the Defendants and/or the Defendants' lawyers (on the other hand);
 - (iii) any advice or notes of advice given by the Legal Practitioner and/or Counsel and/or any other lawyers instructed by the JOLs in relation to the Claim; and
 - (iv) instructions to and correspondence with and from, and reports and drafts of reports prepared by, expert witness or potential witnesses.
- 2.9 **"Investigation"** means the work done by the JOLs to consider relief that may be sought by the Company in respect of (amongst other things) the Disposal.
- 2.10 **"Legal Practitioner"** means any firm of attorneys who has been retained to represent the JOLs in respect of the Claim and/or such other firm of attorneys as may be retained by the JOLs from time to time.
- 2.11 **"Litigation"** includes the Claim and any other court or arbitration proceedings, suits or actions (including any interim or ancillary proceedings or interlocutory applications) brought by the JOLs (whether acting in the name of the Company or the JOLs), and whether within or outside the United States, including in any U.S. district court and the courts of the Cayman Islands.
- 2.12 **"Person"** means any individual, firm, company, corporation, partnership, limited liability company, sole proprietorship, government, state, or agency, or subdivision of a state (or governmental entity), or any association, trust, joint venture, or consortium (whether or not having separate legal personality).
- 2.13 **"Recovered Assets"** means assets over which the JOLs obtain control for the benefit of the Company on and from the Effective Date.
- 2.14 **"Representative"** means the employees, officers, directors, partners, members, shareholders, co-investors, potential co-investors, agents, advisors, consultants, accountants, attorneys, trustees, or authorised representatives of a Party.

- 2.15 **"Settlement"** means any agreement between the JOLs and any one or more Defendants and/or any third party in settlement of the Claim or any part of the Claim including with respect to costs (including interim costs), including any agreement by the JOLs with any Defendant or any other third party to abandon or withdraw the Claim or to discontinue or stay the Claim.
- 2.16 **"Taxes"** means any non-U.S., U.S. federal, state, provincial, territorial, local, municipal, or other governmental taxes, duties, levies, fees, excises, or tariffs, arising as a result of or in connection with any amounts of property received or paid under this Agreement, including: (i) any state or local sales or use taxes; (ii) any import, value-added, consumption, or similar tax; (iii) any business transfer tax; (iv) any taxes imposed or based on or with respect to or measured by any net or gross income or receipts of any of the Parties; (v) any withholding or franchise taxes, taxes on doing business, gross receipts taxes or capital stock or property taxes; or (vi) any other tax now or hereafter imposed by any governmental or taxing authority on any aspect of this Agreement, the Recoveries

3 EFFECTIVE DATE

This Agreement shall be conditional upon and take effect from the date of an order from the Court sanctioning the JOLs to enter into (and to cause the Company to enter into) this Agreement (the **Effective Date**).

4 FUNDING ARRANGEMENT

- 4.1 Subject to Section 4.2 and the terms and conditions of this Agreement, the Funder hereby agrees to pay a lump sum of [REDACTED] to the JOLs within 7 Business Days of the Effective Date [REDACTED] for the purpose of meeting:

- (a) the remuneration of the JOLs (the **Remuneration**); and
- (b) the expenses and disbursements properly and reasonably incurred by the JOLs (the **Expenses**),

within the meaning of those terms under Rule 1(1)(h) and Rule 1(1)(k) respectively of Order 20 of the Companies Winding Up Rules (2023 Consolidation) (the **CWR**).

- 4.2 The Parties agree and acknowledge that the [REDACTED] is provided by the Funder for the specific purpose of only paying the:

- (a) Remuneration; and
- (b) Expenses relating to any Legal Practitioner or Counsel (including any disbursements incurred or paid by any Legal Practitioner or Counsel in connection with the Claim).

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- 6.8 The Funder's written consent shall be required for the negotiation, settlement, or compromise of payment obligations under Section 6.6, such written consent to be provided by Funder in its sole discretion.

7 Third Party Costs / Cross Undertaking.

The Parties acknowledge that the courts of the Cayman Islands and other jurisdictions may require the JOLs, when seeking any interim order in any Litigation, to pay the reasonable costs of any innocent third party in complying with such an order ("**Innocent Party Costs**"), or to offer a cross undertaking in damages as a condition of obtaining an order ("**Cross Undertaking**"). The Funder agrees that it will pay any Innocent Party Costs incurred and provide (if so required) any Cross Undertaking, and will, if so ordered, provide security for any such Cross Undertaking in the sum and on the terms ordered by the Court.

8 RECOVERIES

- 8.1 In the event that the JOLs recover any unencumbered assets to which the Company is beneficially entitled in a cumulative amount equal to or exceeding [REDACTED] (**Threshold Amount**) such that the Company has assets lawfully and properly available (as reasonably determined by the JOLs), any amount in excess of the Threshold Amount shall be paid to the Funder in the following priority:

- (a) first, the Remuneration and Expenses paid by the Funder will be repaid to it by the JOLs: (i) in priority to the claims of creditors and contributories of the Company, in accordance with section 109 of the Companies Act (As Revised); and (ii) as an expense of the liquidation under Rule 1(1)(h) or 1(1)(k) of Order 20 of the CWR, until the Funder has received one-hundred percent (100%) of the aggregate amount paid by it under this Agreement; and
- (b) second:
 - (i) if the Recovered Assets exceed US\$50million, the Funder shall receive an additional 10% of the amount paid by the Funder pursuant to this Agreement;
 - (ii) if the Recovered Assets exceed US\$100million, the Funder shall receive an additional 20% of the amount of the amount paid by the Funder pursuant to this Agreement; and
 - (iii) if the Recovered Assets exceed US\$270million, the Funder shall receive an additional 30% of the amount paid by the Funder pursuant to this Agreement.

- 8.2 The JOLs shall be permitted to retain any amount less than or equal to the Threshold Amount for the purpose of meeting outstanding and future Remuneration and Expenses of the JOLs.

8.3 To the extent that the JOLs do not use part or all of the Threshold Amount to meet their Remuneration and Expenses, any remaining amount shall be paid to the Funder in accordance with Section 8.1.

9 INFORMATION AND ACCESS

9.1 This Section 9 shall remain in force from the date of this Agreement for so long as any amount remains payable to the Funder and under Section 7.

9.2 The JOLs shall:

(a) keep the Funder regularly informed of all developments in the Claim as soon as reasonably practicable and in any event within seven (7) Business Days, including but not limited to:

- (i) any development that may have an impact on the cost budgeting or outcome of the Claim, [REDACTED];
- (ii) the progress of any Settlement discussions or any Settlement offer with the other parties to the Claim, howsoever made or raised, including developments before, during and after any alternative dispute resolution;
- (iii) any pre-action or interlocutory (or equivalent) application it intends to make or which is threatened or made by a Defendant in respect of the Claim;
- (iv) any hearing that is listed in the Claim; and/or
- (v) any change in the Legal Practitioner's or Counsel's appraisal of the JOLs' prospects of success in the Claim, as a whole or in respect of any part or stage of the Claim.

9.3 Matter Monitoring: The JOLs shall keep Funder reasonably informed of the progress of the assertion of the Claims and shall provide Funder access to all non-privileged information and Documents, including, without limitation (but subject to any confidentiality or sealing orders) (i) reports on settlement negotiations, settlement agreements, electronic copies of all pleadings, court filings, notices of hearings, rulings or orders, and all other non-privileged information as soon as practicable after receipt or creation of such information; (ii) oral status reports as may be reasonably requested by Funder from time to time; and (iii) and timely disclosure of important documents and material events or changes regarding the Claim. Funder understands that the timing and scope of its requests must be reasonable given the activity in the Claim, and Funder shall not make requests or demands that will interfere with the JOLs' obligations to the Court or with respect to the Claim. The JOLs shall not be obligated to provide access to documents or information the disclosure of which would violate any order by a court or tribunal, confidentiality or sealing order, or agreement governing confidentiality or non-disclosure.

9.4 Privileged Consultation. It is the intent of the Parties that the communications and exchanges of information between Funder and the JOLs shall be regarded as subject to litigation privilege and not subject to disclosure to any third-party not a Party to this Agreement. Pursuant to such litigation privilege, the JOLs agree (subject to any orders of the Court) to notify (but not invite comment from) the Funder with respect to: (i) any filings with respect to the Claim prior to such material being filed with the court, including providing Funder with an opportunity to review such filings prior to its being filed; and (ii) material strategy decisions with respect to the Claim.

9.5 No Control. The Funder agrees that subject to the approval rights expressly granted to the Funder under this Agreement, the JOLs are free to act as they see fit, provided that such conduct is not inconsistent with their legal and statutory duties, and the JOLs are under no obligation to take or refrain from taking any action requested by Funder relating to the Claim or any further Investigations or Litigation.

10 CONFIDENTIALITY

10.1 Each Party agrees that it will treat as confidential and, save as expressly authorised by this Agreement, will not disclose to any third party without the express prior written approval of each of the other Party, or unless required by applicable law or regulations of any governmental or regulatory authority or ordered to do so by a court of competent jurisdiction, any information or documentation in connection with this Agreement and that it will treat as confidential (and subject to common interest privilege (which it will take all reasonable steps to maintain)) all communications between itself and the JOLs and/or the Legal Practitioner (including communications pre-dating the date of this Agreement).

10.2 Notwithstanding Section 10.1, any Party may disclose such information or documentation in connection with this Agreement to its Affiliate or its Affiliate's directors, officers, employees, advisers, agents, representatives and providers of finance, provided that each Party shall procure that each such person to whom such information is so disclosed shall comply with the undertakings in this Section, and will be responsible for any failure by such persons to do so. The Parties may also make such disclosure:

(b) to any entity to whom a Party considers disclosure is necessary in order to give effect to this Agreement and that Party's obligations pursuant to Sections 3 and 4;

(c)  or

(d) to parties whom, and to the extent that, information is required to be disclosed by any applicable law, regulation or court order.

10.3 The Parties agree and acknowledge that the provision of privileged information and documents to Funder, and any reference in this Agreement to materials that are or may be privileged and/or confidential, is not intended to diminish and shall not waive or diminish in any way the confidentiality and privilege that subsists in them.

- 10.4 Each Party shall use all reasonable endeavours to procure that each Party to whom disclosure of information is made will put in place reasonable measures to maintain the confidentiality and privilege of the same.
- 10.5 Each Party shall inform the other Parties as soon as reasonably practicable of any application or request by a third party for the disclosure (not otherwise permitted in this Section 10) of any information or documentation in connection with this Agreement and, unless each other Party consents to such disclosure, agrees to resist such disclosure and assert to the maximum extent possible claims to confidentiality, common interest privilege and/or legal professional privilege

11 TERMINATION

This Agreement shall terminate upon the later of the conclusion of the liquidation of the Company as ordered by the Court or the re-payment of all amounts to the Funder as required under this Agreement.

12 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of the Cayman Islands. Each Party irrevocably agrees that the Courts of the Cayman Islands shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Deed or its formation.

13 TAXES

- 13.1 All Taxes shall be the financial responsibility of the Party obligated to pay such Taxes as determined by applicable law and no Party is or shall be liable at any time for any of the other Parties' Taxes incurred in connection with or related to amounts paid under this Agreement. The JOLs acknowledge that all amounts advanced to them under this Agreement by Funder are eligible to be claimed as charitable contributions under the U.S. Internal Revenue Code.
- 13.2 The JOLs agree to cooperate with Funder with respect to provision and/or execution of any documents or information reasonably requested by Funder to (i) evidence the amounts paid under this Agreement and (ii) evidence the charitable intent and nature of any amounts paid under this Agreement.

14 MISCELLANEOUS

- 14.1 No Personal Liability of the JOLs. The JOLs execute this Agreement solely in their capacity as official liquidators of the Company and assume no personal liability under the terms of this Agreement.
- 14.2 Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the Parties with respect to the matters covered herein and supersede all prior agreements, promises, representations, warranties, statements, and understandings with respect to the subject matter hereof as between the Parties. This Agreement may not be

amended, altered, or modified except by an amendment or supplement to this Agreement executed by all Parties hereto.

- 14.3 Partial Invalidity; Severability. If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired.
- 14.4 Remedies and Waivers. No failure to exercise, nor any delay in exercising, on the part of any Party hereto, of any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law. No provision of this Agreement may be waived except in writing signed by the Party granting such waiver.
- 14.5 Assignment. No Party may assign or delegate their rights or obligations under this Agreement without the prior written consent of all other parties to this Agreement.
- 14.6 Notices.
- (a) all notices, reports and other communications required or permitted under this Agreement shall be in writing. They shall be delivered by hand or sent by regular mail, courier, email or other reliable means of electronic communication to the Parties at their addresses indicated below or at such other address as may be specified hereafter in writing by any of the Parties to the other Party in accordance with this Section(a).

<p><u>JOLs</u> Margot MacInnis and Sandipan Bhowmik in their capacity as the joint official liquidators of Charitable DAF HoldCo, Ltd (In Official Liquidation) 2nd floor, Century Yard, Cricket Square PO Box 1044</p> <p>Grand Cayman, KY1-1102 margot.macinnis@uk.gt.com sandipan.bhowmik@uk.gt.com</p> <p>With copy to: Maples and Calder (Cayman) LLP PO Box 309, Umland House, Grand Cayman, KY1-1104, Cayman Islands caroline.moran@maples.com justin.naidu@maples.com</p>	<p><u>Funder</u> Crossvine Litigation Funding C/O Services Cayman Limited, P.O. Box 10008, Willow House, Cricket Square, Grand Cayman, KY1-1001, Cayman Islands</p> <p>With copy to: Ogier (Cayman) LLP 89 Nexus Way Camana Bay christopher.levers@ogier.com or nour.khaleq@ogier.com</p>
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- (b) any notice, report or other communication hereunder shall be deemed to have been delivered and received (i) on the date delivered, if delivered personally by hand or sent by courier, (ii) on the date sent, if sent by email or other form of electronic communication provided that confirmation of delivery is received by the sending party, and (iii) five (5) Business Days after mailing, if placed in the U.S. mail, by registered or certified mail, first class postage prepaid, with a request for a confirmation of delivery.
 - (c) any notice, report or other communication sent under this Agreement that is sent by fax, email or other electronic communication must be confirmed by sending a hard paper copy thereof to the recipient in accordance with subsection (a) above, provided, the effective date of such notice, report or other communication shall be as specified in subsection (b) above. If the recipient actually received a fax, email or other electronic form of a notice, report or other communication, then the notice, report or other communication shall be deemed to have been given and delivered even if the sender fails to send a hard copy as called for in this subsection or the sender does not receive a confirmation of delivery under subsection (b)(ii) above.
- 14.7 No Presumption Against Drafter. This Agreement has been negotiated by the Parties and their respective counsel and will be fairly interpreted in accordance with its terms and without any strict construction in favour of or against a Party.
- 14.8 Counterparts. This Agreement may be executed in counterparts which, when read together, shall constitute a single instrument, and this has the same effect as if the signatures on the counterparts were on a single copy hereof.
- 14.9 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

*****REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*****

IN WITNESS WHEREOF –

The Parties execute this Agreement effective as of the Effective Date.

Funder: Crossvine Litigation Funding, LLC

By: 

Name: Scott Ellington

Title: Manager

JOLs: Margot MacInnis and Sandipan Bhowmik of Grant Thornton Specialist Services (Cayman) Limited in their capacity as joint official liquidators of Charitable DAF HoldCo, Ltd.

By: 

Name: Margot MacInnis

Title: Joint Official Liquidator

EXHIBIT 7

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709



**Certificate of Formation
Limited Liability Company**

**Filed in the Office of the
Secretary of State of Texas
Filing #: 805984614 04/08/2025
Document #: 1468771430003
Image Generated Electronically
for Web Filing**

Filing Fee: \$300

Article 1 - Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

Crossvine Holdings, LLC

Article 2 – Registered Agent and Registered Office

A. The initial registered agent is an organization (cannot be company named above) by the name of:

Capitol Corporate Services, Inc.

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

Street Address:

1501 S. Mopac Expy., Ste. 220 Austin TX 78746

Consent of Registered Agent

A. A copy of the consent of registered agent is attached. **Crossvine Holdings, LLC.pdf**

OR

B. The consent of the registered agent is maintained by the entity.

Article 3 - Governing Authority

A. The limited liability company is to be managed by managers.

OR

B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Manager 1: **Scott Ellington**

Title: **Manager**

Address: **2101 Cedar Springs Rd., Ste. 1200 Dallas TX, USA 75201**

Article 4 - Purpose

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Initial Mailing Address

Address to be used by the Comptroller of Public Accounts for purposes of sending tax information.

The initial mailing address of the filing entity is:

**2101 Cedar Springs Rd., Suite 1200
Dallas, TX 75201
USA**

Organizer

The name and address of the organizer are set forth below.

Scott Ellington 2101 Cedar Springs Rd., Ste. 1200, Dallas, TX 75201

Effectiveness of Filing

A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Scott Ellington

Signature of Organizer

FILING OFFICE COPY

Form 401-A
(Revised 12/09)



**Acceptance of Appointment
and
Consent to Serve as Registered Agent
§5.201(b) Business Organizations Code**

The following form may be used when the person designated as registered agent in a registered agent filing is an individual.

<u>Acceptance of Appointment and Consent to Serve as Registered Agent</u>		
I acknowledge, accept and consent to my designation or appointment as registered agent in Texas for		
<i>Name of represented entity</i>		
I am a resident of the state and understand that it will be my responsibility to receive any process, notice, or demand that is served on me as the registered agent of the represented entity; to forward such to the represented entity; and to immediately notify the represented entity and submit a statement of resignation to the Secretary of State if I resign.		
X:	_____	_____
	<i>Signature of registered agent</i>	<i>Printed name of registered agent</i> <i>Date (mm/dd/yyyy)</i>

The following form may be used when the person designated as registered agent in a registered agent filing is an organization.

<u>Acceptance of Appointment and Consent to Serve as Registered Agent</u>		
I am authorized to act on behalf of <u>Capitol Corporate Services, Inc.</u>		
<i>Name of organization designated as registered agent</i>		
The organization is registered or otherwise authorized to do business in Texas. The organization acknowledges, accepts and consents to its appointment or designation as registered agent in Texas for:		
<u>Crossvine Holdings, LLC</u>		
<i>Name of represented entity</i>		
The organization takes responsibility to receive any process, notice, or demand that is served on the organization as the registered agent of the represented entity; to forward such to the represented entity; and to immediately notify the represented entity and submit a statement of resignation to the Secretary of State if the organization resigns.		
X:	<u>Geneva Harrison</u>	Geneva Harrison, Asst. Sec. on behalf of Capitol Corporate Services, Inc. 04/08/2025
	<i>Signature of person authorized to act on behalf of organization</i>	<i>Printed name of authorized person</i> <i>Date (mm/dd/yyyy)</i>

EXHIBIT 8

Form 202

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709



**Certificate of Formation
Nonprofit Corporation**

**Filed in the Office of the
Secretary of State of Texas
Filing #: 805986556 04/10/2025
Document #: 1469596750002
Image Generated Electronically
for Web Filing**

Filing Fee: \$25

Article 1 - Corporate Name

The filing entity formed is a nonprofit corporation. The name of the entity is :

Crossvine Foundation

Article 2 – Registered Agent and Registered Office

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

Capitol Corporate Services, Inc.

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

Street Address:

1501 S. Mopac Expy., Ste. 220 Austin TX 78746

Consent of Registered Agent

A. A copy of the consent of registered agent is attached. **CS Registered Agent Consent.PDF**

OR

B. The consent of the registered agent is maintained by the entity.

Article 3 - Management

A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Scott Ellington**

Title: **Director**

Address: **2101 Cedar Springs Road, Ste. 1200 Dallas TX, USA 75201**

Director 2: **Gabriel Pardo**

Title: **Director**

Address: **2101 Cedar Springs Road, Ste. 1200 Dallas TX, USA 75201**

Director 3: **Giancarlo Stanton**

Title: **Director**

Address: **2101 Cedar Springs Road, Ste. 1200 Dallas TX, USA 75201**

Article 4 - Organization Structure

A. The corporation will have members.

or

B. The corporation will not have members.

Article 5 - Purpose

The corporation is organized for the following purpose or purposes:

The Corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the Code), or corresponding provisions of any subsequent federal tax laws. The general purposes for which the Corporation is organized

are to receive and maintain a fund or funds of property and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, literary, or educational purposes either directly or by contributions to organizations described in Section 501(c)(3) and exempted from taxation under Section 501(a) of the Code and the Regulations thereunder.

Supplemental Provisions / Information

**See attached Addendum for:
Article 6 Foundation Limitations;
Article 7 No Corporate Shares; and
Article 8 Liability and Indemnity of Directors.**

[The attached addendum, if any, is incorporated herein by reference.]

Addendum.pdf

Effectiveness of Filing

A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Initial Mailing Address

Address to be used by the Comptroller of Public Accounts for purposes of sending tax information.

The initial mailing address of the filing entity is:

**2101 Cedar Springs Road, Ste. 1200
Dallas, TX 75201
USA**

Organizer

The name and address of the organizer are set forth below.

Scott Ellington 2101 Cedar Springs Road, Ste. 1200, Dallas, Texas 75201

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Scott Ellington

Signature of organizer.

FILING OFFICE COPY

**Addendum to Form 202 Certificate of Formation
Nonprofit Corporation
Crossvine Foundation**

Article 6 – Foundation Limitations

A. No part of the net earnings of the Corporation shall inure to the benefit of any director, trustee, or officer of the Corporation or of any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no director, trustee, or officer of the Corporation or private individual shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation. No substantial part of the activities of the Corporation shall consist of activities which do not further the Corporation's exempt purposes or of the carrying on of propaganda or otherwise attempting to influence legislation. The Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of any candidate for public office.

B. Upon dissolution of the Corporation, the assets of the Corporation shall be distributed exclusively to charitable, religious, scientific, or educational organizations that would then qualify under the provisions of § 501(c)(3) and §§ 509(a)(1), (a)(2), or (a)(3) of the Code and the Regulations thereunder as they now exist or as they may be amended.

C. The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by § 4942 of the Code or corresponding provisions of any subsequent federal tax laws.

D. The Corporation shall not engage in any act of self-dealing as defined in § 4941(d) of the Code or corresponding provisions of any subsequent federal tax laws.

E. The Corporation shall not retain any excess business holdings as defined in § 4943(c) of the Code or corresponding provisions of any subsequent federal tax laws.

F. The Corporation shall not make any investments in such manner as to subject it to tax under § 4944 of the Code or corresponding provisions of any subsequent federal tax laws.

G. The Corporation shall not make any taxable expenditures as defined in § 4945(d) of the Code or corresponding provisions of any subsequent federal tax laws.

H. The Corporation is intended to be an organization defined in § 509(a) of the Code.

Article 7 – No Corporate Shares

The Corporation shall have no stock or shares.

Article 8 – Liability and Indemnity of Directors

A Director of the Corporation shall not be liable to the Corporation for monetary damages for an act or omission in the individual's capacity as a Director, except for liability (i) for any breach of the Director's duty of loyalty to the Corporation; (ii) for acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) for any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office; or (iv) for acts or omissions for which the liability of a Director is expressly provided by the Act or any other statute of the State of Texas. This provision shall in no way limit or relieve a Director of any liability for federal excise taxes under Chapter 42 of the Code.

The Corporation shall have the power to indemnify the directors, officers, employees, and agents of the Corporation and to purchase liability insurance for those persons as, and to the extent, permitted by the Act or any other statute of the State of Texas.

EXHIBIT 9

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.,

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

MARK S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST

Plaintiff,

v.

JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC
LEVENTON; GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST
AND NANCY DONDERO, AS TRUSTEE OF
DUGABOY INVESTMENT TRUST; GET GOOD
TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE
OF GET GOOD TRUST; HUNTER MOUNTAIN
INVESTMENT TRUST; CLO HOLDCO, LTD.;
CHARITABLE DAF HOLDCO, LTD.; CHARITABLE
DAF FUND, LP; HIGHLAND DALLAS FOUNDATION;
RAND PE FUND I, LP, SERIES 1; MASSAND
CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS
ASSET RECOVERY, LTD.,

Defendants.

Adv. Pro. No. 21-03076-sgj

**PLAINTIFF HUNTER MOUNTAIN INVESTMENT TRUST'S
EMERGENCY VERIFIED MOTION FOR TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, AND APPOINTMENT OF RECEIVER**

Plaintiff Hunter Mountain Investment Trust ("HMIT") files this Emergency Verified Motion ("Motion") seeking entry of a temporary restraining order and a preliminary injunction enjoining Defendants James Dondero, Scott Ellington, Isaac Leventon, Strand Advisors, Inc., The

Get Good Trust, NexPoint Advisors, L.P., Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Highland Dallas Foundation, Massand Capital LLC, Massand Capital, Inc., and SAS Asset Recovery, Ltd., (collectively, “Defendants”) and those persons acting in concert or participation with them from secreting, concealing or otherwise transferring any funds or assets beyond the jurisdiction of this Court that would hinder or prevent the satisfaction of a potential recovery or judgment awarded to Plaintiff in this adversary proceeding. HMIT also seeks a mandatory injunction to require Defendants to periodically report to HMIT and the Court any and all asset transfers regardless of purpose to maintain full and complete transparency.

Defendants have engaged in underhanded conduct for years, as orchestrated by Defendants Dondero, Ellington and their affiliated entities, and Plaintiff has recently learned that they are doing so again, this time to deprive the Court of the ability to enforce a judgment in favor of Plaintiff. Defendants are asset managers, hedge funds, and their affiliates, whose business operations frequently involve financial transactions in the millions of dollars or more. Defendants have historically attempted to prop up sham transactions as otherwise legitimate, then used their intimate familiarity with the civil litigation system to evade judgments in the face of clear liability. Without question, HMIT is entitled to injunctive relief. A temporary restraining order and/or preliminary injunction are vitally necessary to preserve the Court’s jurisdiction over the Defendants’ assets by preventing their concealment or transfer beyond the Court’s reach, thereby ensuring they remain available to satisfy any judgment herein.

This Motion further requests that the Court appoint a receiver over the assets and property of the Defendants and authorize the receiver to take control of such assets and property to the extent necessary to ensure the Defendants’ compliance with the injunctive relief requested herein and to prevent the transfer of assets and property beyond the jurisdiction of the Court.

Unfortunately, given the Defendants' long history of avoiding liability through a complicated web of entities and fraudulent transfers, as well as recent evidence indicating that this pattern and practice of dissipating assets to avoid judgments remains ongoing, neither the Court nor HMIT can have any confidence that this conduct will not continue absent direct supervision.

In support of the Motion, HMIT respectfully incorporates herein, as if fully set forth verbatim, Plaintiff Hunter Mountain Investment Trust's Memorandum of Law in Support of its Emergency Verified Motion for Temporary Restraining Order, Preliminary Injunction and Appointment of Receiver ("Memorandum"), which is being filed contemporaneously with this Motion.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 11 U.S.C. § 105(a), Federal Rule of Bankruptcy Procedure 7065, and Federal Rule of Civil Procedure 65.
4. The requested receivership is authorized, additionally, by Tex. Bus. & Orgs. Code §§ 11.403(a)(3) and 11.410(a), Tex. Bus. & Com. Code § 24.008(a)(3)(B), and/or Tex. Civ. Prac. & Rem. Code §§ 64.001(a)(2) and (a)(7).

RELIEF REQUESTED

5. HMIT requests that this Court issue the proposed form of restraining order attached hereto as **Exhibit A** ("Proposed Order") pursuant to sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 7065.

6. For the reasons set forth more fully in HMIT's Memorandum, HMIT seeks injunctive relief enjoining Defendants from directly or indirectly, through their affiliated corporate entities or anyone else acting on their behalf or in concert with them, from concealing, secreting or dissipating any assets or otherwise transferring any assets out of the country or beyond the jurisdiction of this Court that would hinder or prevent the satisfaction of a potential recovery or judgment awarded to HMIT in this proceeding. The Court also should enjoin Defendants requiring periodic disclosure of all transfers or dispositions of assets.

7. HMIT further seeks the appointment of a receiver over the assets and property of the Defendants to ensure that the Defendants' conduct does not continue, as fully authorized by applicable law.

8. Absent injunctive relief, and the appointment of a receiver to ensure Defendants' compliance, HMIT's ability to obtain the relief requested in this proceeding, which includes equitable relief in the form of the avoidance, recovery and return of fraudulently transferred assets out of the Debtor's estate,¹ will be jeopardized, and the integrity of this lawsuit and the estate assets at issue will be severely threatened. Emergency relief is needed to avoid this immediate and irreparable harm that will be caused to HMIT.

9. In accordance with Rule 7.1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas*, contemporaneously herewith and in support of this Motion, HMIT is submitting its: (a) *Memorandum of Law*, (b) *Proposed Order*, and (c) *Motion for Expedited Hearing on Emergency Motion for a Temporary Restraining Order and Preliminary Injunction* ("Motion to Expedite"). HMIT also provides the Court with the

¹ Amended Complaint and Objection to Claims [Doc. 158] ("Amended Complaint").

Verification of Mark Patrick (“Verification”) as to the statements made in this Motion and the Memorandum concerning the facts at issue and the necessity of immediate relief.

10. As is demonstrated by this Motion, the Memorandum, the Verification, and the evidentiary materials referenced therein, HMIT is entitled to the relief requested herein as set forth in the Proposed Order.

11. Notice of this Motion has been provided to Defendants in compliance with Fed. R. Civ. P. 65, and HMIT submits that no other or further notice need be provided.

WHEREFORE, HMIT respectfully requests that the Court (i) enter the Proposed Order substantially in the form annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant HMIT such other and further relief as the Court may deem proper.

Respectfully submitted,

/s/ Sawnie A. McEntire

Sawnie A. McEntire
Texas Bar No. 13590100
smcentire@pmmlaw.com
Ian B. Salzer
Texas Bar No. 24110325
isalzer@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Tel. (214) 237-4300
Fax (214) 237-4340

**ATTORNEYS FOR HUNTER MOUNTAIN
INVESTMENT TRUST**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, on September 15, 2025, counsel for HMIT emailed counsel for Defendants regarding the relief requested in this Emergency Motion for Temporary Restraining Order, Preliminary Injunction and Appointment of Receiver, and stating that if a response was not received by 2:00 p.m. HMIT would consider Defendants to be opposed. Counsel for HMIT then and conducted a telephone call with counsel for Defendants Dondero, Dugaboy, Nexpoint, and HCMFA, who advised that such Defendants are opposed to the relief requested this Motion, and further stated that they would attempt to coordinate with the other Defendants, but that HMIT should assume the remaining Defendants are also opposed. Accordingly, this Motion is being filed as opposed due to the need for immediate relief.

/s/ Ian B. Salzer

Ian B. Salzer

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2025, a true and correct copy of the foregoing document was served on all parties of record via the Court’s ECF system.

/s/ Ian B. Salzer

Ian B. Salzer

3204169

EXHIBIT 10

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.,

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

**MARK S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST**

Plaintiff,

v.

**JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC
LEVENTON; GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST
AND NANCY DONDERO, AS TRUSTEE OF DUGABOY
INVESTMENT TRUST; GET GOOD TRUST AND
GRANT JAMES SCOTT III, AS TRUSTEE OF GET
GOOD TRUST; HUNTER MOUNTAIN INVESTMENT
TRUST; CLO HOLDCO, LTD.; CHARITABLE DAF
HOLDCO, LTD.; CHARITABLE DAF FUND, LP;
HIGHLAND DALLAS FOUNDATION; RAND PE FUND
I, LP, SERIES 1; MASSAND CAPITAL, LLC;
MASSAND CAPITAL, INC.; AND SAS ASSET
RECOVERY, LTD.,**

Defendants.

Adv. Pro. No. 21-03076-sgj

**PLAINTIFF HUNTER MOUNTAIN INVESTMENT TRUST'S
MEMORANDUM OF LAW IN SUPPORT OF ITS EMERGENCY
VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION, AND APPOINTMENT OF RECEIVER**

Plaintiff Hunter Mountain Investment Trust ("HMIT") submits this Memorandum of Law in Support ("Memorandum") of its Emergency Verified Motion for Temporary Restraining Order,

Preliminary Injunction, and Appointment of Receiver (“Verified Motion”), pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure and Section 24.008(a)(3)(B) of the Texas Business and Commerce Code, also known as the Texas Uniform Fraudulent Transfer Act (“TUFTA”), seeking to enjoin Defendants James Dondero (“Dondero”), Scott Ellington (“Ellington”), Isaac Leventon (“Leventon”), Strand Advisors, Inc. (“Strand Advisors”), The Get Good Trust (“Get Good”), NexPoint Advisors, L.P. (“NexPoint”), Highland Capital Management Fund Advisors, L.P. (“HCMFA”), The Dugaboy Investment Trust (“Dugaboy”), Highland Dallas Foundation (“HDF”), Massand Capital LLC, Massand Capital, Inc., and SAS Asset Recovery, Ltd. (“SAS”) (collectively, “Defendants”) from (i) secreting or concealing assets in any manner or otherwise transferring assets out of the country beyond the jurisdiction of this Court that would hinder, frustrate or prevent the satisfaction of a potential recovery or judgment awarded against them in these proceedings; and, (ii) imposing a receivership on Defendants NexPoint, Get Good, HCMFA and Dugaboy pursuant to TUFTA Section 24.008(a)(3)(B). In support, HMIT states:

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	v
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	4
A. Procedural and Substantive Background	4
B. Defendants’ Historical Pattern of Diverting and Concealing Assets	6
<i>The Highland Bankruptcy</i>	6
<i>Dondero Engaged In Misconduct Relating to Acis and Joshua Terry</i>	7
<i>Dondero and Ellington Fraudulently Induced an Investment from HarbourVest</i>	8
<i>Willful Misconduct in the Transfer of Highland Capital Credit Strategies</i> <i>Fund’s Assets</i>	9
<i>Willful Misconduct in the Transfer of Highland Crusader Fund’s Assets</i>	9
<i>Dondero and His Accomplices Caused Highland to Engage In Misconduct That</i> <i>Increased Liability To UBS</i>	10
C. Defendants’ Recent Efforts to Transfer and Conceal Assets	11
III. LEGAL STANDARD	13
A. Injunctive Relief	13
B. Receivership	14
IV. ARGUMENT	15
A. HMIT Will Suffer Irreparable Harm in the Absence of Injunctive Relief	15
B. HMIT Demonstrates Likelihood of Success on the Merits	18
C. The Equities Strongly Favor HMIT	19
D. Injunctive Relief Serves the Public Interest	20
E. Appointment of a Receiver	20
IV. SECURITY	22

V. CONCLUSION.....23

TABLE OF AUTHORITIES

Cases

35 Bar & Grille, LLC v. City of San Antonio, 943 F. Supp. 2d 706 (W.D. Tex. 2013)..... 18

Akin, Gump, Strauss, Hauer and Feld, L.L.P. v. E-Court, Inc., 2003 Tex. App. LEXIS 3966 (Tex. App.—Austin May 8, 2003, no pet.)..... 21

Amegy Bank N.A. v. Monarch Flight II, LLC, No. 4:11-CV-3218, 2011 U.S. Dist. LEXIS 140874 (S.D. Tex. Dec. 7, 2011)..... 16

Bank of Am., N.A. v. Mega World Builder Corp., No. 4:24-CV-3021, 2024 U.S. Dist. LEXIS 203763 (S.D. Tex. Nov. 8, 2024)..... 16

Biliouris v. Sundance Res., Inc., 559 F. Supp. 2d 733 (N.D. Tex. 2008) 21

Corrigan Dispatch Co. v. Casa Guzman, 569 F.2d 300 (5th Cir. 1978)..... 22

Craig v. McCarty Ranch Trust (In re Cassidy Land and Cattle Co.), 836 F.2d 1130 (8th Cir. 1988)..... 15

Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C., 710 F.3d 579 (5th Cir. 2013)..... 15

Green v. Wells Fargo Bank, N.A., 575 Fed. Appx. 322 (5th Cir. 2014) 14

In re Compton Corp., 90 B.R. 798 (Bankr. N.D. Tex. 1988)..... 14

In re FiberTower Network Servs. Corp., 482 B.R. 169 (Bankr. N.D. Tex. 2012)..... 13, 20

In re Hunt, 93 B.R. 484 (Bankr. N.D. Tex. 1988)..... 15, 20

In re Memorial Estates, Inc., 797 F.2d 516 (7th Cir. 1986)..... 15

In re OGA Charters, LLC, 554 B.R. 415 (Bankr. S.D. Tex. 2016)..... 13, 20

In re Seatco, Inc., 259 B.R. 279 (Bankr. N.D. Tex. 2001)..... 14

Janvey v. Alguire, 647 F.3d 585 (5th Cir. 2010)..... 15, 16, 17, 18

Kaepa, Inc. v. Achilles Corp., 76 F.3d 624 (5th Cir. 1996)..... 22

Louisiana v. Becerra, 20 F.4th 260 (5th Cir. 2021) 14

Miss. Power & Light Co. v. United Gas Pipe Line, 760 F.2d 618 (5th Cir. 1985) 13

Moore v. Brown, 868 F.3d 398 (5th Cir. 2017) 14

Nobelman v. American Savings Bank, 508 U.S. 324 (1993)..... 15

Prep Sols., Ltd v. Lecht, 2022 U.S. Dist. LEXIS 98756 (E.D. Tex. June 2, 2022)..... 16

S. Texas Lighthouse for the Blind, Inc. v. Fed. Supply Servs. Int’l, Inc., 2020 U.S. Dist. LEXIS 157347 (S.D. Tex. Aug. 28, 2020)..... 17

Sargeant v. Al Saleh, 512 S.W.3d 399 (Tex. App.—Corpus Christi 2016, no pet.) 17

SEC v. Barton, 135 F.4th 206 (5th Cir. 2025) 16

Sharp v. SSC Farms I, LLC (In re SK Foods, L.P.), 2010 Bankr. LEXIS 6445 (E.D. Cal. April 5, 2010)..... 17, 18

Star Satellite, Inc. v. City of Biloxi, 779 F.2d 1074 (5th Cir. 1986) 14

Titlemax of Tex., Inc. v. City of Dall., 142 F.4th 322 (5th Cir. 2025) 18

Triadou SPV S.A. v. Chetrit, 2021 WL 3290834, at *9 (Sup. Ct. N.Y. Cnty. Aug. 2, 2021)..... 10

Tujague v. Adkins, No. 4:18-CV-631, 2018 U.S. Dist. LEXIS 171394 (E.D. Tex. 2018) 16, 17

Turnkey Offshore Project Servs., LLC v. JAB Energy Solutions, LLC, 2021 U.S. Dist. LEXIS 149733 (E.D. La. Aug. 10, 2021)..... 17

Unisys Corp. v. Dataware Prods., Inc., 848 F.2d 311 (1st Cir. 1988)..... 14

Walker v. Doe, No. 6:24-cv-00633-ADA, 2025 U.S. Dist. LEXIS 100396 (W.D. Tex. 2025)..... 16, 17

Statutes

11 U.S.C. § 105..... 13, 14, 15

11 U.S.C. § 544..... 20

11 U.S.C. § 548..... 20

11 U.S.C. § 550.....	20
26 U.S.C. § 6502.....	20
N.Y. C.P.L.R. § 5225.....	10
Tex. Bus. & Comm. Code § 24.008.....	ii, 4, 22, 23
Tex. Bus. Orgs. Code § 11.403.....	23
Tex. Bus. Orgs. Code § 11.410.....	24
Tex. Civ. Prac. & Rem. Code § 64.001.....	23

Rules

Fed. R. Bankr. P. 7065.....	ii, 13, 14
Fed. R. Civ. P. 65(c).....	13, 14, 22

I. INTRODUCTION

1. Dondero and Ellington, and the other Defendants which they control or with which they are closely allied, are preparing for imminent reckonings, and they are using their affiliated entities to secrete and conceal assets that would otherwise be available to satisfy a judgment against them in this adversary proceeding. After decades of avoiding accountability through a “byzantine” web of entities and fraudulent transfers, the walls are finally closing in on Defendants.

2. There are two such reckonings on the immediate horizon. First, this adversary proceeding, alone, seeks to impose hundreds of millions of dollars of liability on Dondero and Ellington, individually, as well as entities they control. HMIT recently reactivated this adversary proceeding after a two-year stay.¹ Dondero and other Defendants aggressively opposed HMIT’s acquisition of the rights to prosecute this adversary proceeding and, now, fully realizing the stay would be lifted, opposed HMIT’s substitution as Plaintiff.²

3. The other immediate reckoning is the oral argument now scheduled for September 22, 2025, in a turnover case brought by UBS—one of Highland’s largest original creditors³—seeking to hold Dondero and Ellington personally liable for over \$1.4 billion in damages and accrued interest related to an underlying transaction involving Highland Capital Management, L.P. (“Highland”).⁴ UBS seeks to hold Dondero and Ellington accountable for

¹ HMIT’s notice to lift stay was served on Wednesday, September 3, 2025 [Doc. 375].

² See Objection of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. to Motion to Substitute [Doc. 364]; Joinder to Objection of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. to Motion to Substitute [Doc. 363]; Joinder of Scott Ellington and Isaac Leventon to the Objection of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. to Motion to Substitute [Doc. 362].

³ UBS’s Claims against Highland’s estate (Claim Nos. 190 and 191) exceeded \$1 billion, of which \$125 million was ultimately allowed against the estate. See Order Approving Debtor’s Settlement With UBS Securities LLC And UBS AG London Branch And Authorizing Actions Consistent Therewith [BK Doc. 2389].

⁴ The UBS litigation is pending in New York Supreme Court, Index 6500744/2023, *UBS Securities LLC and UBS AG London Branch v. James Dondero, Scott Ellington, et al.* (“UBS Lawsuit”).

fraudulent transfers predating Highland's bankruptcy,⁵ and also seeks to impose alter ego liability upon them for the very large judgment against Highland in favor of UBS.⁶ Thus, when combined, the UBS litigation and this adversary proceeding seek to impose over \$1.7 billion in damages, making Defendants' motivations undeniably clear—Defendants are aggressively seeking to insulate their assets at all costs.

4. HMIT's immediate need for injunctive relief stems from Defendants' recent use of an old playbook of moving and secreting assets. They are using shell entities and moving assets outside the jurisdiction of this and other interested U.S. courts to achieve this end. If not immediately restrained, the Defendants' efforts will frustrate the essential purpose of this adversary proceeding—recovering assets fraudulently and improperly transferred out of Highland's estate. In sum, Defendants are controlling assets which they wrongfully diverted from Highland, and they are now trying to prevent restitution of those assets.

5. Recent evidence confirms that Dondero and Ellington are involved in transferring or seeking to transfer substantial assets using affiliated entities they control. One of these entities is Skyview Group Inc. ("Skyview"), an entity nominally owned by Ellington, but ultimately controlled and largely funded by Dondero.⁷ These recent transfers or attempts to transfer include:

- Transfers of millions of dollars in 2025 to Crossvine Litigation Funding LLC ("CLF"), a Cayman entity created in April 2025 and controlled by Ellington and funded by Dondero;⁸
- Efforts to liquidate or transfer a stock ownership position (held directly or indirectly by Dondero) involving multi-family housing

⁵ Certain of these fraudulent transfers involved other Defendants, including Massand Capital and SAS.

⁶ Special Turnover Petition (a true and correct copy is attached as **Exhibit 1**) ("UBS Petition"), ¶¶ 1-3 [Index No. 650744/2023, Supreme Court of New York County, New York, *UBS Securities LLC, et al. v. James Dondero, et al.*]

⁷ Skyview provides back-office support for Dondero's NexPoint and HCMFA, which manage assets wrongfully diverted from Highland.

⁸ CLF is owned by Crossvine Holdings LLC and Crossvine Foundation (collectively "Crossvine")—two Texas entities created by Ellington in April 2025.

and thereby moving over \$30 million to a “charity” under Dondero’s control and which, upon information and belief, is located in the Cayman Islands;⁹

- Dondero’s highly improper, if not illegal demand to the Charitable DAF Fund, LP (“DAF”) which indirectly owns HMIT, to send \$1.5 million dollars to an offshore entity to bolster and “maintain the Sentinel structure,” which involved a bogus insurance company created by Dondero and Ellington to hide assets from UBS. DAF’s control person, Mark Patrick (“Patrick”), has independent contemporaneous evidence of this request. This attempt to funnel money from DAF to Sentinel was and is part of an ongoing effort that would continue (and, as described below, has continued) into the future;
- Even though DAF rejected Dondero’s demand, Skyview made multiple wires in connection with this proposed scheme, including a \$3 million wire to Atreyu Pipeline Logistics, LLC, an entity controlled by Ellington,¹⁰ and there is contemporaneous evidence that as much as \$7 million was transferred by Dugaboy, NexPoint and/or Ellington (acting through Skyview); and
- Isaac Leventon, a Defendant, was aware of Dondero’s requests but made it clear to Patrick that he would deny any involvement in any related conversations.

6. The conduct at issue flows from the same vein as the types of conduct previously considered by this Court when the Court expressed concern that Defendants’ efforts to conceal their ongoing fraudulent schemes and transfers involving Sentinel potentially violated federal criminal statutes.¹¹

7. Absent a TRO and preliminary injunction, HMIT’s ability to recover the relief requested in this proceeding, which includes the avoidance, recovery and return of assets diverted

⁹ Preparations for the transfer of this stock position occurred within the immediate past, and is evidenced by a contemporaneous tape recording.

¹⁰ Ellington refused to provide 1099s to Skyview tax professionals relating to Atreyu and certain other entities in an ostensible effort to evade scrutiny.

¹¹ See August 8, 2022 Hearing Transcript [Adv. Pro. No. 21-3020-sgj, Doc. 183] , p. 131; *see also* Highland Capital Management, L.P.’s Memorandum Of Law In Support Of Its Motion To Deem The Dondero Entities Vexatious Litigants And For Related Relief [Case No. 3:21-cv-881, Doc. 137] (“Vexatious Litigant Motion”).

or fraudulently transferred out of Highland's estate,¹² will be jeopardized, and the integrity of these proceedings undermined. If Defendants' schemes remain unchecked, they will succeed in frustrating HMIT's efforts to collect on a judgment in this lawsuit, resulting in a colossal waste of party and judicial resources. At a minimum, HMIT will be forced to incur additional legal expense to unwind Defendants' fraudulent transactions.

8. The imposition of a receivership is separately justified because the Liquidation Trustee's claims, now assigned to HMIT, include a probable interest and right to various assets under Defendants' wrongful control. In light of Defendants' history of diverting assets and fraudulent transfers, a receivership is appropriate pursuant to TEX. BUS. & COMM. CODE § 24.008(a)(3)(B).

9. It is clear that emergency relief is needed. However, if for any reason this Court disagrees with HMIT's application for an immediate TRO, then HMIT alternatively requests an expedited hearing date at the Court's earliest convenience for consideration of a preliminary injunction and the appointment of a receiver. Expedited relief is needed to avoid the harms which HMIT will otherwise suffer if Defendants are allowed to continue transferring and secreting assets undeterred and to preserve the Court's jurisdiction over these assets and ability to grant relief. HMIT is separately seeking expedited discovery in anticipation of this hearing.

II. **FACTUAL BACKGROUND**

A. Procedural and Substantive Background

10. This adversary proceeding was filed in October 2021, shortly after the Effective Date of the Fifth Amended Plan of Reorganization of Highland Capital Management, LP (as

¹² See Amended Complaint, ¶¶ 137-186.

modified) (the “Plan”), and was initiated by a Litigation Sub-Trust created pursuant to the Plan. The purpose of the Litigation Sub-Trust was to bring and prosecute claims belonging to the Debtor’s estate. Those claims have now been assigned and transferred to HMIT;¹³ and HMIT stands in the shoes of the Litigation Sub-Trust as Plaintiff.

11. The relief sought in this adversary proceeding is wide-ranging, seeking to impose liability for myriad wrongful acts and fraudulent transfers induced by Dondero, Ellington and other Defendants. As this Court previously noted:¹⁴

The 36 causes of action [in this lawsuit] seek: the avoidance and recovery of intentional and constructive fraudulent transfers and obligations under Sections 544, 548, and 550 of the Bankruptcy Code; illegal distributions under Delaware partnership law; breach of fiduciary duty; declaratory judgment that certain entities are liable for the debts of others under alter ego theories, successor liability, aiding and abetting, or knowing participation in breach of fiduciary duty; civil conspiracy; tortious interference with prospective business relations; breach of contract; conversion; unjust enrichment; and the disallowance or subordination of claims under Sections 502 and 510 of the Bankruptcy Code.

12. As set forth in the Amended Complaint, at ¶¶ 110-171, stretching back to 2013, Dondero and Ellington have used their control over affiliated entities, such as Dugaboy, Get Good, NexPoint, and SAS, for improper purposes, including improper insider distributions and transfers out of the reach of creditors. Over \$50 million remains to be clawed back from Dondero for avoidable transfers alone, not including the hundreds of millions of dollars HMIT seeks for its other claims against Dondero and the other Defendants.¹⁵

¹³ Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement [BK Doc. 4297]; Order Granting Motion to Substitute [Doc. 377].

¹⁴ Report And Recommendation To The District Court Proposing That It: (A) Grant Defendants’ Motions To Withdraw The Reference At Such Time As The Bankruptcy Court Certifies That Action Is Trial Ready; But (B) Defer Pre-Trial Matters To The Bankruptcy Court [Doc. 151], p. 6.

¹⁵ See Amended Complaint, ¶¶ 171-186.

B. Defendants' Historical Pattern of Diverting and Concealing Assets

13. Dondero, and those acting in concert with him, including Ellington, NexPoint and the other Defendants, have repeatedly undermined the authority and ability of the Court to deal with Highland's estate. Although a meaningful elucidation of the Defendants' conduct would require hundreds of pages, the following historical exemplars, as alleged in the Amended Complaint, exemplify Defendants' wrongful conduct. A common scheme and pattern of behavior is also evident—fraudulent transfers and the diversion of assets.

The Highland Bankruptcy

14. Dondero was formerly the President and Chief Executive Officer of Highland, and the sole member of its general partner, Strand Advisors. Together with Ellington—Highland's former general counsel—Dondero directed Highland to file for Chapter 11 bankruptcy in Delaware in late 2019 in response to several massive litigation awards against Highland.¹⁶ Soon after Highland's bankruptcy was transferred to this Court, the Unsecured Creditors Committee demanded, and the Court approved, a change of control resulting in Dondero's removal as the sole control person and the appointment of an independent board of directors and a new CEO.¹⁷

15. On October 9, 2020, Dondero was instructed to fully resign from all positions related to Highland or face removal as a Highland employee and as portfolio manager for all Highland managed funds due to conduct detrimental to Highland, as the Debtor, and its creditors.¹⁸ Ellington was similarly terminated for cause on January 5, 2021, for actions adverse to Highland.¹⁹

¹⁶ See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief [BK Doc. 1943] ("Confirmation Order"), ¶¶ 6-8.

¹⁷ See Confirmation Order, ¶¶ 11-13.

¹⁸ See Confirmation Order, ¶ 4.

¹⁹ See Plaintiff's First Amended Original Complaint [Civil Action No. 3:24-cv-498 in the Northern District of Texas, Doc. 82] ("HERA Complaint"), ¶ 125.

16. Highland's bankruptcy was unique because the largest creditor claims arose from litigation awards and judgments.²⁰ Indeed, upon information and belief, Dondero and Ellington expected to use the bankruptcy process to thwart recoveries while maintaining control of Highland, but the bankruptcy instead served to reveal a pattern of recurring misconduct that led to over \$1 billion dollars in litigation judgments and arbitration claims against Highland and over \$40,000,000 in legal fees.²¹

17. On February 8, 2021, the Court confirmed the Plan, and the Court entered its Confirmation Order on February 22, 2021.²² The Plan became effective on August 11, 2021, and, as a result, Highland's ownership was restructured.²³ Both before and after bankruptcy, Defendants Dondero and Ellington have been working to strip the assets of entities they controlled to ensure that any aggrieved party could not collect on its hard-fought judgments or its rights of ownership. This Court previously considered evidence of wrongdoing and expressed concern that criminal laws may have been violated.²⁴

Dondero Engaged In Misconduct Relating to Acis and Joshua Terry²⁵

18. In 2010, Dondero formed Acis Capital Management, L.P. ("Acis") as a "lifeboat" to divert collateralized loan business fees from Highland after its lenders placed security liens on Highland's assets. Initially, Acis was owned indirectly by Dondero and others. Joshua Terry, a Highland employee, later joined the platform in 2011 to manage Acis.

²⁰ Confirmation Order, ¶ 8.

²¹ See Amended Complaint, ¶¶ 66, 95.

²² Confirmation Order, p. 4, ¶ k.

²³ See Notice Of Occurrence Of Effective Date Of Confirmed Fifth Amended Plan Of Reorganization Of Highland Capital Management, L.P. [BK Doc. 2700].

²⁴ August 8, 2022 Hearing Transcript [Adv. Pro. No. 21-3020-sgj, Doc. 183], p. 131.

²⁵ The following summary refers to and incorporates ¶¶ 67-72 of the Amended Complaint.

19. In 2016, Dondero sought to finance an investment in South America by causing a separate portfolio company, Trussway Industries Inc. (“Trussway”), to incur unnecessary debt and divert loan proceeds to finance the purchase. Terry criticized this conduct as a breach of fiduciary duties to Acis’ investors, and Dondero responded by firing Terry. Dondero and Terry ultimately went to arbitration in which the panel found against Dondero and Highland.

20. Four days after Terry’s arbitration judgment was issued, Dondero, acting through Highland, and with the aid of Ellington and others, entered into numerous transactions designed to take control of Acis’s business and strip Acis of assets so it would be unable to pay Terry’s arbitration award. This scheme to render Acis judgment-proof led Terry to file involuntary Chapter 11 petitions against Acis. In response, Dondero, through Highland, which Dondero still controlled, amped up Dondero’s mismanagement of the Acis funds, leading Acis’ appointed bankruptcy trustee to replace Highland as sub-advisor.

21. Dondero also caused Highland to commence litigation against Acis’ trustee, prompting a countersuit pursuant to which the Chapter 11 trustee sought to recover fraudulent transfers Dondero had directed. This led to the entry of a temporary restraining order against Highland.

Dondero and Ellington Fraudulently Induced an Investment from HarbourVest²⁶

22. Dondero and Ellington fraudulently induced an investment from a group of third-party investors collectively known as “HarbourVest.” Dondero and Ellington used Highland to induce HarbourVest to purchase 49.9% of HCLOF—the owner of the equity tranche of the Acis CLOs—for approximately \$75 million in cash, with a commitment to invest an additional \$75 million. Unbeknownst to HarbourVest, however, Dondero intended to use the \$75 million from

²⁶ The following summary refers to and incorporates ¶¶ 73-75 of the Amended Complaint.

HarbourVest to make investments in other Dondero controlled and owned entities, including entities managed by NexPoint and HCMFA. Thus, the HarbourVest investment benefited Dondero personally, but left Highland exposed to hundreds of millions of dollars in potential damages to HarbourVest.

Willful Misconduct in the Transfer of Highland Capital Credit Strategies Fund's Assets²⁷

23. Another example of fraudulent transfers involved the judgment relating to Highland Capital Credit Strategies Fund. In that case, Dondero was found to have engaged in willful misconduct by secretly causing Highland (still under Dondero's control) to move certain assets to other entities for far less than actual value. Highland paid only \$24 million for those assets—far less than valuations performed by third parties, even those hired by Highland (up to \$37 million). The arbitration panel found Dondero's explanations to excuse his conduct “to put it mildly, far-fetched”—and awarded Highland Capital Credit Strategies Fund over \$30 million in damages.

Willful Misconduct in the Transfer of Highland Crusader Fund's Assets²⁸

24. Dondero and Ellington engaged in misconduct relating to a group of Highland managed funds known as the “Crusader Funds.” On July 5, 2016, the “Redeemer Committee,” which was formed to oversee the wind-down and distribution of proceeds from the Crusader Funds, commenced an arbitration (the “Redeemer Arbitration”) against Highland alleging misconduct as its investment advisor. The Redeemer Arbitration culminated in a nine-day evidentiary hearing in September 2018 that resulted in an award of damages of \$136.8 million and total damages (including interest) of \$190.8 million.

²⁷ See HERA Complaint, ¶ 153.

²⁸ The following summary refers to and incorporates ¶¶ 87-93 of the Amended Complaint.

25. One of the many willful breaches the arbitrators found is that Dondero and Ellington caused Highland to commit surreptitious self-benefitting transfers of approximately \$32 million in Deferred Fees from the Crusader Funds' accounts on January 21 and April 6, 2016.

Dondero and His Accomplices Caused Highland to Engage In Misconduct That Increased Liability To UBS²⁹

26. In August 2017, Dondero and Ellington, along with others including Leventon, transferred assets to Sentinel Reinsurance, Ltd. ("Sentinel"), a Cayman Islands entity created, and indirectly owned and controlled, by Dondero and Ellington, to ensure that assets would be out of UBS's reach in the event a judgment was entered in its favor in a pending New York State Court proceeding.³⁰ In or around August 2017, Dondero, Ellington and others orchestrated the surreptitious transfer of all assets of the judgment defendants—with a face amount of \$300 million and a market value of at least \$100 million—to Sentinel. The goal of this transfer was to drain assets while keeping the assets within Dondero's and Ellington's ownership and control.

27. In February 2023, UBS filed a turnover petition in New York State Court seeking to collect its judgment from Dondero, Ellington, and others, by clawing-back the assets from Sentinel and unwinding several other alleged fraudulent transfers. Exhibit 71 to UBS's petition outlines the hundreds of entities Dondero and Ellington have under their control to move assets and avoid scrutiny.³¹ Oral arguments on the turnover petition are now scheduled for September 22, 2025, following which the turnover petition will be ripe for summary adjudication.³²

²⁹ The following summary refers to and incorporates ¶¶ 76-80 of the Amended Complaint.

³⁰ See UBS Petition (**Exhibit 1**), pp. 22-35; UBS Pet. Ex. 40 (a true and correct copy of which is attached as **Exhibit 2**) (outlining Sentinel structure and aftershocks of "years of fraudulent transfer claims throughout [the] Highland structure" should Dondero refuse to settle).

³¹ A true and correct copy is attached as **Exhibit 3**.

³² See Index No. 650744/2023 Docket Sheet (a true and correct copy is attached as **Exhibit 4**); N.Y. C.P.L.R. § 5225; *Triadou SPV S.A. v. Chetrit*, 2021 WL 3290834, at *9 (Sup. Ct. N.Y. Cnty. Aug. 2, 2021) (noting that turnover petitions are governed by the same standards as summary judgments).

C. Defendants' Recent Efforts to Transfer and Conceal Assets

28. Following their exodus from Highland, Dondero and Ellington picked up the mantle under the banner of the newly formed Skyview. With Highland no longer under Dondero's control, Skyview and NexPoint are now the primary means by which Defendants continue their fraudulent activities.

29. Ellington nominally owns Skyview,³³ but Dondero, through NexPoint, is Skyview's primary client. Using Skyview, Dondero is currently seeking to move and transfer approximately \$30 million in assets to a new "charity" which Dondero controls. This ownership stake includes a stock position involving multi-family projects and other assets. Upon information and belief, this "charity" is an offshore Cayman entity that has been described as "DAF-2." This scheme was underway as recently as August 2025.

30. Dondero, acting individually and through Skyview, made a highly improper demand upon Patrick, the control person of DAF, to transfer \$1.5 million to an entity unrelated to the charitable purposes of DAF and without any consideration. This transaction was properly rejected by Patrick. It is also apparent Dondero would have used Patrick's compliance with his demand (which never occurred) to exert leverage over Patrick in his capacity as DAF's control person. It was one of many reasons Patrick reorganized the DAF structure in the Cayman Islands. Ultimately, Dondero and Ellington transferred \$7 million overseas to "maintain the Sentinel structure." Over \$3 million (of the \$7 million) initially went to Atreyu. The remaining \$4 million was also funded.

³³ A true and correct copy of the 2024 Texas Franchise Tax Public Information Report for Skyview Group, Inc. is attached as **Exhibit 5**.

31. Due in large part to Dondero's improper demands, Mr. Patrick left Skyview. Since then, Dondero, Ellington, and their conspirators have embarked on a multi-front litigation campaign designed to harass Mr. Patrick and the entities he controls. The cornerstone of this new wave of litigation involves liquidation proceedings in the Cayman Islands regarding a former limited-partner within the DAF structure. Consistent with Dondero's theme of using entities without standing to challenge transactions Dondero does not like, the entity over which Dondero seeks to gain control in the Caymans has no authority to exercise control over any other DAF entity, nor any right to object to transactions made by other DAF entities. Nonetheless, Dondero, either individually or through his representatives, is funding this litigation assault in the Cayman Islands to undo the reorganization of DAF—a series of transactions that were designed to reinforce Dondero's lack of influence over the DAF entities.

32. Dondero and Ellington recently created several new entities that are being used to fund this Cayman litigation by funneling funds to a Cayman entity known as Crossvine, and are doing so through layers of Crossvine-related entities.³⁴ Ellington is identified as the control person in this Cayman entity,³⁵ but again, it is clear that Dondero is funding this entity.³⁶ There is no credible dispute that these Crossvine entities are controlled by Dondero and Ellington. Ellington is the member or manager of these various Crossvine vehicles.³⁷

³⁴ See Funding Agreement of Joint Official Liquidators dated 11 July 2025 (“Funding Agreement”) (a true and correct copy of which is attached as **Exhibit 6**); Certificate of Formation for Crossvine Holdings, LLC (a true and correct copy of which is attached as **Exhibit 7**); Certificate of Formation for Crossvine Foundation (a true and correct copy of which is attached as **Exhibit 8**).

³⁵ See *id.*

³⁶ The Joint Official Liquidators (“JOLs”) have admitted in the Cayman proceedings that Crossvine is a special purpose entity ultimately created for Dondero's benefit.

³⁷ *Id.*

33. This litigation funding serves a dual purpose: (i) it shuffles money to offshore allies in exchange for contingent future recoveries that are legally distinct from the assets that funded those returns, and subject to further dissipation, and (ii) it serves to frustrate this adversary proceeding against Dondero, Ellington, and the other Defendants which, to the extent of any recovery, will benefit the restructured DAF and its charitable mission. This new attempt to move funds offshore under the guise of “litigation funding” is conspicuously similar to the movement of assets through Sentinel.

34. The continued attempts by Dondero, Ellington, and their affiliates to frustrate HMIT’s prosecution of the claims in this adversary proceeding confirm that their litigation strategy is the same today as it has been throughout the past decade: delay, defraud, and dissipate.

III. **LEGAL STANDARD**

A. Injunctive Relief

35. Bankruptcy Rule 7065 provides that Fed. R. Civ. P. 65 applies in an adversary proceeding. Under Rule 65, the Court is authorized to issue injunctive relief, and a decision to do so is committed to the Court's sound discretion. *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir. 1985). Likewise, § 105(a) of the Bankruptcy Code authorizes bankruptcy courts to “issue any order, process, of judgment that is necessary or appropriate to carry out the provisions of the Code,” including injunctions. *In re FiberTower Network Servs. Corp.*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012) (*quoting* 11 U.S.C. § 105); *see also In re OGA Charters, LLC*, 554 B.R. 415, 424 (Bankr. S.D. Tex. 2016) (*quoting Miss. Power*, 760 F.2d at 621).

36. The purpose of injunctive relief is to “prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits.” *Miss. Power*, 760 F.2d at 627. A court also may appropriately exercise its powers to grant injunctive relief by compelling disclosure

of regular audited financial reports and freezing transfers of assets outside the ordinary course of business. *See Unisys Corp. v. Dataware Prods., Inc.*, 848 F.2d 311 (1st Cir. 1988).

37. To obtain injunctive relief under either Rule 65 or § 105, a movant must demonstrate (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction does not issue; (3) that the threatened injury outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction is in the public interest. *Moore v. Brown*, 868 F.3d 398, 402-03 (5th Cir. 2017); *Green v. Wells Fargo Bank, N.A.*, 575 Fed. Appx. 322, 323 n. 3 (5th Cir. 2014). “Likelihood of success and irreparable injury to the movant are the most significant factors.” *Louisiana v. Becerra*, 20 F.4th 260, 262 (5th Cir. 2021).

38. A temporary restraining order should be granted pending a hearing for a preliminary injunction where it appears that “immediate and irreparable injury, loss or damage will result to the movant.” *See Fed. R. Bankr. P. 7065* (incorporating by reference Fed. R. Civ. P. 65); *see also In re Seatco, Inc.*, 259 B.R. 279, 285 (Bankr. N.D. Tex. 2001). Again, the issuance of an injunction is within the broad discretion of the court. *See In re Compton Corp.*, 90 B.R. 798, 806 (Bankr. N.D. Tex. 1988); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074, 1079 (5th Cir. 1986).

B. Receivership

39. Given the Defendants’ long history of transferring and hiding assets, setting up new entities, abusing the bankruptcy system, and engaging in every conceivable effort to delay and avoid responsibility, a preliminary injunction may not be enough to protect Plaintiff and/or the jurisdiction of the Court over the assets at issue. Accordingly, HMIT also asks the Court to appoint a receiver.

40. It is well understood that § 105(b) of the Bankruptcy Code does not prohibit the appointment of a receiver in a related adversary proceeding where authorized and appropriate. *See, e.g., Craig v. McCarty Ranch Trust (In re Cassidy Land and Cattle Co.)*, 836 F.2d 1130, 1133 (8th

Cir. 1988); *In re Memorial Estates, Inc.*, 797 F.2d 516, 520 (7th Cir. 1986) (“The power cut off by section 105(b) of the Bankruptcy Code is the power to appoint a receiver for the bankrupt estate, that is, a receiver in lieu of a trustee.”). The Court’s appointment of a receiver is otherwise governed by applicable state law. *See Nobelman v. American Savings Bank*, 508 U.S. 324, 329 (1993). In this instance, the appointment of a receiver is also authorized under TUFTA.

IV. **ARGUMENT**

A. HMIT Will Suffer Irreparable Harm in the Absence of Injunctive Relief

41. HMIT will be severely harmed if Defendants are not enjoined from transferring assets outside the jurisdiction of this Court or otherwise secreting or concealing assets in a blatant attempt to avoid the impact of an adverse judgment and interfere with the Court’s authority to grant relief.

42. Irreparable harm occurs “where there is no adequate remedy at law.” *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2010); *see OGA Charters*, 554 B.R. at 424 (*quoting Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013)). In the bankruptcy context, “irreparable harm” refers to either “irreparable harm to the interest of a creditor or irreparable harm to the bankruptcy estate,” including th[e] Court’s exclusive authority to effectively manage the[] case[.]” *In re Hunt*, 93 B.R. 484, 495 (Bankr. N.D. Tex. 1988) (internal quotations omitted).

43. Although money damages may, in some circumstances, be *available* to remediate threatened harm, the Fifth Circuit has recognized, the “mere fact that economic damages may be available does not always mean that a remedy at law is ‘adequate.’” *Janvey*, 647 F.3d at 600. “For example, some courts have found that a remedy at law is inadequate if legal redress may be obtained only by pursuing a multiplicity of actions.” *Id.*; *see Walker v. Doe*, No. 6:24-cv-00633-

ADA, 2025 U.S. Dist. LEXIS 100396, at *10 (W.D. Tex. 2025) (finding money damages to be inadequate remedy in light of alleged scheme to launder funds beyond the reach of the court); *Tujague v. Adkins*, No. 4:18-CV-631, 2018 U.S. Dist. LEXIS 171394 (E.D. Tex. 2018) (“[A] plaintiff seeking economic damages will suffer irreparable harm when the defendant’s dissipation of assets would require the plaintiff to initiate “a multiplicity of suits ... to gain relief.”).

44. Courts have determined repeatedly that a dissipation or transfer of assets impairing the court’s ability to grant an effective remedy constitutes irreparable harm, and injunctive relief is appropriate where the underlying complaint includes claims that are equitable in nature. *See, e.g., Janvey*, 647 F.3d 585; *Walker*, 2025 U.S. Dist. LEXIS 100396; *Tujague*, 2018 U.S. Dist. LEXIS 171394; *Prep Sols., Ltd v. Lecht*, 2022 U.S. Dist. LEXIS 98756 (E.D. Tex. June 2, 2022) (“[t]he Court can permissibly freeze assets to protect a plaintiff’s equitable remedies—such as the equitable remedy of disgorgement”); *Amegy Bank N.A. v. Monarch Flight II, LLC*, No. 4:11-CV-3218, 2011 U.S. Dist. LEXIS 140874, at *17 (S.D. Tex. Dec. 7, 2011) (irreparable harm is established and injunctive relief is appropriate where there is “evidence showing that ... the defendant intends to dissipate his assets to make a judgment awarding damages uncollectible”); *Bank of Am., N.A. v. Mega World Builder Corp.*, No. 4:24-CV-3021, 2024 U.S. Dist. LEXIS 203763, *17 (S.D. Tex. Nov. 8, 2024) (“When the dissipation of assets that are the subject of a lawsuit would impair the district court’s ability to grant an effective remedy at the conclusion of the case, the district court may enter a preliminary injunction to protect against those assets’ dissipation”); *SEC v. Barton*, 135 F.4th 206, 228 (5th Cir. 2025) (“[T]he SEC has also shown irreparable harm to the defrauded investors through further dissipation of assets. If those assets were distributed, there would be no recovery for the defrauded investors—thus making the harm irreparable.”); *Turnkey Offshore Project Servs., LLC v. JAB Energy Solutions, LLC*, 2021 U.S. Dist.

LEXIS 149733, at *15-16 (E.D. La. Aug. 10, 2021) (“[W]hen the underlying claim is one that is equitable in nature, a Rule 65 injunction may be available to preserve the defendant’s assets during the pendency of the proceeding.”). In cases like this one, the Court has full authority to issue an injunction if necessary to prevent Defendants from dissipating, disposing or transferring assets prior to judgment. *See id.*; *Sargeant v. Al Saleh*, 512 S.W.3d 399 (Tex. App.—Corpus Christi 2016, no pet.) (affirming sweeping asset-freezing injunction in TUFTA case).

45. Fraudulent transfer, disgorgement, and declaratory judgment claims form a large part of the Amended Complaint.³⁸ Unquestionably, these are equitable claims that support injunctive relief where appropriate. *See, e.g., Janvey*, 647 F.3d 585; *Walker*, 2025 U.S. Dist. LEXIS 100396; *Tujague*, 2018 U.S. Dist. LEXIS 171394; *Sharp v. SSC Farms I, LLC (In re SK Foods, L.P.)*, 2010 Bankr. LEXIS 6445, *54 (E.D. Cal. April 5, 2010) (“Courts have held that a preliminary injunction freezing the transfer of assets is proper where fraudulent conveyance is alleged in a bankruptcy case.”); *S. Texas Lighthouse for the Blind, Inc. v. Fed. Supply Servs. Int’l, Inc.*, 2020 U.S. Dist. LEXIS 157347, *3-4 (S.D. Tex. Aug. 28, 2020) (noting that a fraudulent transfer claim in a complaint is a claim for equitable relief that will support injunctive relief if assets are being concealed or dissipated).

46. An injunction is particularly appropriate where, as here, the assets at issue are not just being dissipated or concealed, but are, upon information and belief, intentionally transferred outside the jurisdiction of the Court and therefore beyond the authority of the Court to enforce a judgment in favor of HMIT. *See, e.g., Janvey*, 647 F.3d 585; *Walker*, 2025 U.S. Dist. LEXIS 100396; *Tujague*, 2018 U.S. Dist. LEXIS 171394; *Sharp*, 2010 Bankr. LEXIS 6445, at *53 (“In the event an injunction is not issued and Defendants are permitted to transfer or sell their assets

³⁸ ¶¶ 137-186.

beyond the reach of this Court, the Trustee, and the creditors of the estates, will suffer irreparable harm.”).

47. Such activity should be prohibited and, in reaching the determination to do so, this Court is free to and should consider Dondero’s and Ellington’s long history of engaging in the very type of conduct sought to be enjoined. Manifestly, “[p]rior misconduct in hiding or depleting assets is ‘extremely relevant to the concern that [defendants] might conceal or dissipate assets’ again and is properly considered in granting an injunction.” *Sharp*, 2010 Bankr. LEXIS, at *55.

48. In the absence of injunctive relief, HMIT will face imminent and irreparable harm that cannot be adequately remedied. If Defendants continue to engage in the conduct sought to be prohibited, HMIT’s ability to effectively recover the fraudulent transfers and assets at issue will be impaired and the Court will not be able to effectively grant the relief requested. If Defendants are not immediately enjoined from engaging in their attempts to hide assets and place those assets beyond the jurisdiction of the Court, this entire proceeding may be rendered futile.

B. HMIT Demonstrates Likelihood of Success on the Merits

49. HMIT is likely to succeed on the merits. To satisfy the likelihood of success element, the movant need only present a “prima facie case.” *Janvey*, 647 F.3d at 595. In that regard, the Fifth Circuit recognizes that “[n]one of the [preliminary injunction] prerequisites has a fixed quantitative value,” and instead employs a sliding scale which balances the likelihood of success on the merits against the other factors. *Titlemax of Tex., Inc. v. City of Dall.*, 142 F.4th 322, 328 (5th Cir. 2025). “As the level of persuasion in relation to the other three factors increases, the degree of persuasion necessary on the substantial likelihood of success factor may decrease.” 35 *Bar & Grille, LLC v. City of San Antonio*, 943 F. Supp. 2d 706, 722 (W.D. Tex. 2013).

50. Here, the Amended Complaint alleges, among other things, numerous claims for the avoidance and recovery of intentional and constructively fraudulent transfers under 11 U.S.C.

§§ 544, 548, and 550, 26 U.S.C. § 6502, as well as Delaware and Texas law, as applicable. The Amended Complaint details the avoidable transactions at issue, in explicit detail and with numerous references to competent evidence amassed throughout these bankruptcy proceedings, and explains why the transfers were illegal under applicable law and should be recovered.

51. The Amended Complaint and the documents cited therein alone establish the required likelihood of success on the merits, as to these and all of the claims asserted therein. As they are doing now, and as they have done in the past, Dondero and Ellington have devised elaborate schemes to place assets beyond the ability of the Court and HMIT to recover.³⁹ There is no legitimate defense to Defendants' various fraudulent schemes, whether through "lifeboats," their use of pass-through entities to transfer assets, and their other actions in avoidance of this Court's management of the Highland bankruptcy.

C. The Equities Strongly Favor HMIT

52. The balance of the equities also tip decisively in HMIT's favor. In the absence of injunctive relief, HMIT faces imminent and irreparable harm. If Defendants are not prevented from secreting or transferring assets outside the jurisdiction of the Court, HMIT's ability to recover on its claims will be at risk, as will the Court's jurisdiction to effectively render judgment. By contrast, there are no equities that favor denying injunctive relief as Defendants have no legal or equitable right to engage in conduct intentionally designed to avoid paying a judgment awarded against them. Should Defendants have a legitimate need to transfer assets, they can seek the Court's permission to do so.

³⁹ See Vexatious Litigant Motion, ¶ 5 n.5 ("Dondero's proclivity for frivolous litigation is so well known that HCMLP was unable to obtain cost-effective insurance because the insurance market refuses to insure the risk of Dondero's vexatiousness, calling it the 'Dondero Exclusion.'").

53. In sum, the potential harm to HMIT in the absence of injunctive relief far outweighs any harm to Defendants if injunctive relief issues.

D. Injunctive Relief Serves the Public Interest

54. Finally, injunctive relief will further the public interest because it is necessary to protect HMIT's ability to successfully prosecute its claims and recover assets wrongfully taken from the Highland estate. "Courts have often held that injunctions that facilitate reorganizations serve the public interest." *FiberTower*, 482 B.R. at 189; *see also Hunt*, 93 B.R. at 497 ("Chapter 11 expresses the public interest of preserving the going-concern values of businesses, protecting jobs, ensuring the equal treatment of and payment of creditors, and if possible saving something for the equity holders."); *OGA Charters*, 554 B.R. at 426 (finding that the "public interest may be served where the purpose of the preliminary injunction is such that it serves to" uphold a core "pillar of bankruptcy by preserving a debtor's ... assets that can be potentially used to satisfy valid claims against the bankruptcy estate."). By contrast, the public interest will not be served by allowing Defendants to continue to avoid the claims asserted against them and place assets at issue beyond the reach of HMIT and the Court's jurisdiction.

E. Appointment of a Receiver

55. Among other things, the Amended Complaint includes claims under TUFTA, which expressly authorizes the appointment of a receiver under "applicable principles of equity" when necessary to "take charge of the asset transferred or of other property of the transferee." TEX. BUS. & COM. CODE § 24.008(a)(3)(B). TUFTA provides creditors, secured or unsecured, with "a substantive right to the prejudgment appointment of a receiver" when a defendant is "seeking to hinder, delay, or defraud creditors." *Biliouris v. Sundance Res., Inc.*, 559 F. Supp. 2d 733, 737-39 (N.D. Tex. 2008) ("TUFTA provides creditors—secured and unsecured alike—with the substantive right to seek quickly the appointment of a receiver to secure their interests and prevent

further fraudulent conduct without first enduring the long delay necessary to reduce their claims to judgment”).

56. The Texas Civil Practices & Remedies Code § 64.001 also authorizes any “court of competent jurisdiction” to appoint a receiver for numerous reasons, including “in an action by a creditor to subject any property or fund to the creditor’s claim” and “in any other case in which a receiver may be appointed under the rules of equity.” Tex. Civ. Prac. & Rem. Code §§ 64.001(a)(2) and (a)(7). Under subsection (a)(2), a receiver may be appointed where the applicant has “a probable interest in or right to the property or fund” and the property or fund is “in danger of being lost, removed, or materially injured.” *Id.* at § 64.001(b). The decision to appoint a receiver, whether under TUFTA, § 64.001(a)(2) or § 64.001(a)(7), “rests in the sound discretion of the trial court.” *Akin, Gump, Strauss, Hauer and Feld, L.L.P. v. E-Court, Inc.*, 2003 Tex. App. LEXIS 3966, *10 (Tex. App.—Austin May 8, 2003, no pet.).

57. Like § 64.001, a court that has subject matter jurisdiction over specific property of a domestic or foreign entity in Texas may appoint a receiver for that property, or the proceeds from that property, in several scenarios, including actions “by a creditor to subject the property or fund to the creditor’s claim,” and between “partners or others jointly owning or interested in the property or fund.” Tex. Bus. Orgs. Code §§ 11.403(a)(2), (a)(3). Additionally, under § 11.410 of the Texas Business Organizations Code, a court may appoint a receiver for all of the property, in and outside Texas, of a foreign entity doing business in Texas if the court determines, in accordance with the ordinary usages of equity, that circumstances exist that necessitate the appointment of a receiver even if a receiver has not been appointed by another court.

58. Defendants Dondero and Ellington, along with their controlled entities, affiliates, and allies, are actively seeking to deprive the Court of jurisdiction over the assets and funds at

issue in this adversary proceeding, which were in large part diverted or fraudulently transferred from the Debtor. Absent relief, HMIT will be frustrated in its efforts to recover those assets and collect on any future judgment issued herein. The documented history of Defendants' manipulation of corporate entities and assets to retain control and to avoid expected judgments strongly suggests that a receiver should be appointed to preserve Defendants' assets, or, at a minimum, assets sufficient to satisfy any judgment rendered in this case.

59. HMIT will be irreparably harmed if the Defendants' manipulation, dissipation and fraudulent transfers of assets are allowed to continue through the remaining course of these proceedings, and Defendants have given the Court no reason to believe they will fully respect and comply with a preliminary injunction alone. Thus, the Court should invoke its authority to appoint a receiver.

IV. **SECURITY**

60. Generally, the Court may issue a TRO if Plaintiff "gives security in an amount that the [C]ourt considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." *See* Fed. R. Civ. P. 65(c). Despite the language of Rule 65(c), the Fifth Circuit has held that a court, in the proper exercise of its discretion, "may elect to require no security at all" in an appropriate case. *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (quoting *Corrigan Dispatch Co. v. Casa Guzman*, 569 F.2d 300, 303 (5th Cir. 1978)). Here, because there is no risk of monetary loss to the Defendants, and the relief requested is in fact directed to *preserving* the alleged assets, the Court should waive the bond or set a nominal amount for its issuance.

V.
CONCLUSION

WHEREFORE, Plaintiff Hunter Mountain Investment Trust respectfully requests that the Court grant its Motion and enter an Order in the form annexed thereto as Exhibit A, and grant any further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Sawnie A. McEntire

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**ATTORNEYS FOR HUNTER MOUNTAIN
INVESTMENT TRUST**

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2025, a true and correct copy of the foregoing document was served on all parties of record via the Court's ECF system.

/s/ Ian B. Salzer

Ian B. Salzer

3203957

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.,

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

HUNTER MOUNTAIN INVESTMENT TRUST,

Plaintiff,

v.

**JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC
LEVENTON; GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS,
L.P.; DUGABOY INVESTMENT TRUST AND NANCY
DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT
TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT
III, AS TRUSTEE OF GET GOOD TRUST; HIGHLAND
DALLAS FOUNDATION; MASSAND CAPITAL, LLC;
MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY,
LTD.,**

Defendants.

Adv. Pro. No. 21-03076-sgj

VERIFICATION

My name is Mark Patrick, my date of birth is April 23, 1972, and my address is 6716 Glenhurst Drive, Dallas, Texas 75254. I am the Administrator of Hunter Mountain Investment Trust (“HMIT”), I am of sound mind, and I am competent to make this Verification. I declare under penalty of perjury that the factual statements contained in HMIT’s Emergency Verified Motion for Temporary Restraining Order and Preliminary Injunction, as well as the accompanying Memorandum of Law in Support, are true and correct to the best of my knowledge and belief.

Executed in Dallas County, State of Texas, on September 15, 2025.

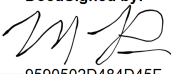
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MARK PATRICK

EXHIBIT 11

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.,

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

**MARK S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST**

Plaintiff,

v.

**JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC
LEVENTON; GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST
AND NANCY DONDERO, AS TRUSTEE OF
DUGABOY INVESTMENT TRUST; GET GOOD**

Adv. Pro. No. 21-03076-sgj

TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

ORDER GRANTING TEMPORARY RESTRAINING ORDER AND SETTING HEARING ON PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION AND APPOINTMENT OF RECEIVER

Having considered Plaintiff Hunter Mountain Investment Trust's ("HMIT") *Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and Appointment of a Receiver and Memorandum in Support* ("Verified Motion") against Defendants James Dondero, Scott Ellington, Isaac Leventon, Strand Advisors, Inc., The Get Good Trust, NexPoint Advisors, L.P., Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Highland Dallas Foundation, Massand Capital LLC, Massand Capital, Inc., and SAS Asset Recovery, Ltd. (collectively, "Defendants"), and all persons acting in concert or participation with them, the Court finds the following:

HMIT's Verified Motion and accompanying Memorandum of Law in Support, the evidentiary materials referenced therein, the record in this adversary proceeding and in the underlying bankruptcy case of Highland Capital Management, L.P., establish sufficient grounds for issuance of a temporary restraining order as set forth in the Verified Motion. The Court specifically finds that:

- HMIT has established a likelihood that it will prevail on the merits of the claims asserted against Defendants in the Amended Complaint, which details the avoidable transactions and conduct at issue in explicit detail and with numerous references to competent evidence amassed throughout these bankruptcy proceedings;

- HMIT will be irreparably harmed absent immediate injunctive relief if Defendants' efforts to conceal assets, or transfer such assets outside the jurisdiction of this Court, are allowed to continue;
- The equities favor HMIT;
- Injunctive relief serves the public interest; and
- Defendants have no legal or equitable right to engage in conduct designed to avoid paying a judgment awarded against them.

Accordingly, pending the hearing and determination of HMIT's Motion for Preliminary Injunction and Appointment of a Receiver, and HMIT having established grounds for the issuance of a temporary restraining order, the Court hereby **ORDERS** that:

1. Defendants¹ shall be temporarily restrained and enjoined from transferring, selling, liquidating, dissipating, assigning, alienating, tampering with, withdrawing, concealing, mortgaging, encumbering, granting a lien or security interest or other interest in, or otherwise harming or reducing the value of, or disposing of, any funds or other assets under the Defendants' individual or joint control including, among other things, their subsidiaries, businesses, physical assets, real property, cash, and equity interests ("Assets").

2. Defendants shall be temporarily restrained and enjoined from transferring any Assets to other entities owned or controlled, directly or indirectly, by the Defendants, whether such entity is currently existing or newly created.

3. Defendants shall be temporarily restrained and enjoined from transferring any Assets owned or controlled by the Defendants, directly or indirectly, to any account, entity or individual located outside the United States of America or beyond the jurisdiction of this Court.

¹ Including Defendants' successors, assigns, officers, agents, employees, and attorneys, and all persons or entities in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or through any corporation, subsidiary, division, or other device,

4. Notwithstanding this Order, the Defendants are allowed to continue to engage in transactions in the ordinary course of business, but all transactions are subject to the disclosure requirements set forth in Paragraph 5. For purposes of this paragraph, “ordinary course of business” shall include transfers, assignments or sales to a bona fide third-party purchaser or assignee for equivalent value, as viewed by an objective observer with knowledge of the party's business, so long as such transactions are at arm’s length, on commercially reasonable terms, and with unaffiliated third parties, without involving extraordinary commitments, unprecedented expenditures, or actions that would breach duties or dissipate assets outside the jurisdiction of this Court or in any manner that may frustrate collection of any judgment in this lawsuit.

5. The Defendants are ordered to identify and disclose on or before September ____, 2025, all past, current or planned transactions in which they have been involved or are currently involved relating to or involving the transfer, assignment, monetization or other disposition of any Assets since the commencement of this adversary proceeding through the date of the hearing on the Preliminary Injunction set forth below.

6. The Court shall hold a hearing on HMIT’s request for preliminary injunctive relief and appointment of receiver(s) on _____, 2025 at _____.

7. Defendants may submit any opposition to the requested preliminary injunction and/or the appointment of a receiver on or before _____, 2025, to which HMIT may reply on or before _____, 2025.

8. This Order is effective immediately and the Court, in the exercise of its discretion, finds that no security is required.

9. The Court retains jurisdiction for such other pre-trial orders as shall be deemed just and necessary.

END OF ORDER

EXHIBIT 12



CLERK, U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
 THE COURT'S DOCKET

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

Signed April 6, 2022

Stacy G. C. George

 United States Bankruptcy Judge

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

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	CASE NO. 19-34054-SGJ-11
L.P.,	§	(CHAPTER 11)
	§	
REORGANIZED DEBTOR.	§	
_____	§	
	§	
MARC S. KIRSCHNER, AS LITIGATION	§	
TRUSTEE OF THE LITIGATION	§	
SUB-TRUST,	§	
	§	CIVIL ACTION NO. 3:22-CV-203-S
PLAINTIFF,	§	
	§	
v.	§	ADVERSARY NO. 21-03076
	§	
JAMES D. DONDERO; MARK A. OKADA;	§	
SCOTT ELLINGTON; ISAAC	§	
LEVENTON; GRANT JAMES SCOTT III;	§	
FRANK WATERHOUSE; STRAND	§	
ADVISORS, INC.; NEXPOINT ADVISORS,	§	



L.P.; HIGHLAND CAPITAL §
MANAGEMENT FUND ADVISORS, L.P. §
DUGABOY INVESTMENT TRUST §
AND NANCY DONDERO, AS TRUSTEE §
OF DUGABOY INVESTMENT TRUST; §
GET GOOD TRUST AND GRANT JAMES §
SCOTT III, AS TRUSTEE OF GET GOOD §
TRUST; HUNTER MOUNTAIN §
INVESTMENT TRUST; MARK & §
PAMELA OKADA FAMILY TRUST – §
EXEMPT TRUST #1 AND LAWRENCE §
TONOMURA AS TRUSTEE OF MARK & §
PAMELA OKADA FAMILY TRUST – §
EXEMPT TRUST #1; MARK & PAMELA §
OKADA FAMILY TRUST – EXEMPT §
TRUST #2 AND LAWRENCE §
TONOMURA IN HIS CAPACITY AS §
TRUSTEE OF MARK & PAMELA §
OKADA FAMILY TRUST – EXEMPT §
TRUST #2; CLO HOLDCO, LTD.; §
CHARITABLE DAF HOLDCO, LTD.; §
CHARITABLE DAF FUND, LP.; §
HIGHLAND DALLAS FOUNDATION; §
RAND PE FUND I, LP, SERIES 1; §
MASSAND CAPITAL, LLC; MASSAND §
CAPITAL, INC.; SAS ASSET RECOVERY, §
LTD.; AND CPCM, LLC, §
§
DEFENDANTS. §
§

**REPORT AND RECOMMENDATION TO THE DISTRICT COURT PROPOSING
THAT IT: (A) GRANT DEFENDANTS’ MOTIONS TO WITHDRAW THE
REFERENCE AT SUCH TIME AS THE BANKRUPTCY COURT CERTIFIES THAT
ACTION IS TRIAL READY; BUT (B) DEFER PRE-TRIAL MATTERS TO THE
BANKRUPTCY COURT**

I. INTRODUCTION

As further explained herein, there are 23 Defendants in the above-referenced adversary proceeding (the “Adversary Proceeding”)—almost all of whom have jury trial rights and desire to have the reference withdrawn from the bankruptcy court, so that a jury trial may ultimately occur in the District Court. All parties agree (even the Plaintiff) that the reference *must* ultimately be withdrawn for final adjudication to occur in the District Court, since: (a) jury trial rights exist, and (b) the Defendants do not consent to a jury trial occurring in the bankruptcy court. However, there is a question of *timing* here.

Specifically, the Plaintiff believes that the bankruptcy court should, for the time being—that is, *until the action is trial-ready*—essentially serve as a magistrate and preside over all pre-trial motions and other matters, with the District Court considering reports and recommendations with regard to any dispositive motions.

The Defendants, on the other hand, believe that the District Court should *immediately* withdraw the reference, taking the position that there is not even “related to” bankruptcy subject matter jurisdiction with regard to the 36 causes of action asserted in the Adversary Proceeding (*see* 28 U.S.C. § 1334(b))—since the Adversary Proceeding was brought *after* confirmation of a Chapter 11 debtor’s plan, and the claims in the Adversary Proceeding do not require interpretation or implementation of the plan. Additionally, the Defendants argue that, even if there is “related to” bankruptcy subject matter jurisdiction, mandatory abstention applies with regard to certain of the causes of action in the Adversary Proceeding, since certain *other* federal laws—namely tax law and securities law—are implicated (*see* 28 U.S.C. § 157(d)).

The bankruptcy court disagrees with the Defendants. This Adversary Proceeding is a typical post-confirmation lawsuit being waged by a liquidating trustee, who was appointed

pursuant to a Chapter 11 bankruptcy plan to pursue pre-confirmation causes of action that were owned by the bankruptcy estate, for the benefit of creditors. Despite the “post-confirmation” timing of the *filing* of the lawsuit, there *is* still “related to” bankruptcy subject matter jurisdiction. Additionally, there will be no substantial or material consideration of “other laws of the United States regulating organizations or activities affecting interstate commerce.” *Id.*

Accordingly, the bankruptcy court recommends that the District Court only withdraw the reference of this Adversary Proceeding *at such time as the bankruptcy court certifies that the action is trial-ready and defer to the bankruptcy court the handling of all pre-trial matters (as is most often the custom in this District)*. A more detailed explanation follows.

II. PROCEDURAL CONTEXT

This Adversary Proceeding is related to the bankruptcy case (the “Bankruptcy Case”)¹ of Highland Capital Management, L.P. (the “Debtor,” “Highland,” or sometimes the “Reorganized Debtor”).

Highland filed a voluntary Chapter 11 petition on October 16, 2019, in the United States Bankruptcy Court of Delaware. That court subsequently entered an order transferring venue to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”), on December 4, 2019.

On February 22, 2021, the Bankruptcy Court entered an *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* (the “Confirmation Order”) [Bankr. Docket No. 1943], which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* (as amended, the “Plan” or “Highland Plan”) [Bankr. Docket No. 1808].

¹ Bankruptcy Case No. 19-34054.

The Highland Plan went effective on August 11, 2021 (the “Effective Date”). Thus, the Bankruptcy Case is now in what is referred to as a “post-confirmation” phase.

Like many Chapter 11 plans, the Highland Plan provided for the creation of a “Claimant Trust” for the benefit of holders of Highland’s creditors. The Claimant Trust was vested with certain assets of Highland, including “all Causes of Action” and “any proceeds realized or received from such Assets.” Plan §§ I.B.24, I.B.26, I.B.27. The Plan also provided for the creation of a “Litigation Sub-Trust,” as a “sub-trust established within the Claimant Trust or as a wholly-owned subsidiary of the Claimant Trust,” for the purpose of “investigating, prosecuting, settling, or otherwise resolving the Estate Claims” transferred to it by the Claimant Trust pursuant to the Plan. Plan §§ I.B.81, IV.B.1 (“[T]he Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims.”), Plan § IV.B.4. The Litigation Trustee of the Litigation Sub-Trust is “responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust[.]” Plan § I.B.83. Under the Plan, proceeds from the Litigation Trust’s pursuit of claims “shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries[.]” Plan § IV.B.4.

On October 15, 2021, the Litigation Trustee (“Plaintiff”) commenced the Adversary Proceeding for the benefit of Highland’s creditors. [Adv. Proc. Docket. No. 1 (the “Complaint”).]

The Complaint asserts **36 causes of action** against **23 Defendants**. The causes of action all arise from **pre-confirmation conduct** allegedly perpetrated by Highland’s founder James Dondero and individuals and entities affiliated with him, which purportedly resulted in hundreds of millions of dollars in damages to Highland. It appears that all of the Defendants are owned, controlled, or related to Mr. Dondero, although some of the Defendants dispute this characterization.

The 36 causes of action seek: the avoidance and recovery of intentional and constructive fraudulent transfers and obligations under Sections 544, 548, and 550 of the Bankruptcy Code; illegal distributions under Delaware partnership law; breach of fiduciary duty; declaratory judgment that certain entities are liable for the debts of others under alter ego theories, successor liability, aiding and abetting, or knowing participation in breach of fiduciary duty; civil conspiracy; tortious interference with prospective business relations; breach of contract; conversion; unjust enrichment; and the disallowance or subordination of claims under Sections 502 and 510 of the Bankruptcy Code.

As further addressed below, the Bankruptcy Court has concluded that the 36 causes of action include some statutory *core* (i.e., “arising under” or “arising in”) claims, some *non-core* (i.e., “related to”) claims, and some causes of action that are a *mixture* of both core and non-core claims. The following three tables summarize the Bankruptcy Court’s determination as to which counts are core, which are non-core, and which are a mixture:

Count No.	Core (“Arising Under”) Claims	Defendants Named
31	Avoidance and Recovery of One-Year Transfers as Preferential Under 11 U.S.C. §§ 547 and 550	James Dondero and Scott Ellington
34	Disallowance of Claims Under Sections 502(b), 502(d), and 502(e) of the Bankruptcy Code	James Dondero, Scott Ellington, Isaac Leventon, Frank Waterhouse, and CPCM, LLC
35-36	Disallowance or Subordination of Claims Under Sections 502 and 510 of the Bankruptcy Code	James Dondero, Dugaboy Trust, Get Good Trust, Mark Okada, MAP #1, MAP #2, Hunter Mountain, and CLO Holdco

Count No.	Non-Core (“Related to”) Claims	Defendants Named
3	Illegal Distributions Under Delaware Revised Uniform Limited Partnership Act	James Dondero, Strand Advisors, Dugaboy Trust, Hunter Mountain

4	Breach of Fiduciary Duty Arising Out of Dondero's Lifeboat Scheme	James Dondero, Strand Advisors
5	Breach of Fiduciary Duty Arising Out of Conduct that Resulted in HCMLP Liabilities	James Dondero, Scott Ellington, Isaac Leventon, Strand Advisors
6	Declaratory Judgment that Strand is Liable for HCMLP's Debts in its Capacity as HCMLP's General Partner	Strand Advisors
7	Declaratory Judgment that Dondero is Liable for Strand's Debts as Strand's Alter Ego	James Dondero
8	Declaratory Judgment that Dondero and Strand are Liable for HCMLP's Debts in Their Capacities as HCMLP's Alter Ego	James Dondero, Strand Advisors
9	Declaratory Judgment that NexPoint and HCMFA are Liable for the Debts of HCMLP, Strand, and Dondero as Their Alter Egos	NexPoint Advisors, HCMFA
10	Declaratory Judgment that Dugaboy is Liable for the Debts of Dondero in Their Capacities as Dondero's Alter Ego	Dugaboy Trust
13	Successor Liability	NexPoint Advisors, HCMFA
14	Breach of Fiduciary Duty in Connection with Fraudulent Transfers and Schemes	James Dondero, Mark Okada, Scott Ellington, Strand Advisors
15	Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty Under Texas Law	Grant Scott, Strand Advisors, NexPoint Advisors, HCMFA, Get Good Trust, CLO Holdco, DAF Holdco, DAF Highland Dallas Foundation, and SAS
16	Civil Conspiracy to Breach Fiduciary Duties Under Texas Law	James Dondero, Scott Ellington, Isaac Leventon, Grant Scott, NexPoint Advisors, HCMFA, Get Good Trust, CLO Holdco, DAF Holdco, DAF, Highland Dallas Foundation, and SAS
17	Tortious Interference with Prospective Business Relations	James Dondero, NexPoint Advisors, HCMFA
24	Breach of Contract Arising Out of Hunter Mountain Note	Hunter Mountain and Rand
25	Conversion	James Dondero, Scott Ellington
26-30	Unjust Enrichment	James Dondero, Scott Ellington, Isaac Leventon, NexPoint Advisors, HCMFA, CLO Holdco, Massand Capital, and SAS

Count No.	Mixture of Core and Non-Core Claims	Defendants Named
1	Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law	James Dondero, Mark Okada, Strand Advisors, Dugaboy Trust, Hunter Mountain, MAP#1, and MAP #2
2	Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law	James Dondero, Mark Okada, Strand Advisors, Dugaboy Trust, Hunter Mountain, MAP#1, and MAP #2
11	Avoidance of Transfer of Management Agreements as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law	NexPoint Advisors and HCMFA
12	Avoidance of Transfer of Management Agreements as Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law	NexPoint Advisors and HCMFA
18	Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, and Applicable State Law	James Dondero, Grant Scott, Get Good Trust, CLO Holdco, DAF Holdco, DAF, and Highland Dallas Foundation
19	Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, and Applicable State Law	James Dondero, Grant Scott, Get Good Trust, CLO Holdco, DAF Holdco, DAF, and Highland Dallas Foundation
20	Avoidance of Obligations Under Massand Consulting Agreement as Constructively Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law	Massand LLC
21	Avoidance of Obligations Under Massand Consulting Agreement as Intentionally Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law	Massand Capital
22	Avoidance and Recovery of Certain Massand Transfers as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law	James Dondero, Scott Ellington, Massand Capital, and SAS
23	Avoidance and Recovery of Certain Massand Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law	James Dondero, Scott Ellington, Massand Capital, and SAS
32	Avoidance and Recovery of the Alleged Expense Transfers as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, and Other Applicable Law	James Dondero and Scott Ellington
33	Avoidance and Recovery of the Alleged Expense Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, and Other Applicable Law	James Dondero and Scott Ellington

Of the 23 Defendants, *only one* has a pending, unresolved proof of claim on file in the Bankruptcy Case: CLO Holdco.² The rest of the Defendants have either never filed proofs of claim, have withdrawn their proofs of claim, or have had them disallowed during the pendency of the Bankruptcy Case.³ Thus, 22 of the 23 Defendants have jury trial rights.⁴ Further, none of the Defendants have consented to the Bankruptcy Court presiding over a jury trial or issuing final orders for that matter.⁵

Six motions to withdraw the reference (collectively, the “Motions to Withdraw”) were subsequently filed by the following Defendants on the following dates:

- On January 18, 2022, Defendants Scott Ellington, Isaac Leventon, Frank Waterhouse, and CPCM, LLC (collectively, the “Former Employee Defendants”) filed the Motion to Withdraw the Reference for Causes of Action in the Complaint Asserted Against the Former Employee Defendants [Adv. Docket No. 27] and their Brief in Support [Adv. Docket No. 28].
- On January 21, 2022, Defendants Mark A. Okada, The Mark & Pamela Okada Family Trust – Exempt Trust #1, Lawrence Tonomura in his Capacity as Trustee, The Mark & Pamela Okada Family Trust – Exempt Trust #2, and Lawrence Tonomura in his Capacity as Trustee (the “Okada Defendants”) filed the Motion of the Okada Parties to Withdraw the Reference [Adv. Docket No. 36] and their Memorandum of Law in Support [Adv. Docket No. 37].
- On January 21, 2022, Defendants NexPoint Advisors L.P (“NexPoint”) and Highland Capital Management Fund Advisors L.P. (“HCMFA”) filed the Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against Defendants [Adv. Docket No. 39] and their Memorandum of Law in Support [Adv. Docket No. 40].

² CLO Holdco’s claim (Claim No. 198) was objected to by the Litigation Trustee in an omnibus claims objection. CLO Holdco’s has moved to ratify a second amended proof of claim. These matters are currently set for hearing on May 2, 2022.

³ Actually, there are two withdrawals of proofs of claim that are not quite final. Specifically, those of Frank Waterhouse and CPCM. On March 24, 2022, the Reorganized Debtor filed a Bankruptcy Rule 9019 motion for the court to approve a settlement among the Litigation Trustee, Frank Waterhouse, and CPCM. Through the settlement motion, among other terms, Frank Waterhouse and CPCM have agreed to withdraw proofs of claim with prejudice. In return, the Litigation Trustee has agreed to withdraw Count 34 (the only claim asserted against Mr. Waterhouse), as to Mr. Waterhouse, with prejudice from the Complaint. The motion is currently set for hearing on May 2, 2022.

⁴ See, e.g., *Grandfinanciera, S.A. v. Nordberg*, 109 S. Ct. 2782 (1989); *Lagenkamp v. Culp*, 111 S. Ct. 330 (1990).

⁵ See, e.g., *Stern v. Marshall*, 564 U.S. 462 (2011).

- On January 25, 2022, Defendants James Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. (the “Dondero Defendants”) filed Defendants James D. Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc.’s Motion to Withdraw the Reference [Adv. Docket No. 45] and their Memorandum of Law in Support [Adv. Docket No. 46].
- On January 26, 2022, Defendant Grant James Scott III filed his Motion to Withdraw the Reference [Adv. Docket No. 50] and his Memorandum of Law in Support [Adv. Docket No. 41].
- On January 26, 2022, CLO Holdco, Ltd., Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, and Charitable DAF Holdco, Ltd. (the “CLO Holdco-Related Defendants”) filed their Motion to Withdraw the Reference [Adv. Docket No. 59] and their Brief in Support [Adv. Docket No. 59].
- On February 1, 2022, Defendants Hunter Mountain Investment Trust (“Hunter Mountain”) and Rand PE Fund I, LP, Series 1 (“Rand” and together with Hunter Mountain, the “Hunter Mountain Defendants”) filed a nominal joinder.

The six different Motions to Withdraw initially created six different civil actions before six different District Judges. These six actions were administratively consolidated, by an order signed and entered on March 22, 2022, in Civil Action No. 3:22-CV-203-S [Docket No. 13], and are now pending before District Judge Karen Scholer.

After holding a status conference on the Motions to Withdraw on March 17, 2022, as required by Local Bankruptcy Rule 5011, the Bankruptcy Court now submits the following report and recommendation to the District Court. Based on the reasoning set forth below, the Bankruptcy Court recommends that the Motions to Withdraw be granted, *but only at such time as the Bankruptcy Court certifies to the District Court that the lawsuit is trial-ready*. The Bankruptcy Court further recommends that the District Court *defer to the Bankruptcy Court the handling of all pre-trial matters*.

III. LEGAL STANDARDS

A. *Some General Principles Regarding Discretionary Withdrawal of the Reference*

First, some basic discussion is in order regarding discretionary or permissive withdrawal of the reference. The concept is described in 28 U.S.C. § 157(d) as follows: “The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown.”

The statute does not define “cause shown,” but the United States Court of Appeal for the Fifth Circuit, interpreting the United States Supreme Court case of *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), has identified a number of factors for courts to consider in determining whether permissive withdrawal of the reference is appropriate: (1) whether the matter is core or noncore; (2) whether the matter involves a jury demand; (3) whether withdrawal would further uniformity in bankruptcy administration; (4) whether withdrawal would reduce forum-shopping and confusion; (5) whether withdrawal would foster economical use of debtors’ and creditors’ resources; and (6) whether withdrawal would expedite the bankruptcy process. *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 998-99 (5th Cir. 1985). Courts in this District have placed an emphasis on the first two factors. *See Mirant Corp. v. The Southern Co.*, 337 B.R. 107, 115-23 (N.D. Tex. 2006).

As explained by the Supreme Court in *Stern v. Marshall*, Congress has divided bankruptcy proceedings (*i.e.*, adversary proceedings or contested matters within a bankruptcy case)—over which there is bankruptcy subject matter jurisdiction—into three different categories: (a) those that “aris[e] under” Title 11; (b) those that “aris[e] in” a Title 11 case; and (c) those that are “related to” a case under Title 11. 28 U.S.C. § 1334(b). *Stern v. Marshall*, 564 U.S. 462, 473-474 (2011). Further, those that arise under Title 11 or arise in a Title 11 case are defined as “core” matters and those that are merely “related to” a Title 11 case are defined as “non-core” matters. The significance of the “core”/“non-core” distinction is that bankruptcy courts may statutorily enter

final judgments in “core” proceedings in a bankruptcy case, while in “non-core” proceedings, the bankruptcy courts instead may only (absent consent from all of the parties) submit proposed findings of fact and conclusions of law to the district court, for that court's review and issuance of final judgment. This is the statutory framework collectively set forth in 28 U.S.C. § 1334 and 28 U.S.C. § 157. But while a proceeding may be “core” in nature, under 28 U.S.C. § 157(b)(2), and the bankruptcy court, therefore, has the *statutory* power to enter a final judgment on the claim under 28 U.S.C. § 157(b)(1), *Stern* instructs that any district court, in evaluating whether a bankruptcy court has the ability to issue final orders and judgments, must resolve not only: (a) whether the bankruptcy court has the statutory authority under 28 U.S.C. § 157(b) to issue a final judgment on a particular claim; but also (b) whether the conferring of that authority on an Article I bankruptcy court is *constitutional* (and this turns on whether “the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process”). *Stern*, 564 U.S. at 499.

Pursuant to 28 U.S.C. § 157(e), if a litigant has the right to a jury trial under applicable non-bankruptcy law, a bankruptcy court may only conduct the jury trial if: (a) the matters to be finally adjudicated fall within the scope of bankruptcy subject matter jurisdiction; (b) the district court of which the bankruptcy court is a unit authorizes the bankruptcy court to do so; and (c) all of the parties consent.⁶

Starting first with whether a right to a jury trial even exists, the Seventh Amendment, of course, provides a jury trial right in cases in which the value in controversy exceeds twenty dollars and the cause of action is to enforce statutory rights that are at least analogous to rights that were

⁶ “If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.” 28 U.S.C. § 157(e) (West 2019).

tried at law in the late 18th century English courts. *See City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 708 (1999). Suits “at law” refers to “suits in which legal rights were to be ascertained and determined” as opposed to “those where equitable rights alone were recognized and equitable remedies were administered.” *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989). This analysis requires two steps: (1) a comparison of the “statutory action to 18th century actions brought in the courts of England prior to the merger of the courts of law and equity”; and (2) whether the remedy sought is “legal or equitable in nature . . . [t]he second stage of this analysis” being “more important than the first.” *See Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 205 (S.D. Tex. 2008) (quoting *Granfinanciera*, 492 U.S. at 42).

It is well established that the act of filing a proof of claim can operate to deprive a creditor of a jury trial right, by subjecting a claim, that would otherwise sound only in law, to the equitable claims allowance process. *See Langenkamp v. Culp*, 498 U.S. 42, 44-45 (1990). Withdrawing a claim from the claims allowance process of the bankruptcy courts prior to the commencement of an adversary proceeding can serve to preserve a right to a jury trial. *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995) (“[T]he successful withdrawal of a claim pursuant to Fed. R. Bankr. P. 3006 prior to the trustee’s initiation of an adversarial proceeding renders the withdrawn claim a legal nullity and leaves parties as if the claim had never been brought.”); *In re Goldblatt’s Bargain Stores, Inc.*, No. 05 C 03840, 2005 WL 8179250, at *5 (N.D. Ill. Dec. 6, 2005) (claims withdrawn before adversary proceeding are as if never filed); *see generally, In re Manchester, Inc.*, No. 08-30703-11-BJH, 2008 WL 5273289, at *3-6 (Bankr. N.D. Tex. Dec. 19, 2008) (permissible to withdraw a claim to preserve jury trial right).

B. Post-Confirmation Bankruptcy Subject Matter Jurisdiction

Defendants argue here that this is all more than simply a matter of “permissive withdrawal of the reference” being applicable. Specifically, the Defendants argue that bankruptcy subject matter jurisdiction is lacking with regard to the Plaintiff’s various causes of action (*i.e.*, all 36 causes of action) pursuant to the Fifth Circuit’s rulings in *Craig’s Stores of Texas, Inc. v. Bank of Louisiana (In re Craig’s Stores of Texas, Inc.)*, 266 F.3d 388 (5th Cir. 2001) and *Newby v. Enron Corp. (In re Enron Corp. Securities)*, 535 F.3d 325 (5th Cir. 2008).

In *Craig’s Stores*, the Fifth Circuit held that a bankruptcy court could not exercise subject matter jurisdiction over a post-confirmation breach of contract claim asserted by a reorganized debtor against its bank in connection with an alleged post-confirmation breach. The Fifth Circuit stated that, following confirmation of a plan, “expansive bankruptcy court jurisdiction” is no longer “required to facilitate ‘administration’ of the debtor’s estate,” and further noted: “After a debtor’s reorganization plan has been confirmed, the debtor’s estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan.” *Craig’s Store’s*, 266 F.3d at 390. *Craig’s Stores* has often been cited for the notion that bankruptcy subject matter jurisdiction significantly narrows post-confirmation of a Chapter 11 plan.

The Fifth Circuit elaborated on its *Craig’s Store’s* holding in *Enron*, in holding that confirmation of a plan does not divest a court of bankruptcy subject matter jurisdiction with regard to an action commenced prior to confirmation. *Enron*, 535 F.3d at 335. Noting that “Section 1334 does not expressly limit bankruptcy jurisdiction upon plan confirmation,” the Fifth Circuit explained that “three factors were critical to its decision” in *Craig’s Stores*:

[F]irst, the claims at issue “principally dealt with post-confirmation relations between the parties;” second, “[t]here was no antagonism or claim pending between the parties as of the date of the reorganization;” and third, “no facts or law deriving from the reorganization or the plan [were] necessary to the

claim.” *Craig’s Stores*, 266 F.3d at 391. Notwithstanding its statement that bankruptcy jurisdiction exists after plan confirmation only “for matters pertaining to the implementation or execution of the plan,” the facts in *Craig’s Stores* were narrow; they involved post-confirmation claims based on post-confirmation activities.

Id. (citing *Craig’s Stores*, 266 F.3d at 389–91).

Thereafter, numerous courts within the Fifth Circuit have held that the exception to jurisdiction at issue in *Craig’s Store’s* does not arise where, as here, a trustee of a litigation trust created under a confirmed plan of reorganization for the benefit of creditors pursues post-confirmation causes of action, predicated on pre-confirmation conduct, for the creditors’ benefit. *See Faulkner v. Lane Gorman Trubitt, LLC (In re Reagor-Dykes Motors, LP)*, 2021 WL 4823525, at *2–4 (Bankr. N.D. Tex. Oct. 14, 2021) (bankruptcy court had post-confirmation subject matter jurisdiction over a litigation trustee’s state law claims “based on pre-petition conduct,” the recoveries of which would “affect distributions to creditors under the confirmed plan”); *Dune Operating Co. v. Watt (In re Dune Energy, Inc.)*, 575 B.R. 716, 725–26 (Bankr. W.D. Tex. 2017) (bankruptcy court had post-confirmation subject matter jurisdiction over lawsuit asserting state law claims brought by liquidating trustee established under Chapter 11 plan); *Brickley for Cryptometrics, Inc. Creditors’ Tr. v. ScanTech Identification Beams Sys., LLC*, 566 B.R. 815, 830–32 (W.D. Tex. 2017) (holding that post-confirmation “related to” subject matter jurisdiction existed over creditors’ trust’s post-confirmation suit asserting pre-confirmation Chapter 5 claims and non-core state law claims where the plan vested the claims in the trust); *Schmidt v. Nordlicht*, 2017 WL 526017, at *2–3 (S.D. Tex. Feb. 9, 2017) (holding that post-confirmation “related to” subject matter jurisdiction existed over state law claims aimed at pre-confirmation conduct brought by a litigation trustee established by a confirmed plan); *Ogle v. Comcast Corp. (In re Houston Reg’l*, 547 B.R. 717, 736 (Bankr. S.D. Tex. 2016) (bankruptcy court had post-confirmation subject

matter jurisdiction over lawsuit brought by litigation trustee established under confirmed Chapter 11 plan that asserted state law claims); *Kaye v. Dupree (In re Avado Brands, Inc.)*, 358 B.R. 868, 878–79 (Bankr. N.D. Tex. 2006) (bankruptcy court had post-confirmation jurisdiction over litigation trustee’s pre-confirmation core and non-core claims that were transferred to the trustee for prosecution under the plan, where proceeds were to be distributed to creditors); *Coho Oil & Gas, Inc. v. Finley Res., Inc. (In re Coho Energy, Inc.)*, 309 B.R. 217, 221 (Bankr. N.D. Tex. 2004) (bankruptcy court had post-confirmation jurisdiction over claims preserved under Chapter 11 plan and assigned to the creditor’s trust for prosecution with recovery to be distributed to creditors).

The Bankruptcy Court agrees with these numerous holdings and believes that they are consistent with *Craig’s Stores*. First, unlike the post-confirmation contract dispute at issue in *Craig’s Stores*, the claims here all arise from **pre-confirmation** conduct. Second, “antagonism” plainly existed between the parties at the date of the reorganization. Contrary to Defendants’ assertion that an action must be filed prior to confirmation, courts in the Fifth Circuit consistently hold that “where the claims are based on pre-petition conduct and the cause of action appears to have accrued before the bankruptcy, the antagonism factor is satisfied.” *Faulkner*, 2021 WL 4823525, at *3; *see also Schmidt v. Nordlicht*, 2017 WL 526017, at *3 (while “no claim was pending before the bankruptcy,” “antagonism existed in the relevant sense; the defendant’s alleged wrongdoing harmed the company prior to the bankruptcy, and the company’s cause of action appears to have accrued before the bankruptcy”); *Brickley*, 566 B.R. at 831 (confirming that “actual litigation is not necessary to find the existence of antagonism”); *Coho Oil*, 309 B.R. at 221 (finding this factor satisfied where “claims were preserved under the Plan and assigned to the creditor’s trust for prosecution”). Moreover, the order confirming the Highland Plan expressly stated that “Implementation of the Plan” shall include the “establishment of” and “transfer of Estate

Causes of Action” to “the Litigation Sub-Trust,” the Trustee of which is charged with “investigating, pursuing, and otherwise resolving any Estate Claims.” *See* Confirmation Order at ¶ 42(b); *see also* Plan § IV. A (“the Plan will be implemented through . . . the Litigation Sub-Trust”); *id.* at § I.B.4 (“The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims,” the proceeds of which “shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries . . .”). Courts within the Fifth Circuit have held that, where a plan “contemplates the prosecution of the claims and the distribution of . . . recovery to creditors under the Plan, and the prosecution of the claims will thus impact compliance with, or completion of, the Plan, the *Craig’s Stores* test for post-confirmation jurisdiction is satisfied.” *Ernst & Young LLP v. Pritchard (In re Daisytek, Inc.)*, 323 B.R. 180, 185–86 (N.D. Tex. 2005) (bankruptcy court had post-confirmation subject matter jurisdiction over a Rule 2004 motion brought by the trustee of a creditors’ trust, established under a confirmed plan, relating to potential accounting malpractice investigation); *see also First Am. Title Ins. Co. v. First Trust Nat’l Ass’n (In Re Biloxi Casino Belle Inc.)*, 368 F.3d 491, 496 (5th Cir. 2004) (a suit pertained to the implementation and execution of the plan where recovery had been assigned to a “liquidating trust . . . for the benefit of unsecured creditors”).

Accordingly, the Bankruptcy Court concludes that the 36 counts in the Adversary Proceeding “[w]ithout doubt . . . ‘pertain[] to implementation and execution’” of the plan and the Defendants arguments to the contrary have no merit. *See Dune Energy*, 575 B.R. at 725–26 (quoting *Craig’s Stores*).⁷

⁷ The court in *Schmidt* also noted that “*Craig’s* turned on the idea that a reorganized debtor’s confirmed plan marked the end of the bankruptcy and the emergence of a new reorganized business entity not dependent on the bankruptcy court’s protection,” commenting that while “that rule makes a good deal of sense in the reorganization context . . . in a liquidation case like this one there is no entity that emerges from the bankruptcy to continue

C. Mandatory Withdrawal of the Reference

Withdrawal of the reference pursuant to 28 U.S.C. § 157(d) provides for the possibility of mandatory withdrawal of the reference from the bankruptcy court: “The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” Under the precedent of this District, in *Nat’l Gypsum Co.* and *Pilgrim’s Pride*, mandatory withdrawal of the reference must be granted when: (1) the motion was timely filed; (2) a non-Bankruptcy Code federal law at issue has more than a *de minimis* effect on interstate commerce; and (3) the proceeding involves a substantial and material question of non-Bankruptcy Code federal law. *See U.S. Gypsum Co. v. Nat’l Gypsum Co. (In re Nat’l Gypsum Co.)*, 145 B.R. 539, 541 (N.D. Tex. 1992) (stating “withdrawal must be granted if it can be established (1) that the proceeding involves a substantial and material question of both Title 11 and non-Bankruptcy Code federal law; (2) that the non-Code federal law has more than a *de minimis* effect on interstate commerce; and (3) that the motion for withdrawal was timely.”); *see also City of Clinton, Ark. v. Pilgrim’s Pride Corp.*, No. 4:09-CV-386-Y, 2009 WL 10684933, at *1 (N.D. Tex. Aug. 18, 2009).

It has been well established that “mandatory withdrawal is to be applied narrowly” and to “prevent 157(d) from becoming an ‘escape hatch.’” *Manila Indus., Inc. v. Ondova Ltd. (In re Ondova Ltd.)*, 2009 U.S. Dist LEXIS 102134, at *6 (N.D. Tex. Oct. 1, 2009), *adopted in its entirety*, 2009 U.S. Dist. LEXIS 102071 (N.D. Tex. Nov. 3, 2009). Unsubstantiated assertions that

operations.” *Schmidt*, 2017 WL 526017, at *3. Here, although the Plan is one of reorganization, it is “an ‘asset monetization plan’ providing for the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds.” Confirmation Order at ¶ 2. Thus, as in *Schmidt*, the role of the Litigation Trust “is nothing more or less than maximizing the pot of money for distribution to creditors.” *Schmidt*, 2017 WL 526017, at *3.

non-bankruptcy federal law issues are substantial and material to an adversary proceeding are insufficient to warrant mandatory withdrawal. *Keach v. World Fuel Servs. Corp., (In re Montreal Me. & Atl. Ry.)*, 2015 U.S. Dist. LEXIS 74006, at *21-*23 (D. Me. June 8, 2015) (insufficient basis for mandatory withdrawal where party failed to demonstrate specifically why a court would have to “engage in anything beyond routine application of current law” and the party “tries to kick up some dust to make the relevant analysis seem complicated”).

Why is the issue of mandatory withdrawal of the reference even being raised here—when the Bankruptcy Court and all the parties agree that permissive withdrawal of the reference should be exercised here, since mere non-core “related to” claims are pervasive and jury trial rights exist? In other words, everyone agrees the reference should be withdrawn—it’s just a matter of ***when***. Should withdrawal happen immediately or when the action is trial-ready?

The Defendants advocate for immediate withdrawal on the grounds that the Bankruptcy Court does not have authority to preside over the “other federal law” issues present with regard to certain causes of action—so this should preclude the Bankruptcy Court from even presiding over pre-trial matters.

The court does not agree with the Defendants. The “other federal law” issues that may be involved in this Adversary Proceeding are not pervasive or particularly complicated. There are, admittedly, one or more Tax Code provisions at issue. But bankruptcy courts routinely consider tax matters. Defendants’ attempts to characterize what appear to be commonplace tax law issues here as sufficient to mandate withdrawal of the reference seem disingenuous.

Certain of the Defendants (HCMFA and NexPoint Advisors) contend that federal securities laws are implicated by the Adversary Proceeding. But the Plaintiff has not asserted any claims that are based on federal securities law statutes. Rather, HCMFA and NexPoint Advisors have

merely made barebone references to potential defenses that might implicate federal securities laws. While certain of the parties in the litigation are “registered investment advisors,” this does not mean that the parties’ alleged conduct will implicate broad questions of federal securities law. “If a party to a case is federally regulated, such as a bank or securities brokerage, but no federal regulation applies to the dispute at hand, the court need not withdraw the proceeding because no federal regulation will have to be considered.” *Contemp. Lithographers, Inc. v. Hibbert*, 127 B.R. 122, 125 (M.D.N.C. 1991). The rule advanced by HCMFA and NexPoint Advisors would mean that bankruptcy courts would be unable to hear virtually any claims against any investment advisor or other financial entity regulated under the federal securities laws.

In summary, mandatory withdrawal of the reference is inapplicable here.

D. CONCLUSION

In light of: (a) the non-core, related-to claims in the Complaint; (b) the jury trial rights of most Defendants; (c) the fact that only one Defendant out of 23 still has a proof of claim pending—that might arguably negate jury trial rights; and (d) the lack of consent by the Defendants to the Bankruptcy Court presiding over a jury trial or issuing final judgments, the Bankruptcy Court recommends that the District Court: refer all pre-trial matters to the Bankruptcy Court, and grant the Motions to Withdraw upon certification by the Bankruptcy Court that the parties are trial-ready.

With regard to such pre-trial matters, the Bankruptcy Court further recommends that, to the extent a dispositive motion is brought that the Bankruptcy Court determines should be granted and would finally dispose of claims in this Adversary Proceeding, the Bankruptcy Court should submit a report and recommendation to the District Court for the District Court to either adopt or reject.

*****END OF REPORT AND RECOMMENDATION*****

EXHIBIT 13



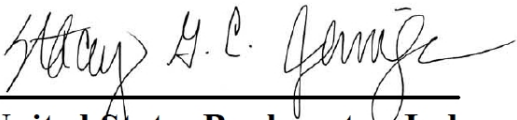
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed April 4, 2023


United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹
Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST,
Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT
ELLINGTON; ISAAC LEVENTON; GRANT JAMES
SCOTT III; STRAND ADVISORS, INC.; NEXPOINT
ADVISORS, L.P.; HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.;
DUGABOY INVESTMENT TRUST AND NANCY
DONDERO, AS TRUSTEE OF DUGABOY
INVESTMENT TRUST; GET GOOD TRUST AND
GRANT JAMES SCOTT III, AS TRUSTEE OF GET
GOOD TRUST; HUNTER MOUNTAIN

Chapter 11

Case No. 19-34054-sgj11

Adv. Pro. No. 21-03076-sgj

STIPULATION AND PROPOSED
FOURTH AMENDED
SCHEDULING ORDER

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.



193405423040400000000005

INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

STIPULATION AND PROPOSED FOURTH AMENDED SCHEDULING ORDER

This stipulation and proposed fourth amended scheduling order (the “Stipulation”) is made and entered into, subject to Court approval, in the above-captioned adversary proceeding (the “Adversary Proceeding”) by and among Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the “Trustee”), and James D. Dondero; Mark A. Okada; Scott Ellington; Isaac Leventon; Grant James Scott III; Strand Advisors, Inc.; NexPoint Advisors, L.P.; Highland Capital Management Fund Advisors, L.P.; Dugaboy Investment Trust and Nancy Dondero, as Trustee of Dugaboy Investment Trust; Get Good Trust and Grant James Scott III, As Trustee of Get Good Trust; Hunter Mountain Investment Trust; Mark & Pamela Okada Family Trust – Exempt Trust #1 and Lawrence Tonomura, as Trustee of Mark & Pamela Okada Family Trust – Exempt Trust #1; Mark & Pamela Okada Family Trust – Exempt Trust #2 and Lawrence Tonomura, as Trustee of Mark & Pamela Okada Family Trust – Exempt Trust #2; CLO Holdco, Ltd.; Charitable DAF Holdco, Ltd.; Charitable DAF Fund, L.P.; Highland Dallas Foundation; and Rand PE Fund I, LP, Series 1 (each, a “Defendant” and collectively, the “Defendants,” and with the Trustee, the “Parties”), by and through their respective undersigned counsel. In support of the Stipulation, the Parties respectfully state as follows:

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (“HCMLP”), filed a voluntary petition for relief under title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11;

WHEREAS, on February 22, 2021, the Court confirmed HCMLP’s *Fifth Amended Plan of Reorganization* [Case No. 19-34054-sgj11, Docket No. 1943] (the “Plan”) which, among other things, established the Litigation Sub-Trust (as defined in the Plan) for the benefit of the Claimant Trust Beneficiaries (as defined in the Plan);

WHEREAS, on October 15, 2021, the Trustee commenced the Adversary Proceeding by filing a complaint against Defendants [Docket No. 1];

WHEREAS, on October 18, 2021, the Clerk of Court for the United States Bankruptcy Court for the Northern District of Texas issued the *Summons In An Adversary Proceeding* [Docket No. 3];

WHEREAS, on October 18, 2021, the Court entered the *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* [Docket No. 4] which, among other things, sets forth an Alternative Scheduling Order that applies to the Adversary Proceeding “[i]f the [P]arties do not submit a proposed scheduling order or do not schedule a status conference with the Court to discuss the provisions and deadlines of a scheduling order within forty-five days of the filing of this [A]dversary [P]roceeding”;

WHEREAS, on December 2, 2021, the Trustee filed the *Stipulation and Proposed Scheduling Order* [Docket No. 21], setting forth a proposed schedule mutually agreed to by the Parties;

WHEREAS, on December 17, 2021, the Court entered the *Order Approving Adversary Proceedings Trial Setting and Alternative Scheduling Order* (the “Scheduling Order”) [Docket No. 22];

WHEREAS, on February 11, 2022, the Court entered the Amended Scheduling Order (the “First Amended Scheduling Order”) [Docket No. 81];

WHEREAS, on May 19, 2022, the Trustee filed the *Amended Complaint and Objection to Claims* [Docket No. 158];

WHEREAS, on June 20, 2022, the Parties filed the *Stipulation and Proposed Second Amended Scheduling Order* [Docket No. 162], setting forth a proposed schedule mutually agreed to by the Parties;

WHEREAS, on June 29, 2022, the Court entered the *Stipulation and Proposed Second Amended Scheduling Order* (the “Second Amended Scheduling Order”) [Docket No. 167];

WHEREAS, on November 18, 2022, the Parties filed the *Stipulation and Proposed Third Amended Scheduling Order* [Docket No. 228];

WHEREAS, on November 28, 2022, the Court entered the *Stipulation and Proposed Third Amended Scheduling Order* (the “Third Amended Scheduling Order”) [Docket No. 229];

WHEREAS, the Parties have met and conferred as to proposed amendments to the Third Amended Scheduling Order, and have mutually agreed to the schedule as set forth below;

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval by the Court it shall be **SO ORDERED**:

1. Proposed Fourth Amended Scheduling Order. The Parties agree to the following proposed scheduling order (the “Proposed Fourth Amended Scheduling Order”):

Event	Deadline
Substantial Completion of Fact Document Discovery	Wednesday, August 9, 2023
Start of Fact Depositions	Earlier of Wednesday, September 6, 2023 or decision on the last outstanding motion to dismiss
Completion of Fact Depositions	Monday, December 4, 2023
Deadline to Exchange Names and Addresses of Experts and Expert Witness Reports	Friday, February 9, 2024
Deadline to Exchange Names and Addresses of Rebuttal Experts and Rebuttal Expert Witness Reports	Friday, April 5, 2024
Expert Discovery Closes	Friday, May 17, 2024
Dispositive Motion Deadline	Friday, June 14, 2024
Deadline to File a Response to Dispositive Motions	Friday, August 9, 2024
Deadline to File a Reply in Support of Dispositive Motions	Monday, September 9, 2024
Last Date For Hearings on Dispositive Motions (subject to the Court’s schedule)	Monday, October 7, 2024
Deadline to Exchange Expert and Witness Lists	Tuesday, October 15, 2024
Joint Pretrial Order Deadline	Friday, November 1, 2024
Written Proposed Findings of Fact and Conclusions of Law Deadline	Friday, November 1, 2024
Docket call (subject to the Court’s schedule)	The first docket call scheduled on or after November 4, 2024 at 1:30pm

2. Pending approval of this Stipulation by the Court, each of the Parties agrees that it is and will be bound by this Stipulation and waives any right to object to approval by the Court. In the event that this Stipulation is not approved by the Court, it will be null and void and have no force or effect whatsoever except as may be otherwise agreed in writing by the Parties.

3. If approved by the Court, the Proposed Fourth Amended Scheduling Order shall be modified only by a writing signed by all Parties or further order of the Court.

4. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of the Proposed Scheduling Order.

[Remainder of Page Intentionally Left Blank]

Dated: March 24, 2023

Respectfully submitted,

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Robert S. Loigman (admitted *pro hac vice*)
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Mark and Pamela Okada Family Trust –
Exempt Trust #1, and The Mark and Pamela
Okada Family Trust – Exempt Trust #2*

EXHIBIT 14

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

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)	Case No. 19-34054-sgj-11
In Re:)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	June 25, 2025
)	9:30 a.m. Docket
Reorganized Debtor.)	
)	- MOTION TO EXTEND DURATION OF
)	TRUSTS (4213)
)	- MOTION TO APPROVE SETTLEMENT
)	(4216)
)	

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

APPEARANCES:

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For the Highland Capital Management Claimant Trust:		Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For Marc S. Kirschner, Litigation Trustee:		Robert Scott Loigman QUINN EMANUEL URQUHART & SULLIVAN, LLP 295 5th Avenue New York, NY 10016 (212) 849-7000

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13 For the Dugaboy Michael Justin Lang
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JUNE 25, 2025 - 9:38 A.M.

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

5 THE COURT: Good morning. Please be seated.

6 MR. LANG: Good morning, Judge.

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

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

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

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

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

24 THE COURT: Good morning.

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

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

3 THE COURT: Good morning.

4 MS. DEITSCH-PEREZ: Good morning.

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

7 THE COURT: Good morning.

8 MR. LANG: Good morning.

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

14 THE COURT: Good morning.

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

18 THE COURT: Good morning. Ms. Schmidt?

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

21 THE COURT: Good morning.

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

25 THE COURT: Good morning.

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

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

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

20 THE COURT: Okay.

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

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

1 THE COURT: Okay.

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

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

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

9 THE COURT: Okay.

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

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

14 MR. MORRIS: Uh-huh.

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

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

25 THE COURT: Okay.

1 MR. MORRIS: It's that simple.

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

3 MR. MORRIS: Yeah.

4 THE COURT: Okay.

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

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

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

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

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

24 THE COURT: It does.

25 MS. DEITSCH-PEREZ: Okay.

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

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

7 MR. MORRIS: Sure.

8 THE COURT: So I was --

9 MR. MORRIS: So let me clarify.

10 THE COURT: Okay.

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

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

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

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

4 THE COURT: Okay. Gotcha.

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

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

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

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

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

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

Seery - Proffer

11

1 once again?

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

6 THE COURT: Okay.

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

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

11 All right. They are admitted.

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

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

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

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

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

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

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

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

1 of.

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

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

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

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

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

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

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

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

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

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

Seery - Proffer

15

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

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

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

13 THE COURT: I have a couple of questions.

14 MR. MORRIS: Sure.

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

17 MR. MORRIS: Great.

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

20 MR. MORRIS: Sure.

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

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

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

1 THE COURT: Okay. Thank you.

2 All right. My question is probably for you.

3 THE WITNESS: Uh-huh.

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

6 MR. MORRIS: Equity interest.

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

10 MR. MORRIS: That is correct.

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

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

13 THE COURT: Okay. Thank you.

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

17 MR. MORRIS: Uh-huh.

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

1 MR. MORRIS: Yes, Your Honor.

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

6 MR. MORRIS: Precisely.

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

12 MR. MORRIS: Yes, Your Honor.

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

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

18 THE COURT: Ah.

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

21 THE COURT: Okay.

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

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

1 MR. MORRIS: Precisely.

2 THE COURT: So that would go away.

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

12 MR. MORRIS: Yeah.

13 THE COURT: So, --

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

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

18 (Counsel confer.)

19 MR. MORRIS: Go ahead, Your Honor.

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

23 MR. MORRIS: Appeal.

24 THE COURT: -- appeal.

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

1 we're just waiting for a decision.

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

4 MR. MORRIS: Uh-huh.

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

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

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

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

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

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

17 THE COURT: Appeal.

18 MR. MORRIS: My hope is that --

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

20 MR. MORRIS: Yes.

21 THE COURT: Okay.

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

1 THE COURT: Okay.

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

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

8 MR. MORRIS: Yeah.

9 THE COURT: Plus the Daugherty matter?

10 MR. MORRIS: Yeah.

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

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

20 THE COURT: Okay.

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

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

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

25 MR. MORRIS: Yeah.

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

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

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

8 THE COURT: Okay. All right.

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

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

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

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

1 the 9019 motion?

2 THE COURT: You may.

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

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

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

22 MR. CURRY: We had just finished.

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

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

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

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

10 THE COURT: All right. You may.

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

14 THE COURT: Okay. All right.

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

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

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

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

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

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

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

1 actually get it resolved.

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

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

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

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

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

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

24 MR. PHILLIPS: Correct.

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

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

4 MR. PHILIPS: Yes.

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

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

10 THE COURT: Okay. All right.

11 MR. PHILLIPS: Yeah.

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

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

17 MR. PHILLIPS: Correct.

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

23 MR. PHILLIPS: Yes, Your Honor.

24 THE COURT: -- Charitable DAF.

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

1 universe, Your Honor.

2 THE COURT: The universe? Okay.

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

5 THE COURT: Okay.

6 MR. PHILLIPS: But in the universe.

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

9 MR. PHILLIPS: Correct.

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

11 MR. PHILLIPS: Correct.

12 THE COURT: -- Claimant Trust, Subtrust.

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

15 THE COURT: All right.

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

23 THE COURT: Okay. Thank you.

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

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

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

3 THE COURT: All right. I appreciate that.

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

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

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

8 THE COURT: -- the objection.

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

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

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

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

20 MR. PHILLIPS: We object.

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

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

1 that we --

2 THE COURT: Coming from someone --

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

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

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

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

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

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

19 MR. LANG: Yes.

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

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

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

3 MR. PHILLIPS: Your Honor?

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

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

10 MR. LANG: Thank you.

11 THE COURT: Thank you.

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

15 THE COURT: Okay. Thank you.

16 MR. CURRY: Thank you, Your Honor.

17 THE COURT: Anyone else wish to weigh in?

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

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

23 MR. MORRIS: And the Dugaboy, yes.

24 THE COURT: And Dugaboy, of course.

25 MR. MORRIS: That's right.

1 THE COURT: Okay.

2 MR. MORRIS: So, --

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

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

6 THE COURT: Okay.

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

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

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

23 MR. MORRIS: Uh-huh.

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

1 Foundation.

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

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

7 MR. YORK: There was no objection.

8 THE COURT: All right.

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

10 THE COURT: You may proceed.

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

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

15 (Pause.)

16 THE COURT: You may proceed.

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

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

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

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

5 (Counsel confer.)

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

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

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

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

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

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

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

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

19 THE COURT: So, --

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

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

23 MR. LANG: He was not.

24 THE COURT: Okay. So how would you address that?
25 Again, we've had, I know, some back and forth over who was

1 going to represent Dugaboy on this matter.

2 MR. LANG: Yes.

3 THE COURT: I remember the substitutions and whatnot.

4 But --

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

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

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

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

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

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

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

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

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

8 THE COURT: All right.

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

10 THE COURT: Uh-huh.

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

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

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

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

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

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

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

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

5 THE COURT: Okay. Let me --

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

7 THE COURT: Thirty second.

8 MR. MORRIS: Really quickly.

9 THE COURT: Uh-huh.

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

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

24 THE COURT: Okay.

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

1 someone tried to introduce it as evidence.

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

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

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

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

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

4 MR. PHILLIPS: Yes, Your Honor.

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

10 MR. MORRIS: Your Honor?

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

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

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

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

18 THE COURT: Oh.

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

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

1 Highland?

2 MR. PHILLIPS: Your Honor?

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

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

15 THE COURT: Which they've stipulated.

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

17 THE COURT: Uh-huh.

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

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

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

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

11 A VOICE: That was long ago.

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

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

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

25 MR. MORRIS: Correct.

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

3 MR. MORRIS: Okay.

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

6 (Pause.)

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

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

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

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

21 MR. YORK: That's fine.

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

1 timing you like you're on the clock.

2 MR. MORRIS: Okay.

3 THE COURT: Okay?

4 MR. MORRIS: May I proceed?

5 THE COURT: You may proceed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 MR. LANG: 57.

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

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

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

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

8 MR. LANG: To 57?

9 MR. MORRIS: Yeah.

10 MR. LANG: Mine did not.

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

12 THE COURT: Okay.

13 MR. MORRIS: Okay.

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

15 MR. LANG: Oh, sorry.

16 THE COURT: That was the first one.

17 MR. LANG: Yeah.

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

19 THE COURT: All right.

20 MR. MORRIS: Okay.

21 THE COURT: So, 59?

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

25 MR. LANG: We withdrew that.

1 MR. MORRIS: Oh, you withdrew that?

2 MR. LANG: Withdrew.

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

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

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

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

7 THE COURT: Uh-huh.

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

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

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

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

21 MR. LANG: Okay.

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

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

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

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

7 MR. LANG: Yes.

8 MR. MORRIS: No objection.

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

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

13 THE COURT: And Daugherty's exhibits?

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

19 THE COURT: All right.

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

21 THE COURT: All right. So you confirm?

22 MR. MORRIS: Yes, Your Honor.

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

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

3 THE COURT: All right. Opening statements.

4 OPENING STATEMENT ON BEHALF OF THE CLAIMANT TRUST

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

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

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

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

16 MR. MORRIS: Counsel have a hard copy.

17 THE COURT: Oh, okay.

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

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

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

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

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

1 burden to carry the day here.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 THE COURT: Okay.

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

16 (Pause.)

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

19 THE COURT: Okay.

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

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

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

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

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

21 Is that clear to Your Honor?

22 THE COURT: It is.

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

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

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

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

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

25 It continues by saying that the Administrator, Mr.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 THE COURT: And --

25 MR. MORRIS: Uh-huh?

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

2 MR. MORRIS: That's all right.

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

5 MR. MORRIS: UBS.

6 THE COURT: -- claim?

7 MR. MORRIS: Exactly right.

8 THE COURT: Okay.

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

11 THE COURT: Okay.

12 MR. MORRIS: Because they had purchased --

13 THE COURT: They had Class 9 --

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

24 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

17 MR. MORRIS: Yeah.

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

21 OPENING STATEMENT ON BEHALF OF THE HUNTER MOUNTAIN ENTITIES

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

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

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

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

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

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

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

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

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

1 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

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

3 THE COURT: You may.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 MR. YORK: The --

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

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

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

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

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

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

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

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

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

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

12 THE COURT: Wait. Wait. What?

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

15 THE COURT: Mr. Highland?

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

18 THE COURT: Uh-huh.

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

22 THE COURT: Uh-huh.

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

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

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

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

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

11 MR. YORK: I understand, Your Honor.

12 THE COURT: So, --

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

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

18 MR. YORK: I presume that --

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

21 MR. YORK: And --

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

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

10 THE COURT: Okay.

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

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

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

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

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

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

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

1 out theoretically in those interim distributions.

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

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

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

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

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

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

9 MR. YORK: Sure.

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

12 MR. YORK: With respect to his --

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

14 MR. YORK: Correct.

15 THE COURT: Is that not true?

16 MR. YORK: So, the day --

17 THE COURT: Is that true?

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

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

23 MR. YORK: Yes. Sure.

24 THE COURT: Has he been paid?

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

1 after the proposed settlement was filed.

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

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

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

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

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

13 MR. DAUGHERTY: That's not true.

14 THE COURT: \$1.7 million?

15 MR. DAUGHERTY: No.

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

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

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

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

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

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

17 THE COURT: Well, what --

18 MR. YORK: Yes.

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

24 MR. YORK: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 MR. YORK: Sure. Happy to.

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

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

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

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

24 So, that's all I have.

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

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

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

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

13 MR. YORK: Sure.

14 THE COURT: -- a contingent unliquidated claim.

15 MR. YORK: I understand.

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

17 MR. YORK: Thank you.

18 THE COURT: And Mr. Lang?

19 OPENING STATEMENT ON BEHALF OF THE DUGABOY INVESTMENT TRUST

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

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

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

8 Does that make sense?

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

12 MR. LANG: On the petition date.

13 THE COURT: -- on the petition date?

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

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

20 MR. LANG: Yes.

21 THE COURT: Okay.

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

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

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

6 THE COURT: It was in several pleadings.

7 MR. LANG: Okay. Yeah.

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

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

14 THE COURT: Uh-huh.

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

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

21 MR. LANG: Yes.

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

1 note that is addressed in the settlement.

2 MR. LANG: Yes.

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

4 --

5 MR. LANG: That was --

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

7 MR. LANG: Seventeen-ish.

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

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

16 MR. LANG: Yes.

17 THE COURT: Okay.

18 MR. LANG: I believe so.

19 THE COURT: Okay. Thank you.

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

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

Seery - Direct

83

1 THE COURT: Okay.

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

3 THE COURT: It's 11:30.

4 MR. MORRIS: Yeah.

5 THE COURT: So, all right.

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

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

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

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

21 MR. SEERY: Thank you, Your Honor.

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

23 DIRECT EXAMINATION

24 BY MR. MORRIS:

25 Q Good morning, Mr. Seery.

Seery - Direct

84

1 A Good morning.

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

3 A I have four binders in front of me.

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

5 A I think -- yes, sir.

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

8 Should we wait for Mr. Edmond?

9 THE WITNESS: That would be good.

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

12 (Pause.)

13 THE COURT: All right.

14 THE WITNESS: Apologies, Your Honor.

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

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

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

21 THE COURT: You may.

22 MR. MORRIS: All right.

23 BY MR. MORRIS:

24 Q Are you comfortable, Mr. Seery?

25 A Yes.

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

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

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

7 A He did have a Class 9 claim.

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

10 A It was approximately \$3.7 million.

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

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

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

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

19 MR. MORRIS: It's 58.

20 A VOICE: Thank you.

21 MR. MORRIS: You're welcome.

22 BY MR. MORRIS:

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

24 A Yes.

25 Q What is that?

Seery - Direct

86

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

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

12 A That's approximately correct, yes.

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

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

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

25 A Yes. The distributions were pro rata.

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

5 A No, he did not.

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

10 A No, he did not.

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

14 A Yes, I did.

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

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

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

1 pursuant to the plan to put HCLOM in there.

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

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

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

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

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

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

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

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

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

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

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

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

Seery - Direct

90

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

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

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

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

21 A Yes.

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

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

1 --

2 Q Yeah.

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

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

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

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

16 A No, not at all.

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

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

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

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

1 litigations. Otherwise, why are we bothering?

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

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

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

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

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

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

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

10 A The topic of the allowed --

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

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

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

23 A Yes.

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

1 out?

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

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

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

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

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

24 THE COURT: 113 to what?

25 MR. MORRIS: 18.

Seery - Direct

95

1 THE COURT: Okay.

2 THE WITNESS: Um, --

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

6 THE COURT: Right.

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

9 THE WITNESS: Yes.

10 BY MR. MORRIS:

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

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

16 Q Yeah. That's 115?

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

22 Q And is that Exhibit 116?

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

1 Q Okay.

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

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

14 A No. This was math.

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

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

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

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

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

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

5 A I -- I don't recall.

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

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

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

17 A Yes.

18 Q What did you do to satisfy yourself?

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

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

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

1 Q If you just look at the exhibit list.

2 A Oh.

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

5 A Yes.

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

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

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

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

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

1 the Cayman Islands?

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

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

17 A Yes.

18 Q And what view did you reach?

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

Seery - Direct

100

1 in this chain.

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

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

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

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

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

Seery - Direct

101

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

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

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

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

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

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

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

10 A Yes.

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

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

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

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

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

13 A Yes.

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

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

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

Seery - Direct

104

1 A That's correct.

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

6 A Yes. I'm familiar with those.

7 Q Do you believe the settlement violates the plan?

8 A Not at all.

9 Q And why is that?

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

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

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

1 A I've got it.

2 Q Are you familiar with that document?

3 A I am, yes.

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

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

8 Q Okay.

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

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

17 A That's correct, yes.

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

20 A No. That had never been his complaint.

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

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

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

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

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

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

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

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

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

14 THE COURT: Yes.

15 MR. MORRIS: Okay.

16 BY MR. MORRIS:

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

23 A That's correct.

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

1 A That's also correct, yes.

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

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

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

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

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

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

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

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

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

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

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

18 Q Yeah. We can stop there.

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

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

Seery - Direct

109

1 THE WITNESS: Thirty minutes.

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

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

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

8 MR. YORK: Fifteen minutes, maybe.

9 MR. LANG: Twenty minutes or so.

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

12 MR. PHILLIPS: Sure.

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

15 MR. PHILLIPS: Perfect.

16 THE COURT: All right?

17 MR. PHILLIPS: Thank you, Your Honor.

18 THE WITNESS: Thank you.

19 THE CLERK: All rise.

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

21 THE CLERK: All rise.

22 THE COURT: Please be seated.

23 (Pause.)

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

1 (Pause.)

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

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

7 THE COURT: Okay.

8 CROSS-EXAMINATION

9 BY MR. PHILLIPS:

10 Q Could you look at Exhibit 118, please?

11 A You said 118?

12 Q Yes, sir.

13 A Certainly.

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

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

20 THE COURT: Would you like this?

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

23 THE COURT: Okay.

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

1 BY MR. PHILLIPS:

2 Q Correct.

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

7 Q Thank you.

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

9 All right. Counsel?

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

12 CROSS-EXAMINATION

13 BY MR. YORK:

14 Q Good afternoon, Mr. Seery.

15 A Good afternoon.

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

19 A Yes, I have it.

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

24 A It appears to be, yes.

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

1 starts on Page #11?

2 A Yes.

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

6 A That's correct.

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

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

11 Q Why not?

12 A Because it says, Daugherty contends --

13 Q Ah. Daugherty contends.

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

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

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

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

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

5 Did I read that correctly?

6 A You did read that correctly, yes.

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

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

15 Q All right.

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

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

19 THE COURT: Okay. Good.

20 MR. YORK: All right.

21 BY MR. YORK:

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

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

1 Q Right.

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

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

7 A He asserted it as that, yes.

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

13 A It should be, yes.

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

16 A You did read that correctly, yes.

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

19 A Correct.

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

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

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

3 Q How do you know that?

4 A I was advised that by another partner.

5 Q Who?

6 A Kurt Plumer.

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

8 A No, I have not.

9 Q Have you asked for it?

10 A Yes.

11 Q You did, personally?

12 A My lawyers did.

13 Q Your lawyers did?

14 A Yes.

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

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

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

20 A Asked Mr. Daugherty.

21 Q Asked Mr. --

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

23 Q Oh, asked me for that information?

24 A Yes.

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

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

2 A I don't know.

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

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

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

12 A I --

13 Q True?

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

16 Q Okay. What -- where --

17 THE COURT: F-A --

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

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

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

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

23 BY MR. YORK:

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

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

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

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

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

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

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

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

20 Q All right.

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

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

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

4 Did I read that correctly?

5 A You read that correctly.

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

10 A Yes.

11 Q How much?

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

20 Q Which would be how much?

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

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

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

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

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

12 A It simply --

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

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

15 MR. MORRIS: Yeah.

16 THE COURT: Okay. Overruled.

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

19 BY MR. YORK:

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

23 A That's correct.

24 Q Why not?

25 A Because I didn't want to.

1 Q Why?

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

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

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

16 Q Oh, really?

17 A Yeah.

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

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

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

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

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

5 So, --

6 MR. YORK: Understood.

7 THE COURT: -- reign it in.

8 MR. YORK: All right.

9 BY MR. YORK:

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

14 A Not necessarily, no.

15 Q Why not?

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

18 Q Yes.

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

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

25 A Yes. The Indemnity Trust would make those distributions

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

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

8 A Yes.

9 Q On an interim basis?

10 A Yes.

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

14 A That's correct.

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

20 A Now I am.

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

1 applicable interest, --

2 Did I read all that correctly?

3 A Yes.

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

6 A Yes.

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

9 A That's correct.

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

13 A Yes.

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

17 A Generally, yes.

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

1 under the plan.

2 Did I read all of that correctly?

3 A I believe you did, yes.

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

7 A That's correct, yes.

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

17 Did I read that correctly?

18 A You did, except you used the article "The" before
19 "contingent trust interest" at the start of the sentence.

20 Q Fair enough. And the GUC beneficiaries there would be the
21 general unsecured creditor beneficiaries, correct?

22 A That's correct.

23 Q And this certification has not been issued yet by the
24 Claimant Trustee in this bankruptcy, correct?

25 A That's correct.

1 Q In part because of Mr. Daugherty's remaining unresolved
2 Class 8 claim, correct?

3 A In part, yes.

4 Q And also in part because of the remaining Class 9 claimant
5 holders who still have money owed to them on their Class 9
6 claims?

7 A In part, yes.

8 Q Okay. Does the term of the proposed settlement agreement
9 provide those Class 9 consent holders with releases from the
10 HMIT entities?

11 A No.

12 Q It does not?

13 A No.

14 Q At all?

15 A No.

16 Q Even if they were in their capacity serving as board
17 members for Highland Capital?

18 A Certain of the Class 9 holders are also on the Oversight
19 Board. In their capacity as Oversight Board members, yes,
20 they get -- they get broad releases. UBS, for example, is
21 not. There are no releases in there for the two UBS entities.

22 Q Would you now -- you can set that binder aside. And if
23 you'd turn with me to Exhibit 60 in the -- Highland's exhibit
24 list.

25 A Six zero?

1 Q Yes, sir.

2 A Yes.

3 Q This is a copy of the tolling agreement extending
4 objection deadline between -- that's on -- dated July 27th of
5 2022 between Mr. Daugherty and Highland Capital Management, LP
6 and Highland Claimant Trust. Correct?

7 A Yes. That's what it appears to be, yes.

8 Q All right. If you would, go with me to Page 2 at the
9 bottom. There is a Footnote #3. Do you see that?

10 A Yes.

11 Q And that footnote relates to, up above, a defined term
12 called a "Reserved Claim," the Reserved Claim being what was
13 discussed earlier in Mr. Daugherty's settlement agreement with
14 Highland, right?

15 A That's correct, yes.

16 Q And it states in here that that Reserved Claim means "the
17 contingent and unliquidated claim as referenced in Proof of
18 Claim #205."

19 Did I read that portion of the footnote correctly?

20 A Yes.

21 Q All right. And it goes further to say that the amount
22 listed there of 2.65 million three hundred -- two point six --
23 let me start over. \$2,650,353 is the amount estimated as of
24 October 23, 2020. Correct?

25 A That's correct.

1 Q All right. It doesn't say it's -- anywhere in there that
2 it's a fully -- it fully reserves that unliquidated contingent
3 claim. Correct?

4 A In what you just read, no.

5 Q All right. And if you go to Page 1 -- or, I'm sorry, to
6 Page 3, Paragraph 1, the covenant to reserve where Highland
7 agrees to reserve \$2,650,353 on account of the reserved claim,
8 does it say anywhere in there that that is -- fully reserves
9 that contingent unliquidated claim anywhere?

10 A It says exactly what it says. And you read it.

11 Q That's not my question. Does it say --

12 A I don't -- well, it says, Further agree to reserve \$2.650
13 [million] on account of the reserved claim in disputed claim
14 reserve.

15 Q All right. Does it say anywhere in there that that is the
16 fully-reserved amount of that claim?

17 A Not in that sentence, no.

18 Q Thank you. All right.

19 MR. YORK: Your Honor, give me one second. Let me
20 confer.

21 THE COURT: Okay.

22 (Pause.)

23 BY MR. YORK:

24 Q Mr. Seery, UBS is one of the consent holders, Class 9
25 consent holders related to the HMIT settlement. Correct?

Seery - Cross

128

1 A There are two UBS entities, UBS AG 66 and UBS Securities,
2 LLC.

3 Q All right. Did either of those entities sit on the
4 Unsecured Creditors' Committee in this bankruptcy?

5 A A UBS entity did. I'm not sure which of those did, or
6 whether it was both with one counsel. I don't -- there's a
7 UBS entity on that Creditors' Committee.

8 Q Is the -- are the members of the Unsecured Creditors'
9 Committee within the definition of the Highland released
10 parties under the proposed HMIT settlement? Do you know?

11 A I don't know. The members of the Creditors' Committee, I
12 believe, have exculpation anyway, so I don't -- I don't -- I
13 don't know if it captures the old members of the Creditors'
14 Committee. I don't -- for example -- I don't think so. I
15 don't -- I don't know.

16 MR. YORK: Pass the witness.

17 THE COURT: All right. Mr. Lang?

18 THE WITNESS: Do you have a separate binder?

19 MR. LANG: No.

20 THE WITNESS: Okay. Will you be using Mr.
21 Daugherty's binder?

22 MR. LANG: No.

23 CROSS-EXAMINATION

24 BY MR. LANG:

25 Q All right, Mr. Seery. Just to be clear, the Class B and C

1 -- or the Class A interests and the -- of Highland under the
2 plan, they have 99.5 percent of the -- Highland Capital
3 Management. Correct?

4 A Could --

5 Q Sorry. The Class B and C --

6 A Limited partnership interest.

7 Q -- shareholder -- limited partnership interests were 99
8 point -- or, were .5 percent of Highland Capital Management?

9 A I -- I'm not trying to be difficult.

10 Q No, it's fine. It's a terrible -- terrible --

11 A I don't -- I just don't -- I don't understand your
12 question. I apologize.

13 Q Okay. So, at the time of the petition, --

14 A Yes.

15 Q -- Hunter Mountain Investment Trust owned 99.5 percent of
16 Highland Capital Management?

17 A It owned 99-1/2 percent of the limited partnership
18 interest in Highland Capital Management.

19 Q And the remainder -- and HMIT has the Class 10 claims.
20 Correct?

21 A You said something, the remainder? The --

22 Q Oh, sorry. The remaining interests are owned by the Class
23 11 claims under the plan.

24 A The remaining partnership interests are among those
25 entities I testified earlier to, which are Dugaboy, Strand, --

1 Q And Okada?

2 A -- Mark Okada individually, and two Mark Okada and Pamela
3 Okada trusts.

4 Q Okay. And the total assets in the estate right currently
5 you testified are between \$65 to \$70 million?

6 A I -- off the top of my head, I don't recall, but it --
7 rough range, it could be in that general vicinity. That does
8 not include the payments that have to be made to the 9s and
9 expenses. So I believe there's documents in here that we
10 could go through, if you like.

11 Q And I believe you testified that the remaining unpaid 9s
12 are owed approximately \$20 million?

13 A Approximately \$20 million, yes.

14 Q Okay. And the plan does not say that the equity claims
15 for Class 10 and 11 are to be determined by the capital
16 account values of the limited partnership interests in the
17 Debtor LP?

18 A That's correct. It says to set an amount. It doesn't
19 tell you how to do the amount.

20 Q Okay. And under the settlement agreement, Class 10
21 interests will be allowed in the amount of \$336,940,230.58?

22 A Approximately \$336 million, yes.

23 Q \$336 million. Fair. And this is the capital account
24 balance as of -- HMIT's capital account balance as of the
25 petition date, less, I believe, the HMIT note?

Seery - Cross

131

1 A That's correct. So that amount is the net amount.

2 Q The net? And do you know how the capital account balances
3 were calculated --

4 A Yes.

5 Q -- on the petition date?

6 A Yes.

7 Q And how were they calculated?

8 A So, you take the 2018 year-end capital account amount, and
9 then there's activity in the company that gets passed through
10 through the partnership. The partnership agreement -- in this
11 instance, the prepetition Debtor partnership agreement passed
12 through profits and losses on a pro rata basis. There was
13 activity in the first half of the year that affected that
14 capital account. You can see that reflected in the year-end
15 auditeds as well as the K-1 statement that -- for 2018 that
16 was given to HMIT. That would be their 2018 year-end. That
17 then, from an accounting perspective, was used and brought
18 down to the petition date. And between the petition date and
19 year-end 2019, there was additional capital activity, the
20 biggest one of which was the reserve -- full reserve for the
21 \$50-plus million for the HMIT note. And so then you'll see
22 the 2009 auditeds that are signed off by Mr. Waterhouse. And
23 in those interim months, then you also see the gross amount of
24 the partner capital each month in the monthly operating
25 reports.

1 Q And correct me if I'm wrong, but I believe you testified
2 that the capital account balances continued to go down after
3 2019. So you have the petition date, you have the next year,
4 and did they continue to --

5 A I don't think I testified to that. What I testified to is
6 that there was economic activity in 2019 that affected the
7 year-end '18 to the petition date. And then from the petition
8 date there was year-end activity -- there was activity from
9 the petition date to year-end '19 that would affect the
10 capital account as reflected in the 2018 auditedes -- they
11 weren't auditedes -- 2018 tax returns signed off by Waterhouse.
12 The biggest part of that activity was the application or the
13 reserve for the Hunter Mountain Note.

14 Q And was there any activity after the 2019 tax return?

15 A There was postpetition activity in the partnership,
16 certainly.

17 Q And did it reduce the capital accounts during those years?

18 A I assume it would have reduced all of the capital accounts
19 pro rata.

20 Q Okay. And why'd you use the petition date as the date to
21 determine the value of the capital accounts?

22 A Because this is bankruptcy and that's the date on which
23 you fix all your claims and interests.

24 Q If you used -- have you ever used equity ownership
25 percentages to determine the payment to the equity versus

1 their capital account balances?

2 A In this case, or elsewhere?

3 Q Elsewhere.

4 A I think that's standard. I can't cite you a specific
5 thing, but typically when a partnership liquidates or a
6 partnership is sold, amounts get distributed pursuant to the
7 capital accounts and -- and -- in up to amounts in the capital
8 accounts.

9 Q You would agree, if you use the percentage of ownership,
10 being 99.5 percent for Class 10 and the .5 percent for Class
11 11, would potentially leave money for the Class 11 creditors
12 to recover?

13 A I don't think so. No, I don't agree with that.

14 Q Why do you say that?

15 A Because Class 11 is subordinated to Class 10.

16 Q Okay. So explain how, if \$60 million exists and you pay
17 \$20 million to the Class 9, --

18 A Roughly. Yeah.

19 Q Rough. Just rough math.

20 A Okay.

21 Q That leaves \$40 million.

22 A Okay.

23 Q Correct? And if the ownership interests or the allowed
24 claim for HMIT was 99.5 percent, wouldn't that leave .5
25 percent of \$40 million for the remaining creditors?

1 A That doesn't make any sense, because 99-1/2 percent of a
2 senior thing means you get everything. So that Class 10 has
3 to be paid in full before the 11.

4 In addition, there's already an agreed-upon amount on
5 HCLOM for \$10 million. So how do I give HCLOM \$10 million and
6 99-1/2 percent to somebody else? There has to be numbers.

7 Q But to be clear, the plan does not say that the equity
8 claims are determined on capital accounts. Correct?

9 A That's correct.

10 Q All right.

11 MR. LANG: No further questions.

12 THE COURT: All right. Any redirect?

13 MR. MORRIS: Just one moment, Your Honor.

14 (Pause.)

15 MR. MORRIS: We have no questions, Your Honor.

16 THE COURT: All right. Any redirect from --

17 MR. PHILLIPS: No, Your Honor. Thank you.

18 THE COURT: -- the one question?

19 Okay. Thank you, Mr. Seery. You are excused from the
20 witness box.

21 THE WITNESS: Thank you, Your Honor.

22 (The witness steps down.)

23 THE COURT: Okay. I'm going to again take proposals.
24 I can live with a 30-minute lunch break. I and my staff can.
25 But it's easier for us than all of you. So do you all want to

1 negotiate for more?

2 MR. MORRIS: I just wanted to let the Court know
3 that, with that, the Movants rest. We're not -- we're not
4 going to call anybody else.

5 THE COURT: Okay.

6 MR. MORRIS: We reserve the right to cross-examine.
7 We reserve the right to call rebuttal witnesses, including Ms.
8 Deitsch-Perez and Mr. Dondero, depending on what testimony is
9 elicited. So we reserve the right to call rebuttal witnesses.
10 But we're not calling anybody further on our direct case, and
11 we rest.

12 THE COURT: Okay. So let me --

13 MR. MORRIS: I'll let them --

14 THE COURT: -- follow up on that point.

15 MR. MORRIS: Uh-huh.

16 THE COURT: There had been a discussion of Mr.
17 Patrick.

18 MR. MORRIS: Uh-huh.

19 THE COURT: Limited to one total hour. Thirty
20 minutes collectively, Debtor and HMIT. Thirty minutes
21 collectively, Dugaboy and Daugherty.

22 MR. MORRIS: You know what, Your Honor.

23 THE COURT: You're -- you're not asking --

24 MR. MORRIS: No, maybe I -- I forgot that you had
25 told us we could do it, too. So let's take the lunch break,

1 let us figure it out, we'll let you know when we come back.

2 THE COURT: Well, I'm clarifying because I'm deciding

3 --

4 MR. MORRIS: Yeah.

5 THE COURT: -- who gets to go first.

6 MR. MORRIS: Understood.

7 THE COURT: Each witness.

8 MR. MORRIS: Understood.

9 THE COURT: And I presume --

10 MR. MORRIS: Understood.

11 THE COURT: -- the Debtor/HMIT would go first.

12 MR. MORRIS: Yeah.

13 THE COURT: And then with regard to Dondero, --

14 MR. MORRIS: Yeah.

15 THE COURT: -- you all would go first.

16 MR. MORRIS: So I withdraw what I said. Let us
17 confer during the lunch break and we'll figure out who's going
18 first, whether we do rest or whether we put Mr. Patrick on for
19 a short direct.

20 THE COURT: Okay. Which leads me to our lunch break.
21 Do people want to negotiate for more than 30 minutes? I don't
22 want to make someone collapse if --

23 MR. MORRIS: Thirty minutes, or 1:30?

24 MR. PHILLIPS: 1:30.

25 MR. MORRIS: 1:30, Your Honor. It's nice and round.

1 MR. PHILLIPS: One clarification, Your Honor.

2 Because I don't -- I don't -- if one side doesn't take the
3 half hour, does that go over to the other side, or --

4 THE COURT: No.

5 MR. PHILLIPS: No?

6 THE COURT: I don't think -- I'm just giving --

7 MR. PHILLIPS: Great. Thank you.

8 THE COURT: And my law clerk said maybe I was
9 confusing about that earlier today.

10 MR. MORRIS: Yeah.

11 THE COURT: One hour total, but 30 minutes each. And
12 if one collective team doesn't use the whole 30 minutes, we're
13 not --

14 MR. MORRIS: Yeah.

15 THE COURT: -- giving it to the other side. Okay?

16 MR. PHILLIPS: That was my question.

17 MR. MORRIS: Understood, Your Honor.

18 THE COURT: And while I'll let you all discuss
19 whatever you want, what I envisioned is you all would go first
20 with Mr. Patrick, --

21 MR. MORRIS: Uh-huh.

22 THE COURT: -- and then Dugaboy and Daugherty would
23 go first on Mr. Dondero. But if you all collectively think it
24 makes sense to do something different, I'll hear.

25 MR. MORRIS: No. That makes sense, Your Honor.

1 MR. PHILLIPS: Thank you, Your Honor.

2 THE COURT: All right. So we'll come back at 1:30 --

3 MR. YORK: Yes.

4 THE COURT: -- and resume.

5 MR. YORK: Thank you so much.

6 THE COURT: Okay. Thank you.

7 THE CLERK: All rise.

8 (A luncheon recess ensued from 12:51 p.m. until 1:33 p.m.)

9 THE CLERK: All rise.

10 THE COURT: Please be seated. All right. We're back
11 on the record in the Highland Capital matter, the Rule 9019
12 motion for approval of a settlement. When we broke, we were
13 waiting to talk about Mr. Patrick and Mr. Dondero as
14 witnesses. Are they going -- is Patrick going to be your
15 witness?

16 MR. MORRIS: No, Your Honor. We're going to reserve
17 our 30 minutes for rebuttal.

18 THE COURT: Okay. Thank you.

19 All right. I'll hear from the Objectors now.

20 (Pause.)

21 MR. YORK: Sorry, Your Honor. I didn't realize they
22 were going to observe. So, --

23 THE COURT: Well, yes. If you understood what I was
24 saying before the break, I presumed they might want to go
25 first with Mr. Patrick, but it was -- you're the one who

1 wanted him, so if they want to go second, they can go second.

2 MR. YORK: Well, --

3 THE COURT: Well, I say "you're." I'm sorry.

4 MR. LANG: No, it's okay.

5 THE COURT: Mr. Lang wanted to go --

6 MR. YORK: Yeah. So are we definitely doing Mark

7 Patrick now?

8 MR. PHILLIPS: No.

9 MR. YORK: Oh, okay.

10 MR. PHILLIPS: We just rested.

11 THE COURT: Okay.

12 MR. MORRIS: They can call whoever they want.

13 THE COURT: They have rested. If you don't want to
14 go forward with any witnesses, you don't have to.

15 MR. YORK: Oh, we --

16 THE COURT: But you had wanted to go forward -- you
17 wanted to question Patrick and I said, if he's going to be a
18 witness, then Dondero should also be a witness. Okay? And at
19 most an hour collectively for each witness. If you don't want
20 to call either one of them, you don't have to call either one
21 of them.

22 MR. LANG: We're going to. I think that they were
23 just going to call Daugherty first. I didn't know if you had
24 an order that you wanted to do this in.

25 THE COURT: Well, no. I don't care. I guess I don't

1 care. Was Daugherty listed? I mean, --

2 MR. YORK: Yes.

3 THE COURT: I'm sorry. Did you say Daugherty or
4 Dondero?

5 MR. LANG: Daugherty.

6 THE COURT: Okay. I'm sorry. So you want to call
7 Daugherty?

8 MR. YORK: Yes.

9 THE COURT: And you listed him as a witness?

10 MR. YORK: Yes.

11 THE COURT: So you may call Daugherty.

12 MR. YORK: All right.

13 MR. MORRIS: Yes. I --

14 MR. YORK: We'll call Patrick Daugherty, then.

15 THE COURT: Okay.

16 MR. MORRIS: I don't believe Dugaboy did, but --

17 MR. YORK: Right.

18 MR. MORRIS: -- if they -- if they want to call him,
19 by all means.

20 THE COURT: Okay.

21 MR. MORRIS: Yep.

22 THE COURT: All right. Mr. Daugherty, if you could
23 approach the witness box, I will swear you in. Please raise
24 your right hand.

25 PATRICK DAUGHERTY, PATRICK DAUGHERTY'S WITNESS, SWORN

Daugherty - Direct

141

1 THE COURT: All right. Please be seated.

2 THE WITNESS: Oh, wow. A lot of water up here.

3 THE COURT: Plenty of water for everyone.

4 DIRECT EXAMINATION

5 BY MR. YORK:

6 Q Good afternoon, Mr. Daugherty. Could you state your name
7 for the record, please?

8 A Patrick H. Daugherty.

9 Q Mr. Daugherty, are you a creditor in the Highland Capital
10 bankruptcy?

11 A Yes, I am.

12 Q All right. And would you turn to, in the Daugherty
13 exhibit binder, turn to Exhibit 1, please?

14 A Yes.

15 Q And this is a settlement agreement between you and
16 Highland Capital Management relating to claims -- your proof
17 of claim that you made in this bankruptcy, correct?

18 A Yes.

19 Q And we looked earlier. You were in the courtroom for Mr.
20 Seery's testimony, correct?

21 A I was.

22 Q All right. And we talked in Section 9 about the defined
23 Reserved Claim in there. Do you remember that?

24 A I did.

25 Q All right. Can you describe what --

1 A I consider it the Compensation Claim, but yes.

2 Q Can you describe what the Reserved Claim is?

3 A Yeah. Basically, it, background, it dates back to the
4 financial crisis of 2008, 2009. Highland was on the brink of
5 filing for bankruptcy. We had a creditor bank led by Bank of
6 America and Scotia, and we were in default. And so the banks
7 came in, declared default, and basically put a limit or
8 terminated our ability to pay cash bonuses. And that -- right
9 after Lehman Brothers failed, so call it September 2008 and
10 going into 2009.

11 And the problem with that is we were losing people right
12 and left. We had about 22 senior-level guys. We were down --
13 and I say guys. I think there were some women, too. But we
14 were down to about 12 people. And they were trying to stem
15 the tide of people running out of the doors in order to save
16 the value of Highland. We started the year at about \$40
17 billion under management, and by that time, we were -- I think
18 we were as low as \$19 or \$20 billion under management.

19 Hedge funds were rolling up. CLOs did fine. Private
20 equity did fine. Retail funds were having problems. And
21 separate accounts were okay. But we were definitely a firm in
22 crisis and trying to hold on to people.

23 So the nature of this compensation claim, you know, every
24 year, everybody except Dondero and Okada would get what's
25 called a compensations and award letter. Because Dondero and

Daugherty - Direct

143

1 Okada were really the only partners. I think you can kind of
2 see that, given your experience. They were called the
3 founding partners. They were the only ones that got true
4 distributions from the firm annually. Guys like us, you know,
5 the other 12 or so, we got cash bonuses and incentive comp and
6 deferred comp. And, you know, obviously, cash compensation
7 was a big part of our compensation, and they were prohibited
8 from the banks from paying it.

9 So Dondero, with the help of Rick Swadley and some of the
10 other tax people, I don't know if we used out outside firms or
11 not, they came up with this scheme, if you will, where
12 Highland was going to go and use whatever they came up with
13 with the partnerships and whatnot and then generate a tax
14 refund to the senior-level guys. As or in lieu of the cash
15 bonuses that couldn't be paid, they were going to go make
16 these elections and then we were going to get this money.

17 And if you look at our awards agreement, it says you're
18 going to get x amount of money. And it's in the line that
19 historically is the cash bonus.

20 Also, when we got like our email or whatever that year
21 from Patrick Boyce, our CFO, he was like, Congratulations,
22 your bonus this year was x. And it was whatever that amount
23 was on your compensation and award letter.

24 Well, several of us had the same accountant, John Garvey,
25 at Bland Garvey. Me, Joe Daugherty, and Davis Deadman. And

1 we took this concept to our accountant and he's like, man,
2 that's really precedent. And so you guys are going to have to
3 basically protect yourselves from -- sorry, go ahead. Make
4 your objection. I'm sure I'm --

5 MR. MORRIS: I just, I just don't remember what the
6 question was at this point and he's testifying to --

7 THE WITNESS: Why I got this thing.

8 THE COURT: It was --

9 THE WITNESS: My apologies.

10 MR. MORRIS: -- to conversations and hearsay.

11 THE COURT: What is the --

12 MR. YORK: Let me ask a question and I'm going to try
13 to --

14 THE COURT: -- proof of claim about, was the essence
15 of the question.

16 MR. YORK: Yeah. Right.

17 THE COURT: So I sustain. We're getting a little
18 narrative, shall we say.

19 THE WITNESS: My apologies.

20 MR. YORK: So, --

21 THE WITNESS: I'll tighten it up.

22 BY MR. YORK:

23 Q All right. So, Mr. Daugherty, what you were getting under
24 this scheme, as you describe it, was a cash bonus that was
25 masked as a refund, correct?

1 A Look, Highland paid for it however they're going to pay
2 for it. They're the one who created whatever that they did.
3 But for us, it was a cash bonus.

4 Q Okay.

5 A But given that I was -- what I was just alluding to, there
6 were concerns about the tax impacts if the IRS didn't agree
7 with Highland. And so what we did is we negotiated for and
8 got from Dondero -- really, I mean, Jim ultimately made the
9 decisions at Highland. He said, look, if you don't -- if this
10 doesn't work, if it doesn't go through, we'll make you whole.
11 And so we got that provision in the compensation and award
12 letter that says if the actual refund deviates materially from
13 the refund, then you'll get substitute compensation. And that
14 was enough for us, --

15 Q And --

16 A -- and that's what led to this claim.

17 Q And was it your understanding that, in terms of making you
18 whole, that was not just whatever you had to pay back for the
19 refund, but also interest and penalties?

20 A Yeah.

21 MR. MORRIS: Objection. Leading.

22 THE COURT: Sustained.

23 THE WITNESS: That's fair enough.

24 BY MR. YORK:

25 Q What was your understanding as to what that 'make you

1 whole' constituted?

2 A It was basically to put me and the others back in the
3 position of getting to that number that was listed in the
4 document. So if there were any interest, penalties, pullbacks
5 from the IRS, then we would be made whole at that -- we'd get
6 back the net of that number. However, if the IRS was fine
7 with it, we wouldn't get anything.

8 Q So there's a chance, depending on how the IRS audit turns
9 out, if the IRS says what Highland did was fine, then you
10 don't owe the IRS anything, right?

11 A Yeah. That's been a critical thing, that I may not owe
12 the IRS anything, and certainly I wouldn't expect Highland to
13 give me anything.

14 Q And at that point, what's been reserved as your reserved
15 claim would effectively at that point, from the IRS
16 perspective, the IRS audit perspective, would be a zero dollar
17 amount, right?

18 A Yeah. I mean, more so. I mean, Jim Seery offered to buy
19 me out with an amount of the reserved claim. And I said,
20 listen, I'm not looking for a windfall here. What I'm looking
21 for is to be made whole, --

22 Q Right.

23 A -- it's my insurance policy on what I earned back in 2008,
24 because the alternative is I will have ended up working for
25 free in 2008, plus have to pay penalties and interest going

1 forward that could wipe out my net worth.

2 Q All right.

3 A So I wanted the insurance policy aspect of it.

4 Q So you heard Mr. Seery's testimony earlier where he said
5 the total amount you would owe was somewhere in the range of
6 \$1.4 to \$1.5 million if there was --

7 A He's wrong about that, if that's what he said.

8 Q Why?

9 A At the time -- I think the number he was referencing was
10 in our claim number that I filed back in, I want to say,
11 October 2020. And the \$1.45 million, what was in the
12 compensation -- was the number in the compensation and awards
13 letter.

14 The other number that I spoke about from the gallery out
15 there was one point -- I don't know, whatever the interest --
16 whatever I guessed the interest might be. And then I didn't
17 have anything for penalties. So, at that particular time,
18 took those numbers and said, okay, if the IRS says no way on
19 all this, this is what I'd have to pay, not including
20 penalties.

21 Q All right. So you've seen today and you listened to the
22 testimony about the footnote in Highland's adversary complaint
23 against you in which they say that the resolution may not be
24 until 2029 of this IRS audit?

25 A That's correct. I've heard that.

Daugherty - Direct

148

1 Q All right.

2 A I've seen it and heard it.

3 Q All right. As you've sat here today, have you done any
4 calculation back of the napkin to try to estimate what your
5 potential exposure would be to the IRS in terms of interest
6 and penalties as a result of that audit dispute if it wasn't
7 resolved until 2029?

8 A Yeah. I listened to the judge. I went and ran '33
9 because that was a number that was just thrown out. At '33,
10 if it's 2033, it's \$7.4 million, and if it's 2029 it's \$5.7
11 million.

12 Q What sort of financial impact would that have on you?

13 A The latter would pretty much wipe me out. I'm sorry. The
14 former would -- the \$5.7 million would wipe me out. The
15 latter would cause me to file for bankruptcy.

16 Q Okay. Mr. Seery also discussed his -- that he had heard
17 through the grapevine that the IRS audit had been resolved.
18 Has anyone from Highland ever told you that the IRS audit is
19 resolved?

20 A No one's told me that from anywhere, anyhow, anyway.

21 Q Have you had a conver... have you had -- so nobody at all,
22 right?

23 A No one at all.

24 Q Have you -- did you have a conversation recently with Kurt
25 Plumer over it?

1 A I did. I had lunch with him at Hillstone.

2 Q Did he mention it at all?

3 A No.

4 Q All right. Could you turn with me to, in your exhibit
5 binder, Exhibit 8, please?

6 A Yeah.

7 Q All right. Can you just identify for us what this
8 document is?

9 A This is a letter I got from the IRS dated November 20th,
10 2024, basically telling me that the case is open and I may owe
11 money.

12 Q And specifically, if we look at the first paragraph, it
13 says, "Why You're Receiving This Letter," in bold, right?

14 A It does.

15 Q And then below that it says: We might have to adjust your
16 tax return based on our examination of the Highland Capital
17 Management listed above.

18 Did I read that part correctly?

19 A Yes.

20 Q And so is it your understanding that your -- that this is
21 related to the IRS audit of Highland?

22 A That is my understanding.

23 Q And that your tax return, your personal tax return may be
24 adjusted as a result of that?

25 A Mine and my wife's.

1 Q Which would mean you're subject to interests and penalties
2 as well?

3 A As is she.

4 Q Okay. And is this the only letter you've ever received
5 from the IRS?

6 A No.

7 Q Related to the Highland Capital Management audit?

8 A No.

9 Q All right. Do you receive these periodically?

10 A Yes. The initial one came I want to say about five months
11 after we filed the returns in two thousand -- it was for the
12 calendar year 2008, so it was April 15th, 2009, I want to say.
13 Maybe it was -- I think the first one came around October,
14 late October 2009.

15 Q And --

16 A Like this. I can't -- I don't remember it verbatim.

17 Q Is this the last communication you have received from the
18 IRS relating to Highland's IRS audit?

19 A This was it. Yeah.

20 Q Okay. Has anyone from the IRS ever told you that an FPAA
21 has been issued --

22 A No.

23 Q -- with respect to the Highland's audit?

24 A No. I don't even know what that -- I didn't even know
25 what that was.

Daugherty - Direct

151

1 Q And you've never received an FPAA from the IRS, right?

2 A I have not.

3 Q And you've never -- nobody else has ever sent you an FPAA
4 related to the Highland audit, right?

5 A No.

6 MR. MORRIS: I'm being kind, but this is just --

7 THE COURT: It's leading.

8 MR. MORRIS: -- testifying from the podium.

9 THE COURT: Sustained.

10 THE WITNESS: Yeah.

11 BY MR. YORK:

12 Q All right. Mr. Daugherty, would you turn -- we'll switch
13 topics real quick to the tolling agreement. Would you turn in
14 Volume 1 of the Highland exhibits to Exhibit 60, please?

15 A Volume 1, and then which one, I'm sorry?

16 Q Exhibit 60.

17 A Yeah. Yes, I'm there.

18 Q Why did you enter into -- well, back up. Strike that.
19 Start over. This is the tolling agreement extending a claim
20 objection deadline between you and Highland Capital and the
21 Highland Claimant Trust as of July 27th, 2022, correct?

22 A That is correct.

23 Q And is it your signature on Page 6 or 7 of the document on
24 the left-hand side?

25 A It appears to be, yes.

1 Q All right. Why did you enter in this tolling agreement?
2 Why did you enter into --

3 A I'm sorry, what was your question?

4 Q Why did you enter into this tolling agreement?

5 A Jim Seery had reached out to me in 2022 and said that they
6 had a problem with -- the Court had an objection deadline that
7 was running and that was somewhat inconsistent with the
8 settlement agreement that we had just gotten approved in early
9 March of 2022 that said they couldn't object, they being
10 Highland, object to the legitimacy or amount of my
11 compensation claim.

12 So he said, look, you know, we're in a little bit of a
13 predicament here. We can go to the Court or we can try and
14 work this out. And I'm like, hey, I'm fine to work it out. I
15 don't want the estate to be burdened or any way. So we went
16 back and forth on the document, and ultimately I felt that it
17 was the right thing to do. The spirit of our settlement was,
18 you know, I -- they couldn't -- they couldn't challenge this
19 part of my claim, but the *quid pro quo* was I'm not going to be
20 able to beat them out on a technicality by running in here,
21 saying, ah, the objection deadline, you know, expired.

22 So his solution seemed to be a reasonable one. And we
23 worked with their counsel, I think Demo and to some degree
24 Morris, to work that out for them.

25 Q How did the estimate come about in Footnote 3?

Daugherty - Direct

153

1 A I don't know. Nobody ever asked me about it. There was
2 no -- Mr. Morris is right, there was no negotiation about it.
3 Because, frankly, I didn't see that as my problem. They had
4 something to fulfill pursuant to the plan. And there was no
5 back and forth on that reserve amount with Seery whatsoever.
6 He just said, This is what we're doing and, you know, we're
7 going to put this -- and my perception is I didn't have any
8 right to challenge it other than what was in my settlement
9 agreement. And I looked at that as a one-time right to go and
10 seek an estimate, and I didn't want to do it that early in the
11 process.

12 Q Would you take a look with me at the last recital that's
13 on Page 3 of the document? All right. It says, --

14 A Oh. You're going to make me read. All right.

15 Q It says: Whereas, solely to avoid the expense,
16 inconvenience, and uncertainty associated with litigation, and
17 without any party admitting liability, fault, or wrongdoing,
18 or releasing or waiving any rights or defenses with respect to
19 the reserved claim, the parties desire to enter into this
20 agreement to extend the claim objection deadline solely with
21 respect to the reserved claim to January 11th, 2023 at 5:00
22 p.m. Central Time, defined as the Objection Deadline.

23 Did I read that part correctly?

24 A You did.

25 Q What was your understanding of this recital provision

Daugherty - Direct

154

1 being put in here?

2 A Well, I think I just kind of summarized it. There was a
3 problem that the parties didn't, you know, fully recognize
4 could occur that would give me a windfall, and so this was to
5 kind of solve that on an interim basis until we got to a final
6 resolution on this tax refund thing.

7 I mean, the honest truth, God -- Judge. Not God, Judge.
8 But the honest-to-God's truth is Seery and I had a very good
9 relationship, and we were going back and forth, and his view
10 was that this thing could get resolved in 2022.

11 Q Did you have an understanding as to whether or not you
12 were reserving all rights with respect to your reserved claim
13 under the terms of the tolling agreement?

14 A Absolutely I did. Both in emails and in the document.

15 Q All right.

16 MR. YORK: Pass the witness.

17 THE COURT: All right. Any cross? I'm assuming
18 Dugaboy did not have questions. And, Mr. Daugherty, I should
19 have --

20 MR. LANG: No, we do not.

21 THE COURT: Okay. Thank you. Cross?

22 CROSS-EXAMINATION

23 BY MR. MORRIS:

24 Q Good afternoon, Mr. Daugherty. Take your time.

25 A How are you, Mr. Morris?

1 Q Good. I just have a few questions. You have been paid in
2 full on your Class 9 claim, correct?

3 A Evidently, yes.

4 Q And that Class 9 claim was for \$3.7 million, correct?

5 A I believe it was \$3.75 million.

6 Q Thank you for the clarification. Do you recall how many
7 payments you received that resulted in your receipt of \$3.75
8 million?

9 A I don't.

10 Q When you received those payments, did you tell Mr. Seery
11 -- did you send it back to Mr. Seery out of any concern that
12 your Class 8 claim has not been resolved?

13 A No.

14 Q When you received those payments, did you object to Mr.
15 Seery or to anybody else that it was improper for the other
16 Class 9 holders to receive the payments when your Class 8
17 claim had not been resolved?

18 A I had no idea what they were receiving.

19 Q Did you have any reason to believe that you were receiving
20 a benefit that the other Class 9 claim holders were not
21 receiving?

22 A Again, I had no idea what they were receiving, so I can't
23 compare the two.

24 Q Okay. But it is true that you accepted without protest
25 your Class 9 payments, even though your Class 8 claim had not

1 been resolved, correct?

2 A I think that's accurate.

3 Q Okay. I think you mentioned in your proof of claim it had
4 \$1.4 million; is that right?

5 A Again, I'm cuffing it. If you could grab it, I'll -- I
6 want to say it was -- the proof of claim had two components,
7 as I mentioned. There was a, as I mentioned, there was the
8 compensation award amount from my compensation letter of like
9 \$1.475 million.

10 Q Uh-huh.

11 A Don't quote me on that, but close enough.

12 Q Approximate.

13 A And then an interest component that would take me up to
14 that particular time if the IRS reversed it.

15 Q Okay.

16 A But no penalties were included.

17 Q And that approximately \$1.45 million, that's money that
18 you received back in 2009?

19 A I didn't get that full amount in 2009. That was -- I
20 don't want to broaden this up too much, but many times what
21 was promised was not what was delivered. So I got a lesser
22 amount from the IRS.

23 Q How much less did you receive?

24 A I want to say, on a net basis, it was just under \$1.2
25 million.

1 Q Okay. And so it's true that you've had the benefit of the
2 \$1.2 million for 15 years now?

3 A When you say the benefit, what do you mean?

4 Q It went into your pocket 15 years ago.

5 A Yeah, but it's a contingent liability I have back to the
6 IRS, so I can't say that it's, you know, not without
7 reservations.

8 Q But you've had possession of that million and a half
9 dollars now for 15 years, correct?

10 A Right. And with it comes an obligation --

11 Q Okay.

12 A -- contingent back to the IRS.

13 Q Your claim is a prepetition claim; is that right?

14 A What do you mean by my claim? Are you talking about the
15 compensation one?

16 Q Yes.

17 A Yeah. I mean, that -- that contractual obligation
18 originated in, well, yeah, February 2009.

19 Q It's not an administrative claim, right?

20 A I don't believe so, no.

21 Q It's just -- it's just a claim that existed prior to the
22 petition date. Fair?

23 A That is fair.

24 Q Okay. With respect to the reserve, you did agree to that
25 amount of the reserve, fair?

1 A I did not. I mean, I -- I signed the document, but I did
2 not agree to that amount.

3 Q Well, --

4 A I did not negotiate for it or anything like that.

5 Q Well, but if you turn to Exhibit 60 that you just looked
6 at, --

7 A sure.

8 Q -- and you go towards the end of the document, that is
9 your signature on the first Page 7, right?

10 A Yeah. I've already admitted that.

11 Q And Paragraph 1 of the agreement that you signed
12 specifically set the reserve at the amount set forth in
13 Paragraph 1, correct?

14 A That much is true.

15 Q Okay. And you --

16 A You just said, did I agree to it, and I'm like, it was in
17 the document.

18 Q It's in the agreement that you signed, correct?

19 A For sure.

20 Q Okay. And you've never asked for that amount to be
21 adjusted, correct?

22 A I've spoken many times to Mr. Seery and told him that it
23 will need to be adjusted upward as years go by. We've had
24 quite a dialogue along those lines.

25 Q Okay. But he's never agreed to do that, correct?

1 A He said when the time comes, we'll figure out -- listen,
2 we had a very collaborative relationship up until like the
3 last year. And so it was like, hey, I'm not going to press
4 you. You don't -- he's fighting off Dondero right and left.
5 You know, and I'm like, I don't want to get in the middle of
6 all this. You go do what you've got to do. We'll both sit
7 tight. In fact, there was dialogue to that very effect.

8 Q Uh-huh.

9 A And so this was just all part of sitting tight, thinking
10 that the right thing would be done when we got final analysis
11 to this.

12 Q Okay. So would you just agree with me that, since signing
13 this agreement, you haven't come to court to seek an
14 adjustment --

15 A No.

16 Q -- of the reserve?

17 A I did not want to be a burden.

18 Q Okay. And since signing this agreement back in 2022, you
19 and Mr. Seery have not come to an agreement on any adjustment
20 to the reserve, correct?

21 A We have not.

22 Q Okay. Do you believe that you have claims against
23 Highland's employees?

24 MR. YORK: I'm going to object on relevance grounds.
25 Also, outside the scope.

1 THE COURT: What is the relevance?

2 MR. MORRIS: We're going to get to the \$20 million
3 demand in a moment. I'm laying the foundation. But we have
4 anybody on anybody --

5 THE COURT: But what's the \$20 million demand?

6 MR. MORRIS: I'll get to it in a moment.

7 THE WITNESS: There's --

8 THE COURT: I can't figure out if --

9 MR. MORRIS: I can make a proffer if you'd like.

10 THE COURT: -- that's relevant.

11 MR. MORRIS: I can make a proffer, Your Honor. I'll
12 tell you. I'll tell you right now.

13 On June 5th, Mr. York called me and said that Mr.
14 Daugherty asserts that he has claims against the Highland
15 employees, and if Highland didn't pay him \$20 million he was
16 going to sue them, and he was going to file this objection
17 together with a petition in the Supreme Court opposing
18 Highland's request to stay the issuance of a mandate in the
19 Fifth Circuit.

20 MR. YORK: First off, if Mr. Morris is going to
21 become a witness, we've got a problem here. Secondly, any
22 sort of communications between us would be 408. And third,
23 it's not relevant to the issue we're here on today.

24 THE COURT: Okay.

25 MR. MORRIS: My response to that, Your Honor?

1 THE COURT: All right. I'm going to allow a little
2 latitude, --

3 MR. MORRIS: Yeah.

4 THE COURT: -- but I'm still unclear --

5 MR. MORRIS: It's about -- it's about three
6 questions.

7 THE COURT: Okay.

8 MR. MORRIS: It's about three questions.

9 THE COURT: You may proceed.

10 BY MR. MORRIS:

11 Q Do you believe you have claims against Highland's
12 employees?

13 A Me personally, no.

14 Q Okay. Do you -- did you authorize your lawyer to call me
15 and to demand \$20 million in exchange for a release and your
16 standing down from filing any objection to this motion?

17 A I'm not aware that that ever happened. Nobody demanded
18 anything of you.

19 Q Really?

20 A Yeah.

21 Q Do you know that your lawyer used the number \$20 million
22 to me?

23 A Oh, I've read the emails back and forth between you.

24 Q So why don't you explain to Judge Jernigan what your
25 understanding is as to what your lawyer meant when used \$20

1 million to me.

2 A I can't say for sure what he meant, but I can tell you
3 from my perspective what I understood.

4 Q What did you understand?

5 A I have another entity that I picked up in the settlement
6 with Highland called the Highland Employee Retention Asset
7 Fund. And again, pursuant to the settlement agreement, I mean
8 -- I guess supposedly, I guess, when I think about it, I do
9 have claims individually, because it's with me, that
10 agreement.

11 But it said that Highland had to turn over all the books
12 and records of the HERA fund. And Mr. Morris was on many of
13 those emails. And they had turned over some of the books and
14 records, but they didn't turn over any of the books and
15 records that implicated Thomas Surgent and David Klos in
16 defrauding HERA in allocating Highland's expenses when they
17 were litigating me, against me, back to HERA.

18 So I do have a settlement agreement with Highland and
19 these employees, but Highland Employee Retention Assets needs
20 their books and records. And we've made it very clear to you
21 on numerous emails where you, you know, kind of muscled up on
22 us and said this is all you're going to get and tough if you
23 don't like it or whatever.

24 And so the deeper we get into this, we did get discovery
25 from others, we found that Highland's been withholding

1 material information.

2 So as it relates to -- I mean, you're doing that little
3 squeaky thing, and I think he's a fantastic lawyer, but the
4 reality is you guys have created some damages to HERA that you
5 may be accountable for. Your clients, not you.

6 Q Okay. In the four years since we signed the settlement
7 agreement, you've never asserted a breach of contract claim,
8 have you?

9 A Well, because we thought you were complying with it. So
10 if you want to go into the details there, in 2022, we were --
11 asked for more information. 2023, we asked for more
12 information. 2024, we asked for more information. And so
13 those are continuing breaches.

14 Again, I -- I don't want to go to war with Highland.
15 You're too damn good of an attorney, you're scaring me a
16 little bit. But --

17 Q I don't want to.

18 A You know, listen. You know I think well of you.

19 Q I appreciate that.

20 A But, you know, I mean, I just wanted the information. I'm
21 not looking to go to war with you guys. I got enough battles
22 that I've got to fight. And so, you know, I guess a number
23 was thrown out or whatever. I don't know the full context of
24 it. But it wasn't -- it wasn't for this IRS compensation
25 issue.

1 Q But what was the -- my last question. What was the \$20
2 million demand for?

3 A Again, it's just a number. Y'all were having settlement
4 negotiations. So, I mean, you work off of it.

5 Q All right.

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

7 THE WITNESS: Yeah.

8 THE COURT: All right. Any redirect?

9 MR. PHILLIPS: I have no questions, Your Honor.

10 THE COURT: All right. Okay.

11 MR. YORK: Apologies. I wanted to make sure.

12 THE COURT: Yes.

13 MR. YORK: No redirect, Your Honor.

14 EXAMINATION BY THE COURT

15 THE COURT: Okay. If you've watched Highland
16 hearings, you know the judge sometimes has questions. I am
17 still trying to understand the 1.4, the 1.2, the 1.475. I
18 understand broadly that, in essence, a cash bonus was
19 negotiated back in early 2009, I think you said.

20 THE WITNESS: Yes.

21 THE COURT: After 2008. And so that's, in essence,
22 what was contractually negotiated. But I understand there was
23 a hook, if you will, we're calling it a contingency, whatever
24 word you want to use, where if one day there was an IRS audit
25 and I guess Highland had extra liability for 2008, that this

1 -- I don't know if I understood it or not.

2 THE WITNESS: Do you want me to try and guess what
3 you're asking, or --

4 THE COURT: Try to guess what I'm asking. Again, I'm
5 --

6 THE WITNESS: The liability -- so, Highland chose to
7 use this tax scheme as a currency to pay us a cash bonus.
8 From our perspective, we weren't stupid. We're like, well,
9 okay, that's great, but if the IRS says --

10 THE COURT: Okay, I just want to know what -- you say
11 you were contractually entitled to \$1.4 million.

12 THE WITNESS: That's what I was supposed to get for
13 that bonus year.

14 THE COURT: Okay. But there was a tax contingency,
15 if you will, where -- that's where I want you to jump in.

16 THE WITNESS: So, Highland had a tax problem. They
17 came up with this mechanism to use whatever they were doing
18 with the IRS to create the cash to pay us a bonus. We looked
19 at it and said, well, this looks fishy -- by the way, every
20 year before that and after that, I've just gotten a cash
21 bonus. But for this one year, when the banks are saying, no,
22 no, no, we get this. And so we looked at this and said, look,
23 this sounds fishy, but if you can't pull it off, we need to be
24 made whole. I can't be in a situation where here I am in 2025
25 and I may have to pay \$5, \$6 million to the IRS for the

1 pleasure of working at Highland.

2 THE COURT: Okay. See, that's where my disconnect
3 is.

4 THE WITNESS: Uh-huh.

5 THE COURT: Because I thought this all turned on a
6 Highland tax return.

7 THE WITNESS: Oh, no, no. So, Highland did the
8 planning and the creation of the scheme, and I guess
9 ultimately it was Highland's tax return, but it flowed through
10 to us as pass-throughs. K-1s, what have you.

11 THE COURT: Right.

12 THE WITNESS: So I guess it's both.

13 THE COURT: Okay. You were a partner.

14 THE WITNESS: Well, that's debatable, too. That's
15 debatable, too, because I had a --

16 THE COURT: Okay. I thought you weren't, but --

17 THE WITNESS: Well, I wasn't --

18 THE COURT: But you got -- okay. Let me just skip
19 to, --

20 THE WITNESS: Yeah.

21 THE COURT: -- I guess, the important part. You did,
22 you got paid? You said \$1.2 million?

23 THE WITNESS: Yeah. I got a refund back from the IRS
24 for around that amount. Slightly under \$1.2 million.

25 THE COURT: So the contingency you are worried about

1 that you think gives you a contingent claim against Highland
2 is, what, the IRS comes back and says --

3 THE WITNESS: And they say, Give us that money back
4 plus interest plus penalties or we're taking your house. And
5 it's a very real threat, because this has gone on, as you've
6 noted, forever. And I went from having a one-point-whatever
7 bonus to possibly having to pay six, seven, eight, I don't
8 know how long this lasts, million dollars back to the IRS for
9 an election that was made by them. As a substitute for paying
10 me a cash bonus the regular way, they did it this way. And
11 that's why we put and negotiated for that term in the
12 compensation agreement that said, if for whatever reason the
13 actual refund is different, we get made whole.

14 THE COURT: Okay. I may be overthinking this, I do
15 do that sometimes, but I'm still, I'm trying to understand why
16 your claim would escalate up to, you know, you said maybe \$5.7
17 million if, in 2029, this all plays out with the IRS.

18 THE WITNESS: That --

19 THE COURT: Because you've gotten the benefit of that
20 money and --

21 THE WITNESS: Well, no, because if the IRS says --

22 THE COURT: -- return on that.

23 THE WITNESS: Sorry. I didn't mean to interrupt.

24 THE COURT: You know what I'm saying? So I'm trying
25 to figure out why it would grow in the way that you're

1 suggesting.

2 THE WITNESS: Can I respond?

3 THE COURT: Yes.

4 THE WITNESS: So I've gotten money that the IRS says
5 is not mine. Right? And the IRS says --

6 THE COURT: And you've had the use of it.

7 THE WITNESS: Oh, yes.

8 THE COURT: You've presumably invested it and --

9 THE WITNESS: Well, no, I mean, you can't --

10 THE COURT: Well, you've had the ability to. Uh-huh.

11 THE WITNESS: But you don't want to take risk with
12 something that's not yours, so you're kind of limited, right?
13 But I have, I have that amount of money. Here's the problem,
14 Your Honor, with that. If the IRS says, Give us back our
15 money, here's the interest, here's the principal. Oh, by the
16 way, if it's \$7, \$8 million, I can't -- I don't have that.
17 I've got to file for bankruptcy in order to give the IRS back
18 money that I'm having to pay them for the pleasure that I had
19 of working for Highland in 2008 when I helped save the company
20 and create a lot of the assets that paid all these people in
21 the room. MGM Studios, Trussway.

22 THE COURT: Okay.

23 THE WITNESS: Okay.

24 THE COURT: Yeah. We are going beyond this.

25 THE WITNESS: Fair enough.

1 THE COURT: I was just, I'm zeroing in on this
2 because I'm trying to figure out, I mean, it matters to me if
3 that reserve is likely fair enough, the reserve I'm told you
4 agreed to is fair enough. And I'm having trouble figuring
5 out, I mean, if you've had the use of this money for 17 years
6 or whatever that is, why you would get this extra interest
7 add-on that you're -- \$5.7 million or whatever it would be.
8 You know, \$3 million more.

9 THE WITNESS: Can I answer that question?

10 THE COURT: Uh-huh.

11 THE WITNESS: Because the IRS didn't look at it as my
12 money. They looked at it as their money. And so if you look
13 at the plain language of the compensation award letter, if the
14 actual amount deviates from the amount that was granted, then
15 Highland was going to give me substitute compensation to make
16 me whole. Making me whole includes the penalties and the
17 interest that I would owe the IRS. Because if you look at it
18 any other way, I had to pay money to work at Highland.

19 THE COURT: Do I have that letter in my evidence?

20 THE WITNESS: You should. Drew?

21 THE COURT: Do I? Maybe I'll just cut this off and
22 look at the letter.

23 MR. YORK: It's at Daugherty 2, and it's at the back
24 of --

25 THE WITNESS: There's multiple letters, but this is

1 one of them.

2 THE COURT: The letter that you say this claim stems
3 from.

4 THE WITNESS: Sure.

5 THE COURT: I'll just cut it off and look at that.

6 THE WITNESS: Yeah, you can tell her where it is.

7 MR. YORK: So I think it's at the back of the
8 statement on PD-2. It's at the last page, Your Honor.

9 THE COURT: Which one?

10 MR. YORK: P -- Daugherty 2.

11 THE COURT: Oh, 2? I've got emails.

12 THE WITNESS: P-2? I don't think so.

13 THE COURT: Okay. We can move on.

14 MR. YORK: That's fine. We'll work this out.

15 THE COURT: Before we're done here today, I want to
16 look at the letter to better understand how the claim could
17 grow substantially to --

18 MR. YORK: Yeah.

19 THE COURT: -- \$5.7 million by 2029. Okay. Thank
20 you.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You're excused.

23 THE WITNESS: Oh, I found -- I just found it and then
24 I closed it.

25 THE COURT: Okay. Well, you can --

Patrick - Direct

171

1 THE WITNESS: My bad.

2 THE COURT: -- call my attention to it when you find
3 it.

4 THE WITNESS: All right.

5 (The witness steps down.)

6 THE COURT: All right. Your next witness?

7 MR. YORK: I believe we're calling Mark Patrick.

8 THE COURT: All right, Mr. Patrick. All right.

9 Please raise your right hand.

10 MARK PATRICK, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

11 THE COURT: All right. Please be seated.

12 And, Courtney, you're going to start the clock going. I
13 show 2:12. I don't know if my clock's right.

14 You may proceed.

15 MR. LANG: And, Your Honor, may I hand the witness --
16 this is from Mr. Morris' opening. May I use this as Exhibit
17 3?

18 THE COURT: Oh, okay. You're talking about the back
19 page of his PowerPoint?

20 MR. LANG: Yes. Org chart.

21 THE COURT: Yes. I've got it in front of me. And
22 for the record, I'm going to put this PowerPoint, even though
23 it's not an exhibit *per se*, as a demonstrative aid in the file
24 for this matter. And so it's the last item of the Highland
25 PowerPoint. All right.

Patrick - Direct

172

1 MR. LANG: Yes.

2 DIRECT EXAMINATION

3 BY MR. LANG:

4 Q Mr. Patrick, does this Hunter Mountain Investment Trust
5 org chart that I just handed you accurately reflect the
6 structure of the Hunter Mountain Investment Trust ownership
7 today?

8 A Just give me a few moments to review.

9 Q Sure.

10 MR. LEWIS: Your Honor, I had mentioned early on that
11 we object to this whole line of questioning because it's
12 outside the scope of the objection of Dugaboy. And I don't
13 want to interrupt, but I want to make sure that my objection
14 is continuing, because this has nothing to do with the
15 objection presented by Dugaboy.

16 THE COURT: All right.

17 MR. PHILLIPS: So we object to the question.

18 THE COURT: Okay. So the record will reflect
19 basically a running objection from Hunter Mountain?

20 MR. PHILLIPS: We would appreciate that, Your Honor.

21 THE COURT: Okay. In light of the failure of Dugaboy
22 to disclose Mark Patrick as a witness, as well as the failure
23 to challenge in a written objection his authority. Okay. So
24 I recognized that this was quite a persuasive objection, but
25 given the magnitude, I would say, of what is going on here,

Patrick - Direct

173

1 potentially a settlement that could come very close to ending
2 this long-running plan implementation process, I'm erring, if
3 it's an error, I'm erring on the side of allowing this. All
4 right. But you have a running objection that the record will
5 reflect if one day there is an appeal.

6 MR. MORRIS: And, Your Honor, the Highland Claimant
7 Trust and the Highland Litigation Subtrust and Highland
8 Capital Management, LP join Mr. Phillips' objection.

9 THE COURT: Okay. Understood.

10 MR. PHILLIPS: Thank you very much, Your Honor.

11 THE COURT: All right.

12 BY MR. LANG:

13 Q Mr. Patrick, have you had time to study this Hunter
14 Mountain Investment Trust org chart?

15 A Yes, I have.

16 Q And does this accurately show the ownership structure for
17 Hunter Mountain Investment Trust today?

18 A I'm not sure, without reviewing the underlying corporate
19 documents on some of these entities that you have listed here.

20 Q Did you help prepare this chart?

21 A No.

22 Q No? Okay. So Hunter Mountain Investment Trust is owned
23 by Beacon Mountain, LLC, correct?

24 A Yes.

25 Q And Beacon Mountain, LLC is owned by CLO Holdco, LLC,

1 correct?

2 A Correct.

3 Q And CLO Holdco, LLC is owned by CLO Holdco, Limited?

4 A That's correct.

5 Q And CLO Holdco, Limited is owned by Charitable DAF Fund,
6 LP?

7 A Correct.

8 Q And Charitable DAF Fund 1, LP is owned by CDMC FAD, LLC?

9 A The ultimate beneficial owner is DFW Charitable
10 Foundation. To my -- to the best of my recollection, I would
11 say that appears accurate. I'm just not a hundred percent.

12 Q Okay. And --

13 A But I am a hundred percent that DFW Charitable Foundation
14 is the ultimate beneficial owner. And I'm a hundred percent
15 that Dugaboy Investment Trust has no interest in it. And I'm
16 also a hundred percent that The Dallas Foundation or any --

17 MR. LANG: Judge, I haven't asked --

18 THE WITNESS: -- or any other nonprofit has any --

19 MR. LANG: -- any of these questions.

20 THE COURT: Okay. There's an objection,
21 nonresponsive. I sustain.

22 BY MR. LANG:

23 Q Mr. Patrick, before December of 2024, Charitable DAF Fund,
24 LP was owned by Charitable DAF Holdco, correct?

25 A (Pause.) I'm just waiting for a relevancy. I don't

Patrick - Direct

175

1 understand how that's relevant to my authority --

2 THE COURT: Okay. You're not allowed to make a
3 relevancy objection. Okay.

4 MR. PHILLIPS: Your Honor, I think the problem is
5 that, if I could, we have made an objection. And our
6 objection, our running objection is founded on relevancy and
7 founded on improper process. So I would like to just tell the
8 Court, and so my client representative can hear it, that the
9 fact that I'm not standing up every time there's a problematic
10 question, --

11 THE COURT: Okay.

12 MR. PHILLIPS: -- because every question is
13 problematic, my objection is being maintained to every
14 question that's being asked.

15 THE COURT: Okay. You understand that, right?

16 THE WITNESS: I --

17 THE COURT: There's a running relevancy objection.
18 You're the witness. You can't make the objection. But it's
19 on the record for whatever use it might have down the road.

20 MR. PHILLIPS: I have objected to every question
21 that's coming in connection with this line of questioning on
22 the basis of relevance.

23 THE COURT: I got it. I think we all have it.

24 MR. PHILLIPS: I'm just --

25 MR. LANG: Understood.

1 THE COURT: Yes. And you're thinking he's eating
2 into your 30 minutes?

3 MR. LANG: Yes.

4 THE COURT: Okay. We've got it.

5 THE CLERK: I stopped the time.

6 MR. LANG: So -- thank you.

7 THE COURT: Did you stop the time for a minute?

8 THE CLERK: Yes, I did.

9 MR. LANG: Thank you.

10 THE COURT: Okay.

11 BY MR. LANG:

12 Q So, to my question, before December of 2024, Charitable
13 DAF Fund, LP was owned by Charitable DAF Holdco, correct?
14 Charitable DAF Holdco, Limited?

15 A And where is that on the chart?

16 Q I'm asking, before December of 2024, Charitable DAF Fund,
17 LP was owned by Charitable DAF Holdco, Limited.

18 A Can you show me a corporate document so I know the precise
19 corporation you're referring to?

20 Q You're the -- you are the manager of -- or the control
21 person of CDHGP Limited, correct?

22 A Again, I'd have to refresh my recollection, but I am the
23 control person over CDMC.

24 Q Okay. And CDMC --

25 A As well as Charitable DAF Fund. I'll represent that to

1 you.

2 Q Okay. Was there a transaction in December of 2024 where
3 Charitable DAF Holdco, Limited sold its interest or
4 transferred its interest in Charitable DAF Fund, LP to CDMC
5 FAD, LLC?

6 A I know you're trying to help other litigation and --

7 MR. PHILLIPS: Mark.

8 THE COURT: Okay. Nonresponsive.

9 THE WITNESS: Your Honor, he's using your time to
10 fish for other litigation to support that --

11 THE COURT: Okay. Okay. We have a running objection
12 to relevance. I'm going to say that one more time. Okay.
13 Just answer the question as best you can.

14 THE WITNESS: I'd have to review the corporate
15 documents to refresh my recollection for that time period.

16 BY MR. LANG:

17 Q Up until December of 2024, Charitable DAF Fund, LP was
18 owned 100 percent by Charitable DAF Holdco, Limited, wasn't
19 it?

20 A I don't know what entity you're referring to without a
21 refreshment of corporate documents of that entity. There
22 could be a lot of entities called that.

23 Q You're aware that there is a proceeding in the Caymans
24 investigating the December 2024 transaction that sold -- where
25 Charitable DAF Holdco, Limited sold its interest in -- and or

1 transferred its interest in Charitable DAF Fund, LP to CDMC
2 FAD, LLC?

3 A There are several parts to that question. So the answer
4 is no.

5 Q Are you aware of a proceeding pending in the Caymans
6 involving Charitable DAF Holdco, Limited?

7 A Again, I don't know what entity you're referring to. Show
8 me a -- show me a corporate document.

9 MR. LANG: Your Honor, this was on the Foundation's
10 exhibit list. We cross-designated any document designated as
11 an exhibit by any other party in this case. And I'd like to
12 hand this to the witness.

13 MR. MORRIS: Which exhibit is it?

14 THE COURT: Which is -- yes.

15 MR. LANG: It was on the -- it was on the DAF -- or,
16 the Foundation's exhibit list.

17 MR. MORRIS: They haven't been admitted into evidence
18 and they've withdrawn their objection. We object, Your Honor.

19 THE COURT: Yes, they've not been admitted.

20 MR. LANG: Okay. Well, can I --

21 MR. PHILLIPS: We object to that, Your Honor. We
22 object to any witness --

23 MR. LANG: We cross-designated every --

24 THE COURT: I already discussed at the beginning what
25 we were admitting and that was not disclosed.

Patrick - Direct

179

1 MR. LANG: Okay.

2 THE COURT: As I recall, I said you've only
3 designated the plan and settlement agreement, and the answer
4 was yes.

5 MR. LANG: Okay.

6 BY MR. LANG:

7 Q And we're aware that the Joint Official -- are you aware
8 that there is a Joint Official Liquidator appointed over a
9 Charitable DAF entity in the Cayman Islands?

10 MR. PHILLIPS: Objection to form.

11 THE WITNESS: Again, without more specific --

12 THE COURT: Overruled. Yes.

13 THE WITNESS: -- specificity, there could be a
14 thousand different actions that you're referring to, in my
15 mind.

16 BY MR. LANG:

17 Q Are you aware that the Joint Official Liquidators in the
18 Caymans are investigating transactions involving Charitable
19 DAF Fund, LP and Charitable DAF Holdco, Limited?

20 A Again, again, I don't specifically know what you're
21 referring to.

22 MR. PHILLIPS: Your Honor, may I -- excuse me. I
23 don't know that my running objection includes an objection to
24 form for each of the questions. This objection is to form of
25 the questions about, quote, --

Patrick - Direct

180

1 THE COURT: What's wrong with the form?

2 MR. PHILLIPS: -- investigation.

3 THE COURT: What is wrong with the form of that
4 question? I'm not clear.

5 MR. PHILLIPS: My objection to form is that the
6 question is an open-ended question with an undefined term,
7 investigation.

8 THE COURT: Overruled. I don't think that's a vague
9 term. So you may answer.

10 THE WITNESS: If you show me some document, some
11 complaint or something, I'll be very happy to verify whatever
12 questions related to that. But just giving me verbal words of
13 entities and names and actions, I don't know precisely what
14 you are talking about.

15 BY MR. LANG:

16 Q Mr. Patrick, who set up the entities in the Hunter
17 Mountain Investment Trust org chart that is sitting in front
18 of you?

19 A I'm sorry. Repeat the question?

20 Q Who set up the various entities that are in the org chart
21 that is on your -- on the stand?

22 MR. PHILLIPS: Objection to form. Set up. What does
23 that mean?

24 THE WITNESS: It -- yeah, it's very --

25 THE COURT: I think we know what it means. Creating,

1 perhaps.

2 BY MR. LANG:

3 Q Created?

4 A Who? Are you asking if I created it?

5 Q Did you participate in creating them?

6 A Did I participate? In which ones?

7 Q CDMC FAD, LLC.

8 A What do you mean by participate?

9 Q Were you involved in creating -- did you initiate the
10 creation of CDMC FAD, LLC?

11 A Lawyers were.

12 Q Did you engage in any capacity on behalf of any entity?

13 Were you involved in engaging the lawyers to set up CDMC FAD,
14 LLC?

15 A Yes, I engaged lawyers to set up entities.

16 MR. LANG: Objection. Nonresponsive.

17 THE COURT: Sustained.

18 MR. LANG: Did you --

19 THE COURT: He asked about this one particular
20 entity, I think.

21 BY MR. LANG:

22 Q Did you --

23 A Which entity, again, did you ask?

24 Q CDMC FAD, LLC.

25 A Yes, I believe I hired a lawyer.

Patrick - Direct

182

1 Q And when did CDMC FAD, LLC become a hundred percent owner
2 of Charitable DAF Fund, LP?

3 A Around the end of March of 2025. I believe.

4 Q And were you involved in the transaction between -- in
5 which CDMC FAD, LLC obtained a hundred percent interest in
6 Charitable DAF Fund, LP?

7 A What do you mean by involved? How?

8 THE COURT: Okay. I can see what's happening here or
9 I have an impression of what's happening here. I feel like
10 you're slowing down this process where I've given 30 minutes
11 to this lawyer. Okay? And I feel like you're feigning
12 confusion. I don't mean to be insulting, but that's how it
13 comes across. Okay? So I need you to speed up your answers
14 and not be confused about things you shouldn't be confused
15 about. Okay?

16 THE WITNESS: Okay.

17 THE COURT: I feel like it's late 1980s *Dondi*. Does
18 anyone know what I mean by that? Okay. We've been there,
19 done that, in the federal courts, and we don't like the
20 looking at -- you're not looking up at the ceiling. That's
21 what they did in *Dondi*. Confusion. Delay. Okay?

22 So I don't mean to chastise you. I'm just telling you
23 that you're going to make us be here a lot longer, and nobody
24 wants that, because I will give him extra time for this.

25 Okay?

Patrick - Direct

183

1 THE WITNESS: Understood.

2 THE COURT: Thank you.

3 BY MR. LANG:

4 Q Okay. So you were involved in the transaction in which
5 CDMC FAD, LLC acquired 100 percent ownership interest in
6 Charitable DAF Fund, LP in or around March of 2025, correct?

7 A Correct.

8 Q Who did CDMC FAD, LLC obtain its interests in Charitable
9 DAF Fund, LP from in March of 2025?

10 A From an -- from an entity called Charitable DAF Holdco,
11 Ltd.

12 Q Charitable DAF Holdco, Ltd., the entity that I asked about
13 earlier, correct?

14 A Of the same name.

15 Q Yes. And Charitable DAF Holdco, Ltd. has had Joint
16 Liquidated -- Liquidators, Joint Official Liquidators
17 appointed over it in the Cayman Islands, correct?

18 A Yes.

19 Q And those Joint Official Liquidators were appointed over
20 Charitable DAF Holdco, Limited in or around May 6th, 2025?

21 A In May is what I recall.

22 MR. LANG: Your Honor, we'll pass the witness.

23 THE COURT: All right. Do we have any questions?

24 MR. YORK: No questions, Your Honor.

25 THE COURT: Okay. Any cross?

1 MR. MORRIS: Just briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MORRIS:

4 Q Mr. Patrick, do you know who initiated the proceedings to
5 get the appointment of the Joint Official Liquidators in the
6 Cayman Islands?

7 A The director and myself, we initially filed for a
8 voluntary joint liquidation in May.

9 Q And did there come a time when the Cayman court appointed
10 the Joint Official Liquidators?

11 A Yes.

12 Q Do you know who asked the court to appoint the Joint
13 Official Liquidators?

14 A We did, as well as other -- it was an agreement with the
15 participation holders of that entity.

16 Q And who are the participation holders of that entity?

17 A It was the DFW Charitable Foundation as a 51 percent
18 holder as well as the Highland Dallas Foundation, Highland
19 Santa Barbara Foundation, and the Highland Kansas City
20 Foundation.

21 Q And those three foundations that you just mentioned, do
22 you know who controls them?

23 A Jim Dondero.

24 Q Is it your understanding that Mr. Dondero was funding the
25 litigation in the Cayman Islands?

1 A Yes.

2 Q The Joint Official Liquidators, are you aware of any
3 statement that they've ever made that you are not authorized
4 to act on behalf of any of the HMIT entities?

5 A Yeah, they've never made a statement that I'm not
6 authorized to act under any of those entities.

7 Q Okay. Did you receive a letter last night that was
8 purportedly authored by the Joint Official Liquidators?

9 A Yes.

10 Q Did you review that letter?

11 A Yes.

12 Q Did that letter refer to today's hearing?

13 A Yes.

14 Q Are you aware of the Joint Official Liquidators making any
15 appearance in this proceeding?

16 A No, I'm not aware they made any appearance in this
17 proceeding.

18 Q Based on your recollection of the contents of that letter,
19 did the Joint Official Liquidators challenge your authority to
20 enter into the settlement agreement on behalf of the HMIT
21 entities?

22 A No, they did not, because there's no ownership interest.

23 Q Okay. And what do you mean by that?

24 A The entity in liquidation owns nothing. And the DFW
25 Charitable Foundation is the ultimate beneficial owner.

1 Q Are you aware that The Dallas Foundation filed an
2 objection to the settlement agreement on behalf of Empower
3 Dallas Foundation, the Okada Family Foundation, and Crown
4 Global?

5 A Yes.

6 Q Are you aware that that objection was withdrawn?

7 A Yes.

8 Q Was the withdrawal of that objection the product of
9 negotiations that your counsel had with lawyers for The Dallas
10 Foundation and Crown Global?

11 A Yes, it was.

12 Q Did The Dallas Foundation or Crown Global require you to
13 surrender your control position of the HMIT entities as a
14 condition to the withdrawal of their objection?

15 A To give up my control? No.

16 Q They didn't ask you to do that, did they?

17 A No. No.

18 Q You are the control person for each of the HMIT entities
19 that are party to the settlement agreement, correct?

20 A That is correct.

21 Q Are you aware of any requirement in any of the governance
22 documents --

23 MR. CURRY: Your Honor, I'm not questioning, but I'm
24 going to object to the line of questioning here about what was
25 asked and what was not received into negotiations, because,

1 frankly, you're getting an imperfect picture there. And I
2 don't think it should be misrepresented. The communications
3 didn't happen with Mr. Patrick.

4 THE COURT: Okay. I don't know if that objection was
5 a confidential settlement communications.

6 MR. CURRY: It's a combination of foundation and that
7 he's going into confidential settlement discussions.

8 MR. MORRIS: Your Honor, it's a very simple question.
9 I'll ask it again.

10 THE COURT: Okay. We'll let --

11 BY MR. MORRIS:

12 Q To the best of best of your knowledge, Mr. Patrick, did
13 The Dallas Foundation or any of the entities on whose behalf
14 it filed its objection require you to surrender your position
15 as the control person of the HMIT entities in exchange for the
16 withdrawal of their objection?

17 A No, they did not.

18 Q Thank you. Are you aware -- are you familiar with the
19 governance documents for the HMIT entities?

20 A Yes, I am.

21 Q Are you aware of any restriction on your ability to act on
22 behalf of those HMIT entities with respect to -- withdrawn.
23 Are you required to obtain the consent of anyone in order to
24 enter into the settlement agreement on behalf of the HMIT
25 entities?

1 A No, I am not. I'm the sole authority and control person
2 for that entity.

3 Q And do you believe that you're entering into the
4 settlement agreement on behalf of the HMIT entities in good
5 faith?

6 A Yes, I do.

7 Q Have you received legal counsel before entering into the
8 agreement?

9 A Yes, I have.

10 Q Do you believe that you've negotiated the best terms that
11 you could get on behalf of the HMIT entities?

12 A Yes, I do.

13 Q Do you believe that you received the information that you
14 believed you required in order to make an informed decision
15 before you entered into the settlement agreement on behalf of
16 the HMIT entities?

17 A Yes, I did.

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

19 THE COURT: All right. Mr. Phillips, anything from
20 you?

21 MR. PHILLIPS: No questions.

22 THE COURT: Okay. Any redirect?

23 MR. LANG: Briefly.

24 THE COURT: Uh-huh.

25 MR. LANG: Your Honor, because they mentioned the

1 letter of last night from Grant Thornton, the Liquidators, I'm
2 going to offer that into evidence as the letter that we talked
3 about this morning. But Mr. Morris directly asked him if he
4 reviewed it and asked him questions about it.

5 THE COURT: Response?

6 MR. MORRIS: No objection, Your Honor. Go right
7 ahead.

8 THE COURT: I'll admit it.

9 MR. LANG: This is --

10 THE COURT: Do I have it in my notebook?

11 MR. LANG: -- Dugaboy --

12 THE COURT: Okay.

13 REDIRECT EXAMINATION

14 BY MR. LANG:

15 Q Mr. Patrick, I've handed you --

16 THE COURT: We're going to call this Dugaboy 3?

17 MR. LANG: Dugaboy 3.

18 THE COURT: Okay.

19 (Dugaboy Investment Trust's Exhibit 3 is admitted into
20 evidence.)

21 BY MR. LANG:

22 Q Mr. Patrick, I've handed you a letter. It's from Grant
23 Thornton dated June 24th, 2025. Do you see that?

24 A Yes.

25 Q And is this a true and correct copy of the letter that you

1 received or that you reviewed from the Joint Liquidators that
2 you referred to in your answers to Mr. Morris' questions?

3 A Well, it's a PDF. I mean, I'm assuming it's from the
4 Official Liquidators.

5 Q But this is the letter you were referring to in your
6 testimony a few minutes ago?

7 A Yes.

8 Q And do you see on the second paragraph it says that, on
9 May 6th, 2025, the Grand Court of Cayman Islands Financial
10 Services Division appointed Margot MacInnis and Sandipan
11 Bhowmik, each of Grant Thornton Special Services (Cayman)
12 Limited, as the Joint Official Liquidators of the company. Do
13 you see that?

14 A Yes.

15 Q And do you see on the second page, it says: Since our
16 appointment, we have been diligently investigating these
17 transactions, including a corporate transaction that occurred
18 in or around December 2024 where the company transferred a
19 hundred percent of its interest in the Fund to CDMC FAD, LLC,
20 which resulted in the company being the sole member of CDM and
21 subsequent redemptions of the company's interests in CDM.

22 Do you see that?

23 A Yes.

24 Q Is that your understanding of what is happening in the
25 Caymans right now, is investigating these transactions?

1 A Correct.

2 MR. LANG: Pass the witness.

3 MR. MORRIS: May I just have that letter, please?

4 THE COURT: Any recross?

5 MR. MORRIS: Yeah, just real brief.

6 RECCROSS-EXAMINATION

7 BY MR. MORRIS:

8 Q None of the transactions that you were just asked about
9 has anything to do with any of the HMIT entities, correct?

10 A That's absolutely correct.

11 Q Okay. And now that we have the letter in the record, if
12 you could look at the third paragraph. Do you see --

13 A Yeah.

14 Q Do you see it refers to the Highland Dallas Foundation,
15 Highland Santa Barbara Foundation, and Highland Kansas City
16 Foundation?

17 A Yes.

18 Q Are those the three entities that you referred to earlier
19 that are, to the best of your understanding, controlled by Mr.
20 Dondero?

21 A Yes.

22 Q Okay. And this is the letter that you said you reviewed
23 and concluded that the Joint Official Liquidators weren't
24 challenging your authority to enter into the agreement on
25 behalf of the HMIT entities; do I have that right?

1 A Yes. Yes, you do.

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

3 THE COURT: Okay. I have a question or two.

4 EXAMINATION BY THE COURT

5 THE COURT: And again, I apologize if I sounded harsh
6 earlier. I recognize different people present different ways
7 when they testify. It just appeared to me that maybe we were
8 slowing things down unnecessarily. All right?

9 THE WITNESS: I apologize, too. I'm just a little
10 emotionally upset they're using this proceeding for a benefit
11 someplace else.

12 THE COURT: Okay. My question, very general
13 question: Do you think this settlement is fair and equitable
14 as far as HMIT is concerned?

15 THE WITNESS: Absolutely.

16 THE COURT: And could you tell me why?

17 THE WITNESS: Yeah. There was no obvious pathway for
18 HMIT to, in my mind, to receive the residual interest of the
19 bankruptcy estate without a settlement with the Debtor.
20 Otherwise, it just seemed to me that it would go on forever.
21 And then I balanced that against the existing litigation and
22 the probability of the outcome weighted against the costs, and
23 determined that it made sense from HMIT's perspective to enter
24 into the settlement agreement.

25 THE COURT: Okay. And you understand that, as part

1 of this, you're giving up some litigation claims that have
2 been waged now for a couple of years or more?

3 THE WITNESS: That is correct, but I'm also receiving
4 the Kirschner Litigation, which I did negotiate to receive.

5 THE COURT: Okay. And there was a note that the
6 estate -- I've heard it called at some point the \$57 million
7 note that HMIT owed Highland, a December 2015 note -- that
8 basically gets credited against the capital account. You
9 understand that?

10 THE WITNESS: Yes, I do.

11 THE COURT: Okay. And then you understand that if I
12 approve this deal, I'm not sure why there's going to be
13 \$500,000 to HMIT and then also another \$10 million to HMIT,
14 but subsequent payments could get held up if there are
15 litigation threats to the Highland Claimant Trust. You
16 understand that, correct?

17 THE WITNESS: Yes, I do.

18 THE COURT: Okay. I just, I have to ask. I'm
19 confused about what's going on here. I thought that -- well,
20 let me just ask this: Would you consider yourself crossways
21 with Mr. Dondero now?

22 THE WITNESS: No, but I'll answer the question. Upon
23 advice of counsel, I quit Skyview Group. And upon advice of
24 counsel, I terminated the back office services that Skyview
25 Group was providing to the DAF.

1 THE COURT: Okay. Well, you said you're getting
2 maybe a little emotional because of other litigation. I'm
3 just trying -- I don't understand what all that other --

4 THE WITNESS: Unrelated -- well, unrelated to that.
5 They're clearly trying to use this forum to benefit their
6 Cayman actions. They hired U.S. counsel called Reed Smith,
7 and they've been begging for an organization chart to issue a
8 variety of frivolous lawsuits against the operating DAF
9 entities. So I do apologize, but that's a little upsetting to
10 me because I know we're going to -- that I've just fed them a
11 list of targets in another unrelated matter.

12 THE COURT: Okay. Reed Smith. Here we go again with
13 -- they've made an appearance for Mr. Seery in this
14 litigation.

15 MR. MORRIS: Exactly. And we have raised that issue.

16 THE COURT: Okay.

17 MR. MORRIS: And I'm surprised to hear that they
18 think they still have the ability to do this. But we will
19 pursue that later.

20 THE COURT: Okay. All right. I had nothing further.
21 Thank you, Mr. Patrick.

22 (The witness steps down.)

23 THE COURT: All right. So where are we now? I said
24 that, again, just trying to balance the playing field, if
25 Dugaboy was given the ability to question Mr. Patrick, then I

Dondero - Direct

195

1 would allow I guess you want to call it rebuttal in the form
2 of the Debtor, Reorganized Debtor/Claimant to call Mr.
3 Dondero. Do you choose to call him?

4 MR. MORRIS: I'm not.

5 THE COURT: Oh, and I guess I'll allow you, --

6 MR. MORRIS: Yeah.

7 THE COURT: -- if you want to put on your client
8 representative, Mr. Lang.

9 MR. LANG: We call Jim Dondero.

10 THE COURT: All right. Yes, we are timing.

11 Please raise your right hand, sir, Mr. Dondero.

12 JAMES "JIM" DONDERO, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

13 THE COURT: All right. Thank you. The time is
14 running.

15 THE WITNESS: Thank you for the time.

16 DIRECT EXAMINATION

17 BY MR. LANG:

18 Q Mr. Dondero, do you claim that Mr. Patrick lost authority
19 to enter into the 9019 settlement -- or, the settlement
20 agreement that's the subject of the 9019 motion today?

21 A Yes.

22 Q And when do you claim Mr. Patrick lost authority to enter
23 into that settlement agreement?

24 A I think it's best if I give a timeline. He left Sky --
25 can I give a --

1 MR. PHILLIPS: Objection, Your Honor. Nonresponsive.

2 THE COURT: Overruled. He can give a timeline.

3 THE WITNESS: He left Skyview in October, November,
4 walked out the door, never talked to anybody again, never
5 talked to the charities again except through counsel. Never
6 collected severance, anything else. Just walked out the door.

7 As part of Skyview's review of what he'd been working on
8 and what was the nature and what might have been happening,
9 they discovered numerous abnormalities. They discovered--

10 THE COURT: Do we have an objection?

11 MR. MORRIS: We do. We're not going to use this
12 opportunity to smear Mr. Patrick. If the notion is that the
13 breach of the ability to act with authority occurred in May,
14 he should start his timeline in May.

15 THE COURT: Well, I assumed he was just giving
16 background to explain.

17 THE WITNESS: Yes.

18 THE COURT: So I'll overrule.

19 THE WITNESS: Thank you. I'm going to just give you
20 a little bit of background. Everything that I'm stating is in
21 the public record. I won't do anything to besmirch Mark
22 Patrick. It's all in the public record. It's all in the
23 Cayman pleadings. But there was affidavits regarding
24 embezzlements by vendors where he would request overbilling
25 and the money sent to his house.

1 MR. PHILLIPS: Your Honor, we're talking about
2 documents outside the scope, not identified, not listed.
3 Objection.

4 THE WITNESS: It's all --

5 MR. PHILLIPS: This is not a timeline.

6 THE COURT: This --

7 THE WITNESS: It's --

8 THE COURT: Sustained. We don't have anything in the
9 record. This is --

10 THE WITNESS: Okay. It's all in the public arena.

11 And so is the insider trading.

12 MR. PHILLIPS: Objection, Your Honor.

13 THE WITNESS: So, --

14 THE COURT: Okay. I sustain.

15 THE WITNESS: Okay. All right.

16 And then, yeah, and then there was monies missing. There
17 were large amounts of monies missing from the estate. There
18 was unexplained \$16 million of expenses in '23.

19 MR. PHILLIPS: Objection, Your Honor. They're --

20 THE COURT: Okay. Explain the relevance, Mr. Lang.

21 MR. LANG: I thought he was just giving a background.

22 THE COURT: It's getting rather --

23 THE WITNESS: Okay, Your Honor. Well, --

24 THE COURT: -- colorful, shall we say. All right?

25 THE WITNESS: Okay. Without giving specifics

1 regarding the embezzlement or --

2 MR. PHILLIPS: Your Honor?

3 MR. MORRIS: We move to strike, Your Honor.

4 MR. PHILLIPS: We move to strike all of this.

5 MR. MORRIS: We move to strike all of this.

6 THE COURT: Okay. I grant. We don't have any
7 evidence of embezzlement.

8 THE WITNESS: Okay. All right. Without detailing
9 any of the bad acts that we -- that it looked like happened
10 from the investigation, we took all the bad acts and all the
11 investigations and we gave them to the three underlying
12 charities. Let's remember the DAF is a legacy charity I set
13 up 15 years ago, or actually, Mark Patrick did the
14 documentation back when he was a loyal employee. And it was
15 three -- around \$300 million and about \$600 million of
16 liability, I mean, legal claims and other things that were
17 meant to be a family legacy, where the donations would help
18 the community. We've given out more than \$50 million over the
19 years. And the recognition would help our various companies
20 or our families. That's what it was. Okay?

21 Went to the three underlying charities who were the
22 beneficiaries of the DAF as it existed: Santa Barbara, Dallas
23 Foundation, Kansas City. These are large charities that have
24 been around for a hundred years. I don't control them by any
25 form or fashion. As a matter of fact, the Hunts are \$4

1 billion out of the \$6 billion in Kansas City. I think I'm a
2 hundred million or whatever. The DAF was a hundred million.
3 I think the Hunts would be disturbed to hear that I control
4 it.

5 Anyway, so all those charities were beneficiaries. And so
6 we went to them with all the investigative results. And at
7 first, they tried to verify, they tried to have an audience
8 with Mark Patrick. They wanted details. They wanted what --
9 financials. They wanted to know what was happening. And
10 nothing was forthcoming from Mark Patrick. He didn't think he
11 owed them any fiduciary responsibilities.

12 MR. PHILLIPS: Objection. Hearsay.

13 THE WITNESS: No, that's --

14 THE COURT: What is the out-of-court statement? I'm
15 not sure.

16 MR. MORRIS: Mark Patrick thinks that he doesn't owe
17 any fiduciary duties.

18 MR. PHILLIPS: They did an investigation. They tried
19 to do x. They tried to do y.

20 THE COURT: Oh, okay. Technically not hearsay, but I
21 think we're getting --

22 THE WITNESS: Okay.

23 THE COURT: -- a little far beyond the subject
24 matter. So if we could reign it in, please.

25 THE WITNESS: Okay. In February, they were noted,

Dondero - Direct

200

1 they were notified, or, in particular, Dallas Foundation was
2 notified that their Empower subsidiary, which owned a hundred
3 percent of the HMIT interests that we were talking about, was
4 transferred to an undisclosed company for a million dollars.
5 Without any transparency, without any understanding of who the
6 new owner was, they filed for receivership in Cayman. To the
7 best of the charity's knowledge and based on all the
8 documentation --

9 MR. PHILLIPS: Your Honor, objection.

10 THE COURT: Okay. Let me try to understand the
11 relevance. Do you think I opened this up by asking if there
12 was a falling out essentially between you and Patrick? Is
13 that why you're going into this? Or --

14 THE WITNESS: No, no, no. No. The falling-out is
15 much bigger than this. But I'm just saying the day
16 receivership was filed was the day Mark Patrick lost
17 authority. And I think anybody would look at it that way. It
18 was for liquidation in the Cayman --

19 THE COURT: Okay. That's his view and we'll either
20 see the --

21 THE WITNESS: Okay.

22 THE COURT: -- documents that support that or not.

23 THE WITNESS: All right. So, your -- yes. Because
24 the question was when do I think he lost authority. I -- you
25 could make the argument he lost it a lot sooner, because for

1 months beforehand the charities had written him letters saying
2 they wanted their assets distributed in kind, they lost faith
3 in --

4 THE COURT: Okay.

5 THE WITNESS: Yeah.

6 MR. PHILLIPS: Again, Your Honor, objection.

7 THE COURT: This is hearsay. Okay. I sustain.

8 THE WITNESS: Okay. Well, they did.

9 So, eventually, and it takes a lot to get four little old
10 ladies at different charities to get together and agree to
11 file a charity in liquidation, but they did in the Caymans.
12 Okay? And then lo and behold, the response from Mark Patrick
13 was, ha-ha, there are no assets there anymore, I moved them
14 all to my living room --

15 MR. PHILLIPS: Move to strike, Your Honor.

16 THE WITNESS: -- at DFW.

17 MR. PHILLIPS: There's no evidence in the record of
18 this. There was no evidence of any statement. Move to
19 strike.

20 THE COURT: There's not, right?

21 THE WITNESS: Well, no, there is, because what Mark
22 Patrick --

23 THE COURT: Sustained. I don't have it.

24 MR. PHILLIPS: Your Honor, there is no evidence of
25 any of this.

1 THE WITNESS: Well, Mark Patrick's testimony, he said
2 -- he said that our receivership was right after his
3 receivership. He had liquidated and taken all the assets out
4 from Dallas, Santa Barbara, and whatever, and moved it all to
5 his charity. So when we tried -- when the poor charities in
6 Texas in the U.S. tried to file for liquidation, his response
7 was ha-ha. And there were no assets there, you know, because
8 he had already filed --

9 MR. PHILLIPS: Objection.

10 THE WITNESS: He -- he --

11 THE COURT: Okay, I've sustained the objection to the
12 ha-ha. Okay.

13 THE WITNESS: Okay. But he had, he had filed --

14 MR. PHILLIPS: Your Honor, please, move to strike.

15 THE COURT: Okay. Let's strike everything after that
16 last question. Ask your next question.

17 MR. LANG: I don't remember what the first question
18 was.

19 BY MR. LANG:

20 Q What happened -- or, what's your understanding of the
21 proceedings in the Caymans?

22 MR. PHILLIPS: Your Honor, objection. Form.
23 Understanding of the proceedings in the Caymans?

24 MR. LANG: His understanding is, I mean, his
25 understanding. What's his endgame?

1 THE COURT: All right. I sustain.

2 MR. LANG: Okay.

3 THE WITNESS: The Cayman Islands --

4 MR. PHILLIPS: Your Honor?

5 MR. LANG: Hold --

6 THE COURT: I sustained, so --

7 THE WITNESS: Oh, sustained. Sorry. Okay.

8 BY MR. LANG:

9 Q What is your endgame with respect to your objection over
10 the authority of Mr. Patrick to enter into the settlement
11 agreement that is subject of the 9019?

12 A The three charities in the U.S. are affected materially.
13 Dallas Foundation can't make payroll as of October. Dallas
14 Foundation --

15 MR. PHILLIPS: Your Honor, I'll object to this
16 testimony. The Dallas Foundation has withdrawn its objection
17 on behalf of -- Dallas Foundation appearing on behalf of
18 Empower, the Okada Family Foundation, and Crown Global. The
19 Dallas Foundation is no longer a party here and did not even
20 object in its -- an individual capacity. Object.

21 THE COURT: I sustain the objection. They had an
22 objection. They withdrew it.

23 Moreover, as I announced early on today, I was really
24 questioning their standing to weigh in.

25 So in light of all of that, I'm not going to allow

1 testimony regarding the impact there has been on Dallas
2 Foundation as a result of something Mark Patrick may have
3 done. Okay?

4 THE WITNESS: Okay. I can answer it differently.

5 THE COURT: Well, wait for your question. Okay.

6 BY MR. LANG:

7 Q Well, what -- what is the --

8 A What is my goal?

9 Q Well, yes, what is your goal?

10 THE COURT: Okay. Yes. Why are you objecting? Why
11 is Dugaboy objecting? How about that?

12 MR. LANG: Safely.

13 THE WITNESS: Safely. Without stating where the
14 assets are or might be, they are not with the three charities
15 they were with a year ago. They have zero. And I would like
16 to get those assets back.

17 (Pause.)

18 THE COURT: Okay. Go ahead. I have a couple of
19 questions, but maybe you'll hit on them.

20 MR. LANG: Oh.

21 BY MR. LANG:

22 Q Mr. Dondero, are you asking the Court to -- are you
23 objecting to the settlement agreement that is the subject of
24 the 9019, asking the Court to allow the Joint Liquidators in
25 the Caymans to weigh in on the settlement agreement?

1 A Yes. Or described a little differently, there's no
2 irreparable harm --

3 MR. PHILLIPS: Objection. Nonresponsive.

4 BY MR. LANG:

5 Q Well, let me ask you this: Are you asking --

6 THE COURT: Let him answer.

7 MR. LANG: Yes.

8 THE COURT: Go ahead and answer.

9 BY MR. LANG:

10 Q Go ahead.

11 A There's no irreparable harm for a bit of delay to get to
12 the bottom of where the assets are and what bad deeds have
13 occurred.

14 Q Is that the reason why you're objecting, is to delay this
15 for 45 days or so?

16 A Well, I believe the HMIT million-dollar transaction in
17 February was a steal. I believe it was a stolen asset that he
18 -- Mark Patrick's trying to monetize. And I don't believe
19 it's monetized at nearly its fair value. And so I believe
20 that it needs to be reviewed.

21 Q Are you asking the Court to -- are you objecting simply to
22 allow the Liquidators in the Caymans time to review this
23 transaction and the settlement agreement?

24 A Yes. There needs to be more time.

25 Q Okay.

1 MR. LANG: I'll pass the witness.

2 THE COURT: All right. Cross?

3 CROSS-EXAMINATION

4 BY MR. MORRIS:

5 Q Good afternoon, Mr. Dondero.

6 A How's it going?

7 Q Okay. You referred to the three underlying charities as
8 being The Dallas Foundation, The Highland Santa Barbara
9 Foundation, and The Highland Kansas City Foundation. Do I
10 have that right?

11 A The three are The Dallas Foundation, Santa Barbara, Kansas
12 City. There's a holding company or there's an entity below
13 it, below each one that I'm on the board of, but it's separate
14 and distinct from the overall charity.

15 Q Okay. But the ones that are separate and distinct that
16 have the Highland name, --

17 A Yes.

18 Q -- those are the ones that you control, correct?

19 A No. I'm on the board. There's three or four people on
20 the board.

21 Q Okay. But --

22 A But we don't control. Otherwise, you know, we would have
23 not recommended the settlement.

24 Q Does the Hunt family make their contributions to The
25 Dallas Foundation, The Santa Barbara Foundation, and The

1 Kansas City Foundation, or do they make them to The Highland
2 Dallas Foundation, The Highland Santa Barbara Foundation, and
3 The Highland Kansas City Foundation?

4 A Most families do it through DAF, so they probably have
5 their own -- they're just involved with Kansas City, as far as
6 I know. I don't know if they're involved in any of these
7 others. But they probably have a Hunt Kansas City.

8 Q But the ones with the Highland name are the ones who
9 initiated the proceeding in the Cayman Islands to get the
10 Joint Official Liquidators appointed over this entity down
11 there, right?

12 A Yes, I believe so.

13 Q And you personally funded that litigation, correct?

14 A The charities can't make payroll.

15 Q And the charities, did you tell the charities what's
16 happening here?

17 A Yes. They're aware.

18 Q When did you tell the charities what's happening here?

19 A They've known it for weeks.

20 Q And they haven't filed any objection in this court,
21 correct?

22 A They thought it was best for Dallas to file it.

23 Q And Dallas settled; isn't that right?

24 A To the surprise of all the other charities.

25 Q Okay. So today, there's actually no charity who is

1 objecting to the settlement agreement, correct?

2 A Because it was -- she got bludgeoned in depositions over
3 the weekend and it happened last night and nobody was aware of
4 it.

5 Q I didn't bludgeon anybody.

6 A Well, --

7 Q I don't bludgeon people.

8 A She switched course after a Sunday full-day deposition or
9 half-day deposition.

10 Q Okay. So the charities that you speak of aren't
11 objecting, correct?

12 A Well, if we had more time. We only had six hours' notice
13 that Dallas fell away. I think they probably would object.

14 Q And you say -- you began to have concerns about Mark
15 Patrick going all the way back to 2023, right?

16 A 2023? A little bit, yeah.

17 Q And then you had real concerns in 2024, right?

18 A Yeah. I mean, he's an odd duck, but he was really odd
19 towards the end.

20 Q Did you file a declara... is one of those public documents
21 you mentioned in the Cayman Islands, that's your affidavit,
22 right?

23 A I believe so.

24 Q Do you want to grab Binder 3 of 3?

25 A Sure.

1 Q And turn to Exhibit 119?

2 A Yes.

3 Q Okay. And this is the declara... this is the affidavit
4 that you filed in the Cayman Islands?

5 A Yes.

6 Q And if you turn to Page 4, in Paragraph 25 you begin to
7 recite events concerning Mark Patrick that concerned you,
8 correct?

9 A Yes. I'm glad you're bringing this into evidence.

10 Q Yes. And in the two years since you started having
11 concerns, has anybody sued Mark Patrick for breach of
12 fiduciary duty?

13 A No.

14 Q Have you recommended to any of these charities: Mark
15 Patrick is doing wrong, let's go sue him?

16 A We were unaware on 90 percent of it until he left.

17 Q You were aware of everything that's in your declaration.
18 It says in 2023, you have notice of these emails. Right? And
19 you did an investigation in 2024, correct?

20 A Yes. But it took a while to get the affidavits from third
21 parties.

22 Q You had the whole investigation done in 2024 and nobody
23 sued Mark Patrick, right?

24 A We didn't sue him. Correct.

25 Q You're just mad that you lost control. Isn't that right?

1 A No.

2 Q Turn to Paragraph 33, please. You accuse Mr. Patrick of
3 misusing material nonpublic inside information. Is that
4 right?

5 A Yes.

6 Q What material nonpublic inside information did he abuse?

7 A I wasn't involved in the specifics. My understanding is
8 that he had an awareness of a tender or some financial
9 transaction and then was providing inside information to
10 attorneys and then had them do something. But I don't -- I
11 don't know the specifics.

12 Q Sir, under oath, in this affidavit that you submitted to
13 the Cayman Islands, you accuse Mark Patrick of obtaining and
14 abusing material nonpublic inside information. Can you just
15 tell Judge Jernigan what you had in mind?

16 A Whatever it says I have in mind. I'm just saying I didn't
17 remember the specifics. I can read it, though, if you'd like
18 me to read it.

19 Q Well, was it something about a put option?

20 A Yes.

21 Q Did he tell The Dallas Foundation that it had a put
22 option? Does that refresh your recollection?

23 A I don't remember the details.

24 Q Do you remember who the counterparty was to the put
25 option?

1 A Counterparty. One of the mutual funds.

2 Q Does it refresh your recollection that it was the Dugaboy?

3 A No.

4 Q Do you remember, sir?

5 A I don't remember.

6 Q I'm going to try. I'm going to try and refresh your

7 recollection. Do you remember that Mark Patrick suggested to

8 The Dallas Foundation that it could recover millions of

9 dollars if it simply exercised the put option with Dugaboy?

10 A My recollection is it was a mutual fund, and it wasn't

11 millions of dollars, but it would disrupt the transaction that

12 was already in place. That's my recollection.

13 Q Okay.

14 A And I don't see Dugaboy anywhere in here, by the way.

15 Q I know. I was wondering if you could just -- I asked you,

16 but it doesn't sound like you know specifically what the

17 material nonpublic --

18 A Well, --

19 Q -- inside information is that you accused Mr. Patrick of

20 abusing at that time.

21 A I know it's been reported. We can get you the details.

22 Q Okay. You, in fact, acted on behalf of HMIT, didn't you?

23 A Who is HMIT?

24 Q Apologies. You personally -- there's no question in your

25 mind that Mark Patrick is the Administrator at HMIT, correct?

1 A I'm sorry, I'm drawing a blank on HMIT. What is HMIT?

2 Q I apologize. Hunter Mountain Investment Trust.

3 A Oh. Okay.

4 Q I'm calling it HMIT.

5 A Okay. All right. Sorry.

6 Q I probably not saying it clearly. I apologize. H-M-I-T.

7 HMIT, that's what I call it. Is there something better that
8 you prefer?

9 A No, that's fine. Yeah.

10 Q Okay. So HMIT. Mark Patrick is the Administrator at
11 HMIT, right?

12 A I believe his status, his dirty hands, I believe he's
13 trying to monetize a stolen asset.

14 MR. PHILLIPS: Objection, Your Honor. Nonresponsive.

15 THE COURT: Sustained.

16 THE WITNESS: No, I -- I saw it. I don't agree --

17 MR. PHILLIPS: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. PHILLIPS: Move to strike.

20 THE COURT: Granted.

21 THE WITNESS: I do not agree.

22 BY MR. MORRIS:

23 Q Okay. Has he -- he was at one time the Administrator.
24 You would agree with that, right?

25 A Yes.

1 Q And did he stop becoming the Administrator in your mind
2 when the Joint Official Liquidators were appointed?

3 A Yes. I believe.

4 Q Okay. So, in your mind, that's when it happened?

5 Can you describe for the Court the relationship between
6 the entity in the Cayman Islands and HMIT?

7 A The entity in the Cayman Island, as far as we knew, was
8 the org structure that all the assets were either in or
9 controlled by in the organizational structure before all the
10 HGEQ things that you went over earlier with Mark Patrick.

11 Q Okay. I'm not asking -- it's my fault. Do you believe
12 the entity in the Cayman Islands controls HMIT?

13 A HMIT was one of the assets that were owned by the
14 charities until it was moved for a million dollar to who know
15 who.

16 Q And do you know how many layers there are between the
17 Cayman Islands entity and HMIT?

18 A I do not.

19 Q Is it fair to -- in your view, do you believe that the
20 Cayman Islands entity had a direct -- withdrawn. Do you
21 believe that the Cayman Islands entity had an indirect
22 ownership interest in HMIT?

23 A We believed it was direct.

24 Q Direct. So it was the owner?

25 A Well, it was -- it was the direct before it got moved in

1 February.

2 Q Hasn't Beacon always been the owner of -- the beneficial
3 owner of HMIT?

4 A Then it was Beacon that was moved. There was -- charities
5 were notified in February that, for \$1 million, the HMIT was
6 sold to an undisclosed, unknown person.

7 Q Do you believe that the entity in the Cayman Islands ever
8 had the ability to control Hunter Mountain Investment Trust?

9 A Yeah. It was an asset in the portfolio.

10 Q And do you believe that that gives it the right to control
11 HMIT?

12 A Yes. I think the Liquidators will prove that. I think
13 they can go back in time on bad acts and bad behavior and they
14 can regroup assets to their rightful owners.

15 Q So your concern here is not with corporate authority, it's
16 with the bad acts. Is that fair?

17 A Well, no. I think you lose your corporate authority when
18 you're fiducially irresponsible or commit corporate crimes.

19 Q Okay. But you've never -- you've never brought a lawsuit
20 accusing him of that. Fair?

21 A I think you'll see a litany of stuff come out of the
22 Cayman Islands.

23 MR. PHILLIPS: Objection. Nonresponsive.

24 MR. MORRIS: I'm sure we might someday.

25 THE COURT: Sustained.

1 THE WITNESS: Yeah. But, no. But I have not, no.

2 BY MR. MORRIS:

3 Q Yeah. But you personally, have you ever been the
4 Administrator of Hunter Mountain Investment Trust?

5 A Not that I'm aware of.

6 Q Have you ever had any role whatsoever with respect to the
7 Hunter Mountain Investment Trust?

8 A Not that I -- not that I recall.

9 Q Okay. Do you recall last December we were here on some
10 litigation concerning HCLOM's scheduled claim?

11 A You have to give me more of a clue.

12 Q Remember HCLOM had that \$10 million scheduled claim and
13 Highland had filed a bad faith motion and we were all here in
14 court and we wound up settling that matter and HCLOM got a
15 Class 10 interest for \$10 million?

16 A Yes, I vaguely remember that.

17 Q Okay. And you were here and you were representing HCLOM,
18 right?

19 A Okay. I don't remember specifics, but, yes, go ahead.

20 Q Okay. And do you recall that Highland required Hunter
21 Mountain Investment Trust's consent as part of the
22 transaction?

23 A Vaguely.

24 Q And you personally authorized that consent back in
25 December, didn't you?

1 A No.

2 Q Who did?

3 A Whoever would have spoke for HMIT at the time.

4 Q Okay. Let's take a look at Exhibit 68, please.

5 A So, Binder 2?

6 Q Yes, please.

7 A Sorry, this says Pat Daugherty. This is 1 of 3. This

8 one. Okay. Did you say 68?

9 Q Yes.

10 A It's not in here, either. 68.

11 Q So you see that's an order of the Court?

12 A Yes.

13 Q And this resolves HCLOM's claim? Take your time.

14 A I'll leave it in case someone else needs it. Okay.

15 Q And do you see on the last page of the document there's an

16 electronic signature by Deborah Deitsch-Perez at the Stinson

17 firm as counsel for Hunter Mountain Investment Trust and

18 Dugaboy Investment Trust? Do you see that?

19 A I'm sorry. I went to the very last page with Mark and I.

20 Is there another page? Oh, okay. Yes. Okay.

21 Q So you see Stinson has signed both on behalf of you

22 personally and HCLOM, and at the bottom, Stinson and Ms.

23 Deitsch-Perez has also signed on behalf of Hunter Mountain

24 Investment Trust and the Dugaboy Investment Trust? Do you see

25 that?

1 A Yes. But then it's separate on 69, right?

2 Q Yeah. We're just looking at 68.

3 A Okay.

4 Q Do you know who authorized Ms. Deitsch-Perez to sign her
5 name and tell the Court that the Dugaboy Investment Trust had
6 approved this form of order both as to form and substance?

7 Who acted on behalf of Dugaboy?

8 A I have no idea. I hope she keeps it straight when she's
9 signing stuff.

10 Q Well, on whose behalf are you here today?

11 A Dugaboy's.

12 Q And are you a representative of Dugaboy?

13 A Representative? I'm primary beneficiary until I pass.

14 Q And who's the trustee of Dugaboy?

15 A I believe it's my sister at the moment.

16 Q Does she know you're here today testifying on behalf of
17 Dugaboy?

18 A She knows I'm in court. I didn't -- I wasn't specific.

19 Q Did you talk to her about the Dugaboy -- does she -- does
20 she even know about the Dugaboy objection?

21 A I don't know.

22 Q Okay. So how about Hunter Mountain Investment Trust? Do
23 you know who authorized Ms. Deitsch-Perez to sign this
24 document on behalf of Hunter Mountain Investment Trust?

25 A When was this? In December or January?

1 Q Yeah.

2 A I'm assuming -- I'm assuming Mark Patrick.

3 Q Late December.

4 A I'm assuming Mark Patrick. But I don't know.

5 Q Did you hear about a week later that Mr. Phillips called
6 your lawyer and accused her of signing this document without
7 authority from Hunter Mountain Investment Trust's authorized
8 representative, Mr. Patrick?

9 A In hindsight, he's been in on it for a while, so --

10 Q What do you mean, he's been in on it for a while?

11 A I think he knows the plan Mark Patrick's been putting in
12 place for quite a while.

13 Q But this document was signed without his knowledge or
14 consent; isn't that right?

15 A I don't know.

16 Q And you had to sign a new agreement with Mark Patrick as
17 the authorized representative of HMIT. Didn't you do that,
18 sir?

19 A I don't know.

20 Q Okay. Let's take a look at guess I guess probably Exhibit
21 69. So this is an intercreditor and participation agreement.
22 Do you see that?

23 A Yes.

24 Q And it's dated January 10th, 2025, correct?

25 A Yes.

1 Q And even though you -- even though Skyview had completed
2 this investigation in which it was alleged that Mr. Patrick
3 misused material nonpublic inside information and he had
4 terminated his relationship with Skyview, you still entered
5 into this agreement with him as the authorized representative
6 of HMIT, correct?

7 A Those were different work streams, you know, so they were
8 -- but yes.

9 MR. PHILLIPS: Objection. Nonresponsive.

10 THE COURT: Sustained.

11 BY MR. MORRIS:

12 Q That is -- that is your signature on the last page,
13 correct?

14 A Yeah. I mean, --

15 Q It's a simple question. That's your signature, right?

16 A Yes.

17 Q And you understood that you were signing an agreement with
18 Mark Patrick, correct?

19 A Yes.

20 Q And you signed this agreement in order to avoid Mr.
21 Phillips filing a motion in this court for reconsideration of
22 an order that she signed not knowing that Hunter Mountain had
23 given its consent without authority. Isn't that right?

24 A No, I had no -- none of that --

25 Q So what's your memory? Why do you think you entered into

1 this agreement?

2 A Because the lawyers put it in front of me as a finished
3 product from what had been going on recently.

4 Q And you had no understanding of what it was?

5 A Not with the innuendo and agenda that you were describing.
6 No. I mean, I just -- I knew what it generally involved.
7 That's it.

8 Q But you would agree with me that you entered into an
9 agreement knowing that Mark Patrick was signing on behalf of
10 Hunter Mountain, correct?

11 A Yes.

12 Q I mean, it's right below your name, right?

13 A Yes.

14 Q You couldn't have missed it.

15 A Yes. That part, I'll agree with.

16 Q Okay. And you signed the agreement with Mark acting as
17 the authorized agent and representative of Hunter Mountain,
18 notwithstanding all of the bad acts that you supposedly were
19 aware of at the time. Correct?

20 A Object to aware of at the time. They were all coming
21 together in parallel work paths.

22 THE COURT: Okay.

23 MR. PHILLIPS: Object. Nonresponsive.

24 THE COURT: Sustained. Like I told Mr. Patrick, the
25 witness does not get to object.

1 THE WITNESS: Okay.

2 BY MR. MORRIS:

3 Q And just to close the loop, Mr. Dondero, you fully funded
4 The Dallas Foundation's objection, correct?

5 A And I made additional donations so that they could pursue
6 bad actors and get their money back.

7 Q You funded the litigation so that The Dallas Foundation
8 could pursue their objection, correct?

9 A I made additional donations so that they could get some
10 assets back so that they could be a charity again and make
11 donations.

12 Q Do you get a tax deduction for that donation?

13 A Yes.

14 Q Okay. That's nice.

15 Let's just finish up with the Joint Official Liquidators.
16 Have you spoken to them?

17 A I do not believe so.

18 Q Has anybody acting on your behalf spoken with the Joint
19 Official Liquidators?

20 A I don't know. I think the Joint Official Liquidators are
21 an accounting firm. I think they're Grant Thornton. I think
22 people have spoken to the attorneys down there, but I don't
23 know -- I haven't spoken to Grant Thornton and I don't know if
24 anybody else has.

25 Q Okay. Did you see the letter that your counsel marked as

1 the exhibit, the one that was sent last night?

2 A I've not heard it -- I've not read it, but I've heard you
3 guys read it today.

4 Q Yeah. Are you aware of the Joint Official Liquidators
5 saying at any time that they didn't believe Mark Patrick had
6 the authority to enter into the settlement agreement on behalf
7 of the HMIT entities?

8 A I have not.

9 Q Okay.

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

11 THE COURT: All right. Mr. Phillips?

12 MR. PHILLIPS: Yeah.

13 THE COURT: Wait. What are we at timewise?

14 THE CLERK: So their 30 minutes is over. If you
15 intended to give them 30 minutes for Patrick and --

16 THE COURT: Yes. Yes. They collectively got 30
17 minutes.

18 THE CLERK: For both of those --

19 THE COURT: Yes.

20 THE CLERK: -- witnesses. Okay. Yes, they're out.

21 THE COURT: How much did Mr. Morris use?

22 THE CLERK: Well, I don't know. I just was --

23 THE COURT: No, no, no, no. 30 minutes for each side
24 for each Patrick and Dondero.

25 MR. MORRIS: About eight minutes.

1 THE CLERK: Yes. Mr. Morris -- I think Mr. Phillips
2 may have asked one question, but Mr. Morris mostly -- 30
3 minutes.

4 THE COURT: No. On this witness, Phillips hadn't
5 gone.

6 THE CLERK: No, not this witness.

7 THE COURT: Okay. That's all I care about, this
8 witness.

9 THE CLERK: I don't know this witness.

10 THE COURT: Okay. Do you have a question, Mr.
11 Phillips?

12 THE CLERK: I was doing 30 minutes for the total.

13 THE COURT: No, no, no, no, no.

14 MR. PHILLIPS: Your Honor, I can resolve this. I can
15 resolve this. We have no questions.

16 THE COURT: Okay. Thank you. Where are we? Mr.
17 Lang, any redirect?

18 MR. LANG: I'm not sure.

19 THE COURT: Okay.

20 THE WITNESS: The last one.

21 MR. PHILLIPS: Your Honor, the witness is telling the
22 lawyer what question to ask.

23 THE COURT: Okay.

24 MR. LANG: I believe I've already asked, which is the
25 endgame.

1 THE COURT: Okay. Just let's move on. Anything
2 else? What was the question?

3 REDIRECT EXAMINATION

4 BY MR. LANG:

5 Q Mr. Dondero, what are you looking to accomplish through
6 this objection?

7 MR. PHILLIPS: Asked and answered.

8 THE COURT: Sustained. Sustained. He did. He was
9 asked and answered.

10 BY MR. LANG:

11 Q The endgame in general.

12 MR. PHILLIPS: Asked and answered.

13 THE COURT: Answered and answered. Move on.

14 THE WITNESS: No, no. No, I haven't. No, I --

15 MR. PHILLIPS: Asked and answered. Move to strike.

16 THE COURT: You asked him this on your direct
17 earlier.

18 MR. LANG: I did.

19 THE WITNESS: But, in general, regarding the --

20 MR. PHILLIPS: Your Honor?

21 THE WITNESS: Not just this.

22 THE COURT: Sustained. Ask another question.

23 MR. LANG: I don't have any more questions.

24 THE COURT: Okay. I have a question.

25 EXAMINATION BY THE COURT

1 THE COURT: Here is something that I want to
2 understand. What I have before me is whether a settlement
3 with Hunter Mountain, a settlement between the Highland
4 entities, the Claimant Trust, the Subtrusts, and the Hunter
5 Mountain entities, seven of them, is fair and equitable, is in
6 the best interest of the estate. If you were the director,
7 the manager, the representative of Hunter Mountain estate,
8 what would your answer be?

9 THE WITNESS: It's not in the ZIP Code.

10 THE COURT: It's not in the ZIP Code?

11 THE WITNESS: Of fair. Yes.

12 THE COURT: Okay. Why do you think it's not in the
13 ZIP Code of fair?

14 THE WITNESS: Okay. We filed in Delaware on a \$100
15 million judgment. Pachulski was our counsel. They told us --

16 THE COURT: I know all this.

17 THE WITNESS: It just --

18 THE COURT: I'm talking about the settlement in front
19 of me right now.

20 THE WITNESS: -- we'd be in and out in three months,
21 right? We got liquidated instead. We got liquidated for over
22 \$850 million, which not enough people talk about. Okay? It
23 would've been \$950 million if Seery had done a good job, but
24 it was \$850 million we got liquidated for. Okay? The POCs
25 were pumped up. People who supposedly had no claim, all of a

1 sudden, \$300 million.

2 There's \$700 million missing or misallocated from the
3 estate. Okay? There was -- all the original creditors, all
4 the original creditors sold 99 percent of their interest for
5 \$160 million. The Farallon and Stonehill went to the beach.
6 There was enough money on the balance sheet. Seery could have
7 given them the \$160 million and tossed us the keys. Instead,
8 he had relations, deep relations, undisclosed business
9 relationships with Farallon and Stonehill, --

10 THE COURT: Okay. I do want you to know --

11 THE WITNESS: No, but --

12 THE COURT: -- I've read all this many times.

13 THE WITNESS: Okay. But so -- so these --

14 THE COURT: I promise I read every piece of paper
15 submitted.

16 THE WITNESS: Okay. So, so he sold the POCs to them,
17 and it's been -- they've tripled their money in two and a half
18 years. The professional fees have been \$300-odd million.
19 There's interrelationships between all the professionals --
20 Farallon, Stonehill, Grosvenor, the Hellman & Friedman guys,
21 the Millennium guys who took whatever. All this stuff has to
22 come out.

23 We're on the edge of a giant RICO case eventually. We're
24 -- that's -- we're on the edge of a giant RICO case. And they
25 should not be giving up their rights for \$10, \$20 million.

1 It's crazy for them to give up their rights at Dallas
2 Foundation for 10 or 20 million bucks.

3 There's \$700 million missing. All the original creditors
4 sold for \$160 million. The estate was sold for over \$850
5 million. Where'd all the money go? Where'd all the money go
6 and why? You know.

7 We get updates quarterly, once in a while, well, this much
8 went out to this law firm, this much went out to this,
9 whatever, but no one looks at the gross amount and where'd all
10 the money go? And why? Why did it have to -- why did it have
11 to go down like that? Why do we have to fire --

12 THE COURT: Okay. I know you have an objection.

13 THE WITNESS: -- all the employees?

14 THE COURT: This is narrative.

15 MR. MORRIS: Yeah. And --

16 THE COURT: I understand all --

17 MR. MORRIS: -- I'm not going to cross-examine him,
18 but this is -- this is not accurate.

19 THE COURT: I understand all of these arguments. You
20 know, I --

21 THE WITNESS: But I'm just --

22 THE COURT: Your lawyers at least know, if you don't
23 know, that we wrote a 100-plus-page opinion on the motion of
24 Hunter Mountain to sue for all of this. Okay? So I promise
25 I've heard this and looked at it. But right now, Hunter

1 Mountain, through Mark Patrick, you question his authority,
2 but they are ready to lay down their swords and not pursue
3 that motion for leave to sue based on the claims trading, and
4 --

5 THE WITNESS: Have you seen all the insider trading,
6 Farallon, Stonehill? Have you seen the trading and claims on
7 insider information? Have you seen all that stuff?

8 THE COURT: I've seen the allegations but I --

9 THE WITNESS: Well, why would you release all those
10 people right now before the RICO?

11 THE COURT: So I -- Dugaboy -- you've been asked what
12 is your goal? Dugaboy a .18 limited partnership interest --

13 THE WITNESS: Correct.

14 THE COURT: -- that is subordinated to Hunter
15 Mountain. I'm just trying to understand the scenario where it
16 makes sense to keep fighting for years to come.

17 THE WITNESS: Well, RICO transcends this, right? I
18 mean, RICO brings everybody in. Until we get --

19 THE COURT: Okay. You think it's -- and my question,
20 why is this not fair and equitable and in the best interest of
21 the estate, you think it's better to litigate several more
22 years and maybe have a chance, you know, --

23 THE WITNESS: At \$600 mill. At \$600 million.

24 THE COURT: -- Hunter Mountain would have a chance to
25 --

1 THE WITNESS: \$600 million. Yes.

2 THE COURT: Okay.

3 THE WITNESS: Versus \$20 million now. But you have
4 to remember, it's all part of -- you have to pay attention to
5 this Mark Patrick stuff.

6 MR. PHILLIPS: Your Honor?

7 THE COURT: Okay. Yes. I asked my question. I'm
8 trying to understand why Dugaboy, why its position is this is
9 not fair and equitable and in the best interest and in the
10 range of reasonableness. Those are the buzz words that a
11 judge has to focus on.

12 THE WITNESS: It's not fair to the charities. I
13 still think no one's ever seen --

14 THE COURT: The charities aren't parties here.

15 THE WITNESS: Not yet. Give them a little time.
16 They just heard about the settlement yesterday.

17 THE COURT: Well, isn't that what the Cayman Islands
18 is all about? What I do doesn't necessarily affect what's
19 happening there.

20 THE WITNESS: Well, no, but you're saying they're not
21 here today. If you delayed this three weeks, they'd be here.
22 It's just a couple --

23 THE COURT: They were here and they chose to
24 withdraw.

25 THE WITNESS: One. One. Just one charity. But the

1 others, if you give them some time, they'll be here.

2 THE COURT: Okay. Okay. I think you've answered my
3 question, your theory of how this should play out and how you
4 want it to play out. Okay. All right.

5 THE WITNESS: Thank you.

6 THE COURT: That's all. Thank you.

7 THE WITNESS: Thank you for the time.

8 THE COURT: Uh-huh.

9 (The witness steps down.)

10 THE COURT: All right. I think that concludes our
11 evidence, correct?

12 MR. YORK: Yes, Your Honor. At least from
13 Daugherty and --

14 THE COURT: Okay. The Objectors rest. Any rebuttal?

15 MR. PHILLIPS: No, Your Honor.

16 THE COURT: Okay.

17 MR. YORK: Your Honor, would it be okay if we took a
18 five-minute comfort break?

19 THE COURT: Yes. We may as well turn it into a 10-
20 minute break because that's what's going to happen. All
21 right. We'll be back at 3:40.

22 THE CLERK: All rise.

23 (A recess ensued from 3:30 p.m. until 3:44 p.m.)

24 THE CLERK: All rise.

25 THE COURT: Please be seated. We're back on the

1 record in Highland Capital. I will hear closing arguments.
2 And I dangled something out there before lunch and I've never
3 heard any follow-up. I guess no agreement with Daugherty
4 could be reached on the reserve?

5 MR. YORK: Haven't had that conversation, Your Honor.

6 THE COURT: You didn't have that conversation? Oh,
7 well. Why didn't you have that conversation?

8 MR. YORK: We were, during the lunch break, working
9 busily to prepare the rebuttal to Mr. Seery's testimony, --

10 MR. MORRIS: Yeah.

11 MR. YORK: -- Your Honor. And so --

12 THE COURT: Okay. You told me you'd talk about it.

13 MR. MORRIS: May I proceed, Your Honor?

14 THE COURT: I guess I don't matter. Do I not matter
15 when I suggest something like that?

16 Okay. Go ahead.

17 CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

18 MR. MORRIS: Good afternoon, Your Honor. John
19 Morris; Pachulski, Stang, Ziehl & Jones; for Highland Capital
20 Management, LP and the Highland Claimant Trust and on behalf
21 of the Highland Litigation Subtrust.

22 I know that we've got Bob Loigman in the courtroom, but I
23 know that -- at least I hope he joins me in this closing
24 argument. I suspect he does.

25 I don't want to be too long here, Your Honor. We don't

1 have a high burden. This is a 9019 motion, for goodness'
2 sakes. I've never been involved in such a contentious 9019
3 motion in my life. We had three depositions on Friday. We
4 had two on Sunday. I think we had two on Monday. For a 9019,
5 I've had one witness sit multiple times.

6 It's been an extraordinary experience. But at the end of
7 the day, nobody's really challenging the settlement agreement.
8 You've got people challenging, you know, the Cayman Islands.
9 You've got people challenging, is it -- you know, can you jam
10 it in under the plan? We're not jamming anything under the
11 plan. We're following the plan provisions.

12 Nobody's challenging the bona fides of the motion. Nobody
13 is challenging whether it's the product of good-faith, arm's-
14 length negotiations.

15 You heard Mr. Seery testify at length about the process.
16 You've got 55 different documents in the record proving that
17 this agreement is the product of arm's-length, good-faith
18 negotiations between parties represented by sophisticated
19 counsel that resulted from an exchange of information, an
20 exchange of proposals, back and forth, and here we are.

21 It's also in the best interests of the estate. Really not
22 challenged by anybody. Nobody is contending that Highland is
23 getting a raw deal here. Nobody. And the proof that Highland
24 is getting fair consideration and that this settlement is in
25 the best interest of the Claimant Trust and its stakeholders,

1 it's obvious we are terminating costly, wasteful, and I dare
2 say frivolous litigation. We are disposing of several
3 illiquid assets. We are getting litigation protections that
4 will inure to the benefit of the released parties, the
5 Highland release parties and it will, we believe, provide the
6 protection that we deserve.

7 It's not just releases. It's covenants not to sue. It's
8 all kinds of bells and whistles in there. Substantial
9 benefits to the estate. And so nobody's really objecting to
10 that.

11 Nobody's really objecting to the fairness of the
12 settlement to the HMIT parties except for Mr. Dondero, and
13 he's just mad that peace is breaking out. He's just mad
14 because he's not going to be able to litigate anymore. It's
15 not relevant to a 9019 motion. But even if it was, it's
16 ridiculous. It's just ridiculous.

17 The settlement is fair and reasonable and in the best
18 interest of the creditors. It's the product of good-faith,
19 arm's-length negotiations. And on that alone, it should be
20 approved.

21 We've had a lot of testimony today about Mark Patrick's
22 authority. The only actual evidence that concerns Mark
23 Patrick's authority are the exhibits in the binder and Jim
24 Seery's testimony about the diligence that he did. And the
25 exhibits in the binder all prove that Mark Patrick has the

1 authority to act and bind the HMIT entities to the settlement
2 agreement. It's Paragraph 7 of the HMIT trust agreement
3 itself.

4 Did the objecting parties point you to one single document
5 to support their speculative argument, because it's not
6 anything more than that, that somehow Mark Patrick isn't
7 authorized to do this? There is not a scintilla of evidence
8 that Mark Patrick is not authorized to do this.

9 And if Your Honor had any concerns about Mr. Patrick, I
10 think he answered them at the end. That he understood exactly
11 what the terms of the agreement are. That he had a reasonable
12 opportunity to consult with counsel and to negotiate. That he
13 knows exactly what he's doing on behalf of these entities.
14 That he believes the best path forward from the HMIT entities
15 is to grab the value today instead of letting it waste.

16 We welcome Mr. Patrick to the table. It makes a lot of
17 sense. We've been trying to get to this point forever.

18 Mr. Daugherty. You know, I have no gripes with Mr.
19 Daugherty. I don't know quite what's motivating him these
20 days, but he admitted and the evidence is clear that when he
21 was a Class 9 claim holder, I forget if it's two or three or
22 four occasions, he accepted \$3.7 million in multiple payments,
23 without any concern at all as to whether or not it violated
24 the plan, even though his Class 8 claim had remained
25 unresolved.

1 He didn't send the money back. He didn't say, Mr. Seery,
2 you can't do this because it violates the plan. He knowingly
3 and willingly accepted the benefits of being a Class 9 claim
4 holder. And now he comes and objects on the basis that
5 somehow it's not fair to him as a Class 8 holder? This is
6 what we call estoppel. Right?

7 I wasn't in a position to really make the argument because
8 I didn't quite understand it until today. Like, how does he
9 come in today and say you can't do this, Your Honor? You
10 can't allow Class 9 and 10 to get a nickel until he's done,
11 when he himself has accepted millions of dollars before his
12 claim is resolved? That doesn't sound right to me. And I
13 don't think the Court should accept that argument.

14 Just quickly, because I don't want to give it any weight,
15 frankly, but this whole business of the Cayman Islands and the
16 JOLs, the only facts Your Honor has to take into account are
17 that they were appointed before this motion was filed.
18 They've never appeared here. They've never objected. And
19 there is no evidence in the record to suggest, let alone to
20 prove, that the JOLs contend that Mark Patrick does not have
21 the authority to enter into the settlement on behalf of the
22 HMIT entities. There's no evidence of any kind.

23 What you need to know and need to remember, though, is
24 that whole proceeding in the Cayman Islands is being brought
25 on behalf of not The Kansas City Foundation or The Dallas

1 Foundation, but The Highland Kansas City Foundation, The
2 Highland Dallas. It's Mr. Dondero, and he's funding it, and
3 it says it in Paragraph I think 47 or 48 of his declaration.
4 He's funding all of that. And he funded The Dallas
5 Foundation's objection here.

6 And that's why he's upset, because they settled last night
7 without telling him because they didn't want any part of this,
8 Your Honor. That's the truth. That's why they're not here.
9 And they, right, they're the people who suggested that maybe
10 something untoward happened and maybe someday -- because this
11 is the way their objection is characterized. Complete
12 speculation.

13 If you go back and look at the objection, it's someday,
14 somebody might do something and might someday set it aside.
15 That wasn't a proper basis at the time, but we know that Mark
16 Patrick remains in control of the HMIT entities today because
17 nobody has told the Court otherwise. And we know that The
18 Dallas Foundation has withdrawn its objection. As I asked Mr.
19 Patrick, have you been, you know, removed or clipped or
20 terminated or in any way restricted in your capacity as the
21 Administrator and control person of the HMIT entities as a
22 result of the settlement, and the answer was no.

23 There's nothing to see here, Your Honor, except the
24 opportunity for the Highland Claimant Trust and its affiliated
25 entities in moving this case forward in an enormously positive

1 and constructive direction.

2 We have the opportunity today to put to rest a lot of
3 pending litigation. We have the opportunity today to put to
4 rest a lot of future potential litigation that undoubtedly
5 would have come to pass had these entities remained under the
6 indirect control of Mr. Dondero, because we know that that was
7 the case.

8 If you remember, Your Honor, we sat here two years ago,
9 June 8th, 2023, on the evidentiary hearing on Hunter
10 Mountain's motion for leave to bring the claims trading case.
11 And if Your Honor will remember, Mr. Patrick at that time was
12 forced to admit that the entirety of that case came in from
13 Mr. Dondero, that he had no knowledge of any facts that
14 related to anything.

15 I would ask Your Honor to go and compare The Dallas
16 Foundation's objection with Mr. Dondero's declaration that he
17 filed in the Cayman Islands. I'm not going to say they're
18 verbatim, but they are largely, largely the same. This is
19 just Jim Dondero being Jim Dondero, and that is not a basis to
20 overrule or deny the motion under Rule 9019.

21 It's a product of good faith negotiations, it is clearly
22 in the best interests of the estate, and we respectfully
23 request that as soon as possible Your Honor grant motion.

24 THE COURT: Okay.

25 MR. MORRIS: Thank you, Your Honor.

1 THE COURT: Any closing from the Movant, Co-Movant?

2 MR. PHILLIPS: Your Honor, thank you very much.

3 Louis M. Phillips on behalf of the --

4 THE COURT: I don't know if you're the Co-Movant.

5 You're a party to the proposed settlement.

6 MR. PHILLIPS: I'm not a Co-Movant.

7 THE COURT: Okay.

8 MR. PHILLIPS: I'm a party to the settlement.

9 THE COURT: Uh-huh.

10 MR. PHILLIPS: I didn't quite make it to that status
11 to be a Co-Movant.

12 CLOSING ARGUMENT ON BEHALF OF THE HUNTER MOUNTAIN ENTITIES

13 MR. PHILLIPS: But anyway, we appreciate the Court's
14 time. We appreciate the Court's attention. This was, as the
15 evidence established, we provided and were provided an immense
16 amount of information.

17 Much of the information, certainly the information about
18 Mr. Patrick's control of the HMIT entities, was provided by
19 us. It was reviewed by Mr. Seery. And Mr. Seery made a very
20 strong case for the amount of diligence he did on our side of
21 the equation. It's not nearly as relevant to Your Honor's
22 decision about whether to approve the settlement whether we
23 got a good deal or not, but the deal we got, we think, is very
24 fair.

25 The deal we got was negotiated with counsel, with

1 businesspeople who are very sophisticated. We have agreed on
2 the methodology and of the calculation of our Class 10 claim.
3 The Debtor and the Debtor estate or the Claimant Trust or
4 whoever held the HMIT note got full value for the HMIT note.
5 Any additional value from the HMIT note would come back to
6 HMIT. The Kirschner Litigation would be for the benefit of
7 HMIT. The Dugaboy Note would be for the benefit of HMIT.

8 All of that is being put into a package and is being
9 resolved, affiliated, administered in a very effective and
10 efficient manner. We are getting some money. We appreciate.
11 We tried to get more. We couldn't. They tried to pay less.
12 We made a deal.

13 So, Your Honor, I echo and thank Mr. Morris for all of his
14 comments. I appreciate counsel being involved here today. We
15 think this is a fair and equitable settlement. There is no
16 question under 9019 that this settlement should be approved.
17 And the suggestion that this Court should allow itself to just
18 be a vehicle for continued litigation, when we have analyzed
19 it, perhaps from a different perspective, and made the
20 decision that it is time to make our deal now, it is time to
21 take HMIT out of the litigation picture and into the fold of a
22 party in interest of a fixed claim with fixed treatment that's
23 different from the plan, authorized by the plan. And we
24 appreciate it.

25 Thank you, Your Honor.

1 THE COURT: Thank you. All right. Mr. Loigman, we
2 didn't mean to ignore you.

3 CLOSING ARGUMENT ON BEHALF OF MARC S. KIRSCHNER, LITIGATION
4 TRUSTEE

5 MR. LOIGMAN: Thank you, Your Honor. Robert Loigman,
6 Quinn Emanuel. You didn't ignore me. Louis was just quicker
7 to jump up than I was.

8 And I step up solely because you asked whether the Co-
9 Movant had anything to add. And we have nothing further to
10 add to what Mr. Morris said. We agree with it wholly. We
11 think this is a fair and complete settlement, and we would ask
12 that the Court approve the settlement under the 9019 motion.

13 THE COURT: Thank you.

14 MR. LOIGMAN: Thank You, Your Honor.

15 THE COURT: All right. The Objectors?

16 MR. MORRIS: Your Honor?

17 THE COURT: Oh.

18 MR. MORRIS: Just to clarify, the motion was made
19 under 9019 and Section 363. I just don't want that to get
20 lost. That's all.

21 THE COURT: Okay. 363, use of property. Okay.
22 The Objectors?

23 CLOSING ARGUMENT ON BEHALF OF PATRICK DAUGHERTY

24 MR. YORK: Thank you, Your Honor. I'll be very
25 brief.

1 I certainly appreciate that the Court desires to have this
2 bankruptcy wrapped up, given how long it's gone on now, for
3 six -- approximately six years in this court. The fact of the
4 matter is that the settlement agreement that Highland proposes
5 to enter into with Hunter Mountain Investment Trust entities
6 violates the express terms of the plan, the confirmation
7 order, and the Claimant Trust Agreement.

8 And they have not pointed to any language in there or to
9 argue otherwise. Their only argument has been that they've
10 set a reserve aside. And there's no provision in any of those
11 documents that provides that that's an excuse for them to
12 violate the express terms of the confirmation order, the plan,
13 or the Claimant Trust Agreement, including specifically the
14 language that Class 10 claims are not to receive or retain
15 anything under the plan on account of their interest unless
16 and until the Class 8 and Class 9 claims are paid in full plus
17 applicable interest. And --

18 THE COURT: I really want to understand that
19 argument. Mr. Seery correctly testified that, pretty much in
20 every Chapter 11 plan we see, there's a disputed claim
21 reserve. Well, I guess unless we have really unsophisticated
22 creditors who don't insist on that. But we had sophisticated
23 creditors. So why doesn't that mechanism, which I would call
24 tried and true, we see it in most cases, why doesn't that
25 resolve this issue you're raising?

1 MR. YORK: Well, --

2 THE COURT: And I focused in more than maybe I needed
3 to about the nature of Mr. Daugherty's remaining claim, his
4 Class 8 claim. What was the scope? What's the maximum amount
5 it could be? When might it be resolved? Because I think we
6 have a tried-and-true mechanism that addresses his concerns.
7 Tell me why it doesn't.

8 MR. YORK: Well, --

9 THE COURT: Really, I want to understand what you
10 think I'm missing.

11 MR. YORK: Well, so I think twofold, Your Honor. The
12 first is that the dispute reserve that exists normally would
13 be for whatever the amount of the disputed claim is. And here
14 we're dealing with, as both sides have acknowledged, a claim
15 that they at best could estimate, but they don't know for
16 certain, given all of the machinations that could come out of
17 the IRS audit.

18 And secondly, specifically with respect to the
19 confirmation order, if it had said that the net 10 and 11
20 claims could be paid as long as the allowed 8 and 9 claims
21 were paid, then the dispute reserve would provide that
22 protection. But that's not what the language in the
23 confirmation order says. It says claims, not allowed claims.
24 And therefore it's referring to all claims, including disputed
25 claims. And --

1 THE COURT: But we have a disputed claim reserve.

2 Okay. We have a disputed claim reserve.

3 MR. YORK: There is, yes, there is a reserve.

4 THE COURT: So is it your argument that I can't
5 approve a settlement like this until Mr. Daugherty's claim has
6 been resolved with certainty, which might be in 2033 or
7 whatever? I can't keep a bankruptcy estate open, allowing
8 administrative expenses to continue to accrue, because of one
9 contingent unliquidated claim that may never even develop.

10 MR. YORK: Your Honor, I appreciate the Court's
11 frustration with that, but that's the way that the documents
12 are written in terms of the confirmation order. And so it's
13 an --

14 THE COURT: So the disputed claim reserve is
15 meaningless?

16 MR. YORK: No, it is not -- a disputed claim reserve
17 exists, but it does not, under the terms of the confirmation
18 order, in terms of allowing the payment of Class 10 and Class
19 11 claims, those can't be done until the Class 8 claims are
20 resolved.

21 THE COURT: You would have -- just a moment -- you
22 would have me keep this estate open for as long as it takes,
23 2033, whatever, without allowing Class 10 and Class 11
24 theoretically to get anything?

25 MR. YORK: At least under --

1 THE COURT: Let's just let the -- with all respect to
2 Mr. Seery, he's charging a handsome amount. It was agreed to
3 or approved by the Court. Let's just let him continue
4 accruing until 2033 because of Mr. Daugherty's prospect of the
5 IRS saying you owe \$1.4 million plus interest and penalties,
6 when he's gotten the use of that all? Help me. This doesn't
7 make sense to me.

8 MR. YORK: Sure. One way this could be solved is
9 that the payments to -- the cash payments, for example, that
10 are to be made to the HMIT entities, under the proposed
11 settlement could be held in abeyance until the resolution of
12 the Class 8 claim. The Court could modify the proposed
13 settlement based on that. That's one way to deal with the
14 issue, for example.

15 THE COURT: Do what? Hold it in abeyance?

16 MR. YORK: Yes. For -- the payments to be made to
17 the Hunter Mountain Investment Trust under the proposed
18 settlement could be -- could be done in accordance with the
19 terms of the confirmation order. We'll just hold those
20 payments until such time.

21 THE COURT: We who? Put it in the Court Registry?

22 MR. YORK: Or --

23 THE COURT: Where it will earn 0.18 percent?

24 MR. YORK: No. No. It can remain within the
25 Claimant Trust until the time at which the Class 8 claim is

1 finally and fully resolved.

2 THE COURT: Okay. Meanwhile, I've approved the
3 extension of the Trusts for one year, with Dugaboy saying, we
4 don't think this should happen again and again and again. We
5 reserve our rights. That's not a good solution.

6 MR. YORK: Your Honor, I understand the Court's
7 frustration, but this is the terms of the plan and the
8 confirmation order that were entered. Highland needs to
9 follow it.

10 THE COURT: Okay. What about the estoppel argument
11 that I heard Mr. Morris make?

12 MR. YORK: Well, sure. So, the first time they raise
13 it is here today. And the one thing that -- the difference is
14 that allowing this settlement to go forward is an effective
15 liquidation of the estate versus where things are now, in
16 which any payments that were made is not an effective
17 liquidation. It doesn't expose anyone that would have
18 priority to Class 10 with respect to anything that happens in
19 the future from, you know, not having sufficient funds to deal
20 with it. That's all.

21 THE COURT: Okay.

22 MR. YORK: Thank you, Your Honor.

23 THE COURT: Thank you. All right. Mr. Lang?

24 CLOSING ARGUMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

25 MR. LANG: I'll be brief. Your Honor, there are

1 three issues that we've raised. One is the capital account
2 balance being used for the claim for the Class 10 holders.
3 The plan does not specify that the capital account balance is
4 to be used. Allowing the \$336 million claim to Class 10
5 ensures that Class 11 will not ever receive a dime. That's
6 guaranteed.

7 Alternatively, upon the satisfaction of the Class 9, the
8 \$20 million approximately owed to Class 9, the holders of HMIT
9 should receive 99.5 percent of the total residual. We think
10 that would be a more fair outcome to the Class 11 claimants.

11 THE COURT: Wait, say again?

12 MR. LANG: That, so, of total assets, \$70 million
13 approximately, \$20 million is owed to Class 9.

14 THE COURT: Uh-huh.

15 MR. LANG: Of the remainder from that, HMIT should
16 receive 99.5 percent of those assets, whatever they are, the
17 value, rather than a \$336 million claim. That was the
18 objection.

19 THE COURT: But I didn't get any evidence of a
20 separate way of competing -- of doing that. I heard credible
21 testimony from Mr. Seery about why he used the math he used
22 and I didn't hear any countervailing evidence of, wait, this
23 is a more fair, realistic way of computing it. And what I did
24 hear is the .5 percent limited partnership interest of Dugaboy
25 is subordinated in its payment rights under the limited

1 partnership agreement of Highland.

2 MR. LANG: It's subordinated under the plan, but yes,
3 the plan does not say to use --

4 THE COURT: Under the partnership agreement is the
5 reason the plan did it, is what I've been presented.

6 MR. LANG: I believe Mr. Seery -- and I could be
7 wrong -- I think I heard him say that he has used the other
8 method, but I could have misheard him in the testimony.

9 THE COURT: Well, that's not what I heard. I heard
10 him emphasizing the fact that the Class 8 interests, including
11 that of Dugaboy, are subordinated with regard to payment
12 rights under the Highland partnership agreement. And so
13 that's why he didn't think it made sense to just apply
14 percentages.

15 MR. LANG: That's what he testified to.

16 THE COURT: So I'm just -- anyway, I'm just trying to
17 figure out what the countervailing evidence is here to suggest
18 his methodology is wrong.

19 MR. LANG: I believe the partner -- or, the plan says
20 that the Class 10, when the GUC certification is a Class 10,
21 and the Class 11 received pro rata, it doesn't specify the
22 account balance is to be used as the number to determine what
23 they receive.

24 THE COURT: Okay. You want to point out what you are
25 focused on?

1 MR. LANG: I believe it's under Treatment.

2 THE COURT: Okay.

3 MR. LANG: Section --

4 THE COURT: I don't want to hunt. I want you to tell
5 me what the language is that you think is supportive of that.

6 MR. LANG: And the second -- I guess the secondary
7 issue that we probably should just get to is the release. We
8 think it's broad, and just Dugaboy and Dondero are carved out.
9 And Mr. Morris did send me a proposal last -- yesterday
10 evening that I haven't gotten to. But that is an objection
11 that we have, is just to make sure that the -- that nobody can
12 argue that the release covers any claim Dugaboy might have, if
13 any.

14 THE COURT: Okay. I think many hours ago I remember
15 this being mentioned. I guess it was a little bit more broad
16 than just -- I think it was Highland employees. I don't know.

17 What is the agreement, Mr. Morris, if you're awake there,
18 on --

19 MR. MORRIS: I am awake, Your Honor. Apologies.

20 THE COURT: Okay. I didn't mean to be flippant.

21 MR. MORRIS: Yeah.

22 THE COURT: I get punchy and --

23 MR. MORRIS: That's okay. With respect to the
24 release?

25 THE COURT: Right.

1 MR. MORRIS: We don't have an agreement. We have an
2 agreement -- well, I sent a proposal last night, but it didn't
3 get responded to. If they want to accept that proposal,
4 that's terrific.

5 THE COURT: Okay. I don't know what the agreement
6 says. Are you saying you want to accept what they proposed
7 last night?

8 MR. LANG: No, I have edits to it. I just couldn't
9 -- I was tied up on another filing last night. I have not
10 been able to get to it today.

11 THE COURT: Okay. I'm going to make a ruling today.
12 Okay? If it means y'all sit here in the courtroom a while,
13 fine. But just like all of you, I have a mountain of other
14 stuff waiting for me, so I really want to rule today. So, --

15 MR. LANG: Understood.

16 THE COURT: Yeah.

17 MR. LANG: Maybe we can work on it as soon as I'm
18 done and I can get back to 'em --

19 THE COURT: Okay.

20 MR. LANG: -- and get back to you.

21 Your Honor, the -- it's on Page 23 of the plan. It talks
22 about the Class 10 and Class 11, where the partnership
23 interests, that their treatment, they shall receive as pro
24 rata share of the contingent Claimant Trust interests. And
25 all we're asking is that be used or applied as a 99.5/.5

1 distribution.

2 (Pause.)

3 THE COURT: I'm sorry. Go ahead.

4 MR. LANG: Oh, sorry. I thought you were looking for
5 it.

6 And the last issue is authority. The only point of the
7 authority argument, Your Honor, is that the Joint
8 Administrators were appointed down in the Caymans to
9 investigate the transaction that moved basically the entire
10 ownership, because it's owned a hundred percent down to HMIT,
11 out. They're investigating the transactions. They have not
12 stipulated to authority. They're looking at everything.
13 They've requested a 45-day delay on this motion. And that's
14 all that -- not even asking to deny the 9019. They were just
15 asking time to basically bless this transaction so that nobody
16 could come back and make an issue of it. But I understand
17 your desire to rule today.

18 THE COURT: Okay. Any rebuttal?

19 MR. MORRIS: Yeah, briefly, Your Honor.

20 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

21 MR. MORRIS: I just want to point the Court to two
22 provisions of the operative documents that I think --

23 THE COURT: Okay.

24 MR. MORRIS: -- will resolve even further the issues
25 that we've presented today.

1 The Claimant Trust Agreement -- and I apologize, I don't
2 know if the whole document is in evidence, but I will
3 respectfully suggest to the Court that the Claimant Trust
4 Agreement provides in Article 5, Section 5.1(c), --

5 THE COURT: Okay. Let me catch up.

6 MR. MORRIS: Yes.

7 (Counsel confer.)

8 THE COURT: It's not Debtor's Exhibit 5.

9 MR. MORRIS: Yeah.

10 THE COURT: Daugherty's Exhibit 5?

11 MR. MORRIS: It's Daugherty Exhibit 5?

12 MR. YORK: Yes.

13 THE COURT: Okay.

14 MR. YORK: So we have a full copy at Daugherty --

15 THE COURT: I've got it. Daugherty's Exhibit 5.

16 MR. MORRIS: Okay. So if you could just go to Page
17 27, Your Honor. And this is in response to Mr. Lang's
18 argument about the calculation of the allowed claim. You'll
19 see it deals with contingent trust interests. And the very
20 last sentence says the equity trust --

21 THE COURT: Wait. What page again?

22 MR. MORRIS: 27.

23 THE COURT: Okay.

24 MR. MORRIS: Do you see Section C in the middle is
25 Contingent Trust Interests?

1 THE COURT: No.

2 THE CLERK: It's 26 of the Claimant Trust Agreement,
3 27 of the --

4 THE COURT: Ah, it's 26. Yes. On the bottom, it's
5 26; on the top, it's 27 of 38.

6 MR. MORRIS: Okay.

7 THE COURT: Okay.

8 MR. MORRIS: And at the end of Section C, it says
9 explicitly: The equity trust interests distributed to allowed
10 holders of Class A limited partnership interests -- that's
11 Dugaboy --

12 THE COURT: Uh-huh.

13 MR. MORRIS: -- shall be subordinated to the equity
14 interests distributed to the allowed holders of Class B and C.
15 That's Hunter Mountain. Okay?

16 So the trust agreement provides for exactly what we're
17 doing here. Dugaboy is in fact subordinated to HMIT. It
18 doesn't get paid until HMIT gets paid in full. And Mr. Seery
19 I think compellingly testified as to the reasonable
20 calculation that he did based on very objective numbers to
21 determine each respective limited partner's capital account.

22 With respect to Mr. Daugherty, the plan, which is on the
23 docket at 1943, has a definition of Disputed Claim Reserve.
24 And it states, among other things, that the amount of the
25 disputed claim upon which the disputed claim --

1 THE COURT: Give me the page number.

2 MR. MORRIS: I apologize, Your Honor.

3 THE COURT: I've got it right in front of me.

4 MR. MORRIS: It's Page 7 of the plan.

5 THE COURT: Okay. All right. I'm there. The
6 Defined Term.

7 MR. MORRIS: So the Defined Term "Disputed Claim,
8 Claims Reserve Amount" in the middle says: The amount of the
9 disputed claim upon which the disputed claims reserve is
10 calculated shall be -- they've got an A and then a B -- the
11 amount agreed to by the holder of the disputed claim and the
12 Claimant Trustee or Reorganized Debtor, as applicable. And
13 then it says D: Or is otherwise ordered by the Bankruptcy
14 Court, including an estimated -- an order estimating the
15 disputed claim.

16 And that last provision is vital, Your Honor, because that
17 is the hook upon which you can always hang your hat when you
18 decide that we are not going to wait until 2023 [sic] when the
19 IRS audit may be resolved, because you have the ability, as
20 ordered by the Bankruptcy Court, including estimating the
21 amount of the disputed claim. Which is one of the causes of
22 action that we've asserted in the complaint. It's either to
23 subordinate -- actually, it's to disallow, to subordinate, or
24 to estimate. Because this case does have to end, Your Honor.
25 We actually think he should be bound by the definition in B.

1 It is an agreed-upon amount.

2 I've heard the testimony from Mr. Daugherty that there was
3 no negotiation, but he didn't deny that he signed a document
4 that is called an agreement that sets forth the disputed claim
5 amount. And that is an agreement, and I think that satisfies
6 that definition. And even if it didn't, at some point this
7 case has to end.

8 Thank you, Your Honor.

9 THE COURT: Okay. Thank you.

10 All right. Well, it's been a long day and even a longer
11 case. I think a lot of people were on the receiving end of a
12 little bit of my grumpiness at times today, and I apologize
13 for that.

14 I always feel compelled to say to the lawyers and parties
15 when I rule from the bench that I can assure you it's not
16 knee-jerk. I can assure you my law clerk and I have read
17 every piece of paper submitted. And we come in here I think
18 well-prepared and we just want to listen to the evidence to
19 see if it supports -- who it supports. So I am going to rule
20 from the bench.

21 I first want to make clear that with regard to the motion
22 before the Court, the motion which was filed May 19th at
23 Docket Entry 4216, pursuant to Bankruptcy Rule 9019 and
24 Bankruptcy Code Section 363, the Court is being asked to
25 approve a very broad settlement that is between what are

1 defined as the HMIT entities, seven entities in all; Hunter
2 Mountain Investment Trust; as well as Beacon Mountain, LLC;
3 Rand Advisors, LLC; Rand PE Fund 1, LP; Rand PE Fund
4 Management, LLC; Atlas IDF, LP; and Atlas IDF GP, PLLC. So
5 this proposed compromise and settlement is between all of
6 those Hunter Mountain entities as well as the Reorganized
7 Debtor, the Highland Claimant Trust, the Highland Litigation
8 Subtrust, and the Highland Indemnity Trust.

9 I first will note that notice has been fulsome, reasonable
10 under the circumstances, to provide due process to anyone
11 affected by the proposed compromise.

12 The Court would note that the legal standard is a very
13 well-known and established legal standard here. Among other
14 things, the Court is to look at whether the settlement is
15 fair, reasonable, and in the best interest of the estate;
16 whether it would appear reasonable business judgment has been
17 exercised; is the compromise and settlement within the range
18 of reasonableness?

19 And this involves looking at, among other things, the
20 probability of success in the litigation -- that would be all
21 the various litigation involving HMIT, if it were to go
22 forward; the complexity and likely duration of further
23 litigation and attendant expense, inconvenience, and delay;
24 and all other factors bearing on the wisdom of the compromise.
25 We know that's *Cajun Electric, Jackson Brewing, Foster*

1 *Mortgage*, among other cases. I probably left out *AWECO*.

2 Anyway, applying all of those legal standards here, I do
3 think the evidence was very thorough in showing that the
4 compromise is a product of good faith and arm's-length
5 negotiations. Indeed, it was almost shocking to this Court
6 when I saw the motion, having the history I have with all of
7 the contested issues, adversary proceedings that have
8 transpired over the past few years between Hunter Mountain and
9 the Debtor.

10 I do think the evidence is that it's fair and equitable
11 and in the best interest of the estate and within the range of
12 reasonableness, given due regard for all of the expense,
13 delay, and likelihood of success.

14 I'll just briefly recount that, as noted early today,
15 there was an Exhibit B attached to the 9019 motion that listed
16 nine unresolved pending pieces of litigation that the Highland
17 entities are embroiled in. Two of those are now gone. This
18 was filed May 8th, and as of January 25th, they're gone. So
19 seven pieces of litigation, of which two will go entirely away
20 if I approve this settlement. The Kirschner adversary claims
21 against Hunter Mountain will go away.

22 We have very little, very little, relatively speaking,
23 left in this bankruptcy case to resolve if I approve this
24 settlement. That alone is very, very significant. Again, we
25 have large shall I say issues with Hunter Mountain. Highland

1 says Hunter Mountain owes the Highland entities something like
2 \$57.69 million on a note that Hunter Mountain is payor on
3 dated December 21st, 2015.

4 The flip side of that is that Hunter Mountain was sued by
5 Kirschner in the Kirschner action on various claims, including
6 this \$57 million note. We have had Hunter Mountain file
7 multiple motions for leave to sue Highland, the Claimant
8 Trust, Mr. Seery. And those have been denied, but are in
9 appeal status or remand status or some further litigation
10 status.

11 And again, we have numerous issues. Hunter Mountain
12 having sought valuation. The Court denied that. It's on
13 appeal.

14 So, so much goes away, so much further litigation goes
15 away and we make a monumental step in ending this long-running
16 case if I approve this settlement.

17 Now, on the flip side of this, I know that Dugaboy,
18 through the voice of Mr. Dondero today, expressed that Hunter
19 Mountain is, I forget the words he used, but not -- this isn't
20 close to being fair and equitable as far as he was concerned
21 for Hunter Mountain. That Hunter Mountain, in addition to
22 being through with litigation in this bankruptcy-land, would
23 be paid \$500,000 within five days. They would also be paid
24 separately \$10 million as an initial distribution, with the
25 hope of two more \$6.5 million distributions in '27 and '28.

1 And it would get a note, which I think has \$24 million -- I
2 think it was less than that, \$17 or \$18 million left on it,
3 perhaps, on which Dugaboy is a maker. The debtor is one of
4 the two payees. The Debtor gives up its rights in that note.

5 It looks like Hunter Mountain is getting a lot. And
6 again, the way this estate has been liquidated, there is money
7 that can flow to it as a Class 10 equity here, as the evidence
8 has shown.

9 So I am approving the settlement. I am specifically
10 overruling the remaining objections of both Dugaboy and Mr.
11 Daugherty.

12 As far as Mr. Daugherty's argument that the settlement
13 violates the absolute priority rule or violates the terms of
14 the plan or the confirmation order or the trust agreement by,
15 putting words in his mouth, skipping over the full payment of
16 whatever his Class 8 claim is going to be and allowing a
17 subordinate class, Class 10, to get paid, I have flipped and
18 studied the wording of the plan and the confirmation order and
19 the defined term for Disputed Reserve. And I referred to a
20 disputed reserve as a tried-and-true provision in Chapter 11
21 plans. I think it does what needs to happen for precisely
22 this kind of situation, that as long as an appropriate amount
23 is being held in reserve, and the Court can decide what is an
24 appropriate amount, we don't have to hold up a bankruptcy
25 estate for years and years.

1 So the disputed claim reserve is what allows me to find
2 this is fair and equitable and this isn't some sort of
3 violation of the absolute priority rule. I think this is
4 precisely the reason the disputed claim reserve mechanism is
5 in place, so that we can get on with the business of getting
6 more people paid sooner.

7 And based on the evidence I've heard, it is an appropriate
8 amount, I think. We're doing a lot of crystal-balling, what
9 may or may not ever happen when, but I think, based on all the
10 persuasive evidence I've heard, the Daugherty objection should
11 be overruled.

12 As far as Dugaboy, I, as noted, am overruling that
13 objection. I didn't have any persuasive evidence, solid
14 evidence to show me that Mark Patrick doesn't have appropriate
15 corporate governance authority to enter into this settlement
16 agreement.

17 I realize there's a lot swirling around in the Cayman
18 Islands, and that's going to play out however it plays out.
19 But as of today, I don't have any evidence that he doesn't
20 have authority currently to enter into the settlement. And it
21 speaks volumes that The Foundation backed down. It would seem
22 that they have been convinced that the lack-of-authority
23 argument was not one they wanted to press today. So that is
24 overruled.

25 I feel like we have all seen this movie many times before.

1 I wanted to understand, perhaps I went deeper than I needed
2 to, I know Mr. Phillips thinks I went deeper than I needed in
3 hearing some of the testimony from Mr. Patrick and Mr.
4 Dondero, but I'm just trying to understand what's happening
5 here. Why people who were so lockstep and friendly for years
6 of this case suddenly, when we're right on the brink of maybe
7 the case being put to bed -- I'm optimistic; it's not quite
8 that close -- all of a sudden they're at loggerheads.

9 And so how many times have I seen this over the years,
10 whether it's a breakdown in business and personal
11 relationships, Mr. Daugherty, Mr. Terry, Grant Scott, now Mark
12 Patrick? I'm probably leaving out someone. I don't know. I
13 feel like I'm watching the same movie. Okay, now these two
14 have parted ways. Now these two have parted ways.

15 And then, as I recall, when Grant Scott withdrew his
16 objection to the HarbourVest settlement all these years ago,
17 2020, 2021, which he had been lodging for Charitable DAF, I
18 think it was, --

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: -- then what happens? Well, I think Mark
21 Patrick came in to work or replace Grant Scott, and then a
22 bunch of people ended up getting sued in a different court
23 regarding the settlement I approved, the HarbourVest
24 settlement I approved.

25 So why am I saying this? I just, I'm trying to understand

1 things I'll never understand. I wanted to maybe hear
2 something that would make me better understand what's happened
3 now between Hunter Mountain, Mark Patrick, and Dondero and
4 Dugaboy, because it sure seems like they were on the same team
5 for many years. But it was very likely irrelevant, as Mr.
6 Phillips kept getting up and down and saying. I just was
7 seeing if it would lead to something relevant that would bear
8 on the wisdom of this compromise, since that's one of my other
9 legal standards. I'm supposed to consider all factors that
10 might bear on the wisdom of the compromise. And so I guess
11 that's where I was going in allowing all of that to come in.

12 All right. Well, while everyone is not thrilled with this
13 compromise and settlement, I heartily congratulate the human
14 beings that made it happen, and they know who they are. Maybe
15 I do, maybe I don't. But I think it's rather amazing. And I
16 hope that we are not coming to court for hearings in 2032. I
17 don't know who among us will be alive. I'm not going to be
18 alive by then. Certain people might cheer if that's the case.
19 But I congratulate the human beings who made this happen. And
20 you know who you are. Maybe I do, maybe I don't, but I
21 congratulate you.

22 All right. So I reserve the right to supplement or amend
23 this oral bench ruling in a more fulsome written order. I am
24 asking Mr. Morris and his team to be the scriveners on that
25 order. And obviously, you're going to run it by the other

1 lawyers here who participated today.

2 Is there anything else before we wrap it up?

3 MR. MORRIS: Just one other thing, Your Honor. And I
4 greatly appreciate your comments.

5 When we draft the order, are we authorized to say that
6 this settlement is approved not only pursuant to 9019 but to
7 363? Because there are asset sales that are part of this. We
8 moved under that provision, and I didn't hear Your Honor
9 reference that, --

10 THE COURT: Okay.

11 MR. MORRIS: -- but we would like to include that in
12 the order.

13 THE COURT: You may. And that is precisely why I
14 said I reserve the right to supplement or amend, because many
15 times I get out of here and look at this transcript and, ooh,
16 I forgot to say whatever.

17 MR. MORRIS: Yeah.

18 THE COURT: So I meant to say that and I didn't, so
19 you may add that.

20 MR. MORRIS: And I assume all Your Honor wants is a
21 fairly simple form of order that incorporates --

22 THE COURT: I do not want a 40-page order.

23 MR. MORRIS: Right.

24 THE COURT: Okay?

25 MR. MORRIS: Just an order that incorporates your

1 comments on the record, and to the extent that Your Honor
2 wants to amend that, you'll do so at your leisure?

3 THE COURT: Yes.

4 MR. MORRIS: Perfect.

5 THE COURT: All right.

6 MR. MORRIS: Thank you.

7 THE COURT: Thank you all. We're adjourned.

8 MR. PHILLIPS: Thank you, Your Honor.

9 THE CLERK: All rise.

10 (Proceedings concluded at 4:38 p.m.)

11 --oOo--

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CERTIFICATE

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

23 **/s/ Kathy Rehling**

06/27/2024

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

INDEX

1		
2	PROCEEDINGS	4
3	OPENING STATEMENTS	
4	By Mr. Morris	48
	By Mr. Phillips	62
5	By Mr. York	64
	By Mr. Lang	79
6	WITNESSES	
7	<u>Claimant Trust's Witnesses</u>	
8	James P. Seery	
9	- Proffer of Testimony by Mr. Morris	11
	- Direct Examination by Mr. Morris	83
10	- Cross-Examination by Mr. Phillips	110
	- Cross-Examination by Mr. York	111
11	- Cross-Examination by Mr. Lang	128
12	<u>Patrick Daugherty's Witnesses</u>	
13	Patrick Daugherty	
14	- Direct Examination by Mr. York	141
	- Cross-Examination by Mr. Morris	154
15	- Examination by the Court	164
16	<u>Dugaboy Investment Trust's Witnesses</u>	
17	Mark Patrick	
	- Direct Examination by Mr. Lang	171
18	- Cross-Examination by Mr. Morris	184
	- Redirect Examination by Mr. Lang	189
19	- Recross-Examination by Mr. Morris	191
20	- Examination by the Court	192
21	James "Jim" Dondero	
	- Direct Examination by Mr. Lang	195
22	- Cross-Examination by Mr. Morris	206
	- Redirect Examination by Mr. Lang	
23	- Examination by the Court	224
24	- Recross-Examination by Mr. Morris	
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX
Page 2

EXHIBITS

Claimant Trust's Exhibits (Motion to Extend Duration)

1 through 67 Received 11

Claimant Trust's Exhibits (Motion to Approve Settlement)

1 through 123, 126 Offered 43
10 Withdrawn 45
12 Received 44
13 Received 44
57 Withdrawn 45
59 Received 46
64-69 Received 46

Dugaboy Investment Trust's Exhibits

Plan and Settlement Agreement Received 47
Exhibit 3 Received 189

Patrick Daugherty's Exhibits

1-42 Received 47

CLOSING ARGUMENTS

By Mr. Morris 231
By Mr. Phillips 238
By Mr. Loigman 240
By Mr. York 240
By Mr. Lang 245
By Mr. Morris 250

RULINGS

Motion for an Order Further Extending Duration of Trusts 21
(4213)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX
Page 3

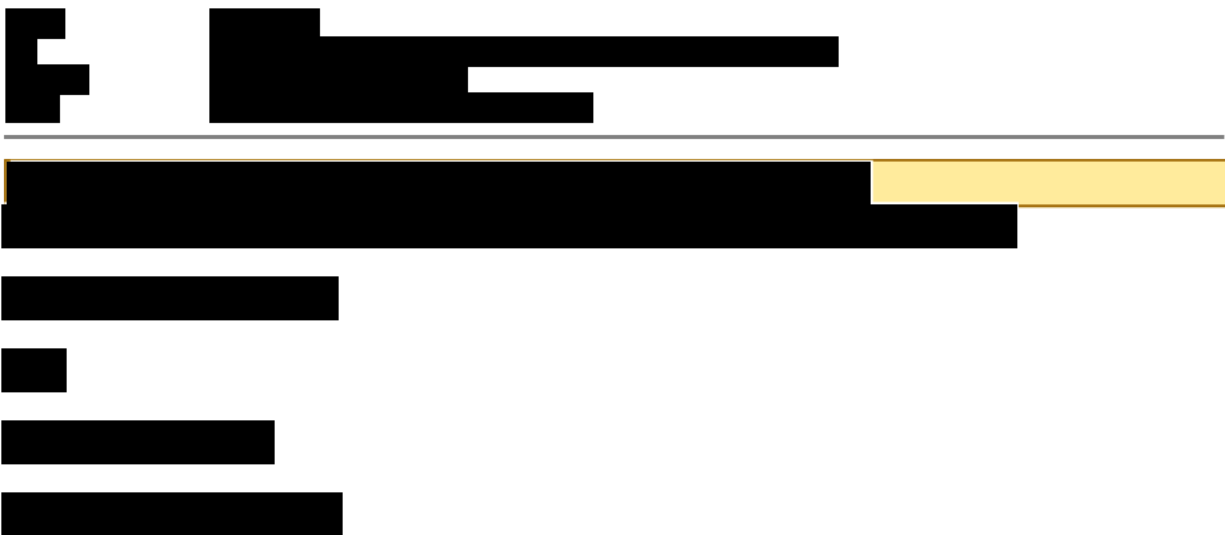
RULINGS, cont'd.

Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with HMIT Entities and Authorizing Actions Consistent Therewith (4216) 28/254

END OF PROCEEDINGS 263

INDEX 264-266

EXHIBIT 15



From: Andrew Johnstone <aj@j-law.ky>
Date: 12 February 2025 at 4:24:27 PM GMT-5
To: Paul Murphy <paul@gkmanagement.com.ky>
Cc: Rhiannon Zanetic <rz@j-law.ky>
Subject: Charitable DAF Fund LP

Dear Mr Murphy

We act for the Charitable DAF Fund 2 LP (**DAF 2**).

We further understand that you hold directorships in certain entities related to the Charitable DAF Fund LP (**DAF 1**), including Charitable DAF Holdco, Ltd.

We would be grateful if you could confirm your availability for an in-person meeting with us to discuss matters related to DAF 1 and DAF 2. Our client would like this meeting to take place as soon as possible, and we would therefore be grateful if you could let us know when you are free to meet this week, alternatively early next week.

Many thanks

Andrew Johnstone
Founder | Partner

<image001.png>

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Johnstone Law, 10 Market Street, PO Box 926
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EXHIBIT 16



CAUSE NO. _____

**THE HIGHLAND DALLAS
FOUNDATION, INC.,
et al.,**

Plaintiffs,

v.

MARK PATRICK, et al.,

Defendants.

IN THE TEXAS BUSINESS COURT

1ST DIVISION

DALLAS, TEXAS

DECLARATION OF JAMES DAVID DONDERO

I, **JAMES DAVID DONDERO**, of 300 Crescent Court, Suite 700, Dallas, Texas, United States, 75201, DECLARE under penalty of perjury:

1. I am the President of NexPoint Advisors, L.P. (*NexPoint*), an investment advisor registered with the U.S. Securities and Exchange Commission (*SEC*). I am a Certified Public Accountant and Chartered Financial Analyst with over forty years of investment advisory experience managing billions of dollars of investments across various assets classes.
2. I make this declaration from matters within my own personal knowledge and believe the information contained herein to be true and accurate in all respects.
3. I founded NexPoint in 2012. NexPoint is an alternative investment firm, with a particular focus on investment in the real estate sector. NexPoint has assets under management exceeding \$16 billion in value. I was formerly the President of Highland Capital Management, L.P. (*Highland*), also an SEC registered investment advisor which I founded in 1993. From that time until 2015, Highland was majority owned by me and/or

my affiliates. In December 2015, I divested my majority stake of Highland (**2015 Transaction**).

THE FUND

4. In addition to my business interests, I am a regular donor to philanthropic and charitable causes. The Fund is one of the vehicles I utilize to donate such funds to charitable organizations.
5. In 2010, the finance, accounting, and tax staff of Highland identified certain assets to be donated to a charitable foundation. In 2011, I requested the Donor Advised Fund (or DAF) to be formed and structured in a way that allowed these donations to be receipted and distributed to certain charitable foundations, as the ultimate beneficial owners of the Fund's economic interest. The structure proposed by the tax and legal advisors to effect this was for the Fund to have one limited partner (i.e. the LP) which would issue 'participation shares' to be held by certain charitable supporting organizations (together, the **Supporting Organizations**) and in turn each of those entities would provide funding directly to certain charitable foundations in the U.S. (together, the **Charities**).
6. The Amended and Restated Limited Partnership Agreement of the Fund dated 7 November 2011 (**ARLPA**), and the Amended and Restated Memorandum and Articles of Association of the LP dated 19 January 2015 (**Articles**), govern the Fund and its partners.
7. The LP held 100% of the economic interest in the Fund. The Fund's general partner, Charitable DAF GP, LLC (the **GP**), a Delaware company incorporated on 25 October 2011, held management shares.
8. The LP issued 100 management shares (the **Management Shares**) with the only voting rights for any and all shareholders in the LP. In essence, the Articles and ARLPA therefore grant complete control of the Fund structure to the holder of the Management Shares in

the LP and the entirety of the issued share capital of the GP. Those shares have at all material times been held by a single individual, who as a result has substantial control over the entire Fund structure (the *Control Position*).

9. The ARLPA provides that the Fund was formed to make investments, directly or indirectly, on behalf of certain entities “*for the economic benefit of the Limited Partner and its Indirect Charitable Owners*” and contemplates the engagement of investment (and other service) advisors to effect this. In this context, the Control Position is responsible for the governance and management functions of the Fund as required in order for the Fund to carry out its sole purpose of benefiting the Supporting Organizations and the Charities they support.
10. The governing documents of the Fund plainly state in multiple places that all of the powers of the Control Position exist solely for the purpose of benefitting the Supporting Organizations and their Charities. This ubiquitous language was created for an express purpose. The expectation by the founders of the Fund (myself included) at the time it was formed was that the governing documents would ensure that the Control Position would be bound through his or her fiduciary obligations to safeguard and advance the interests of the charitable organizations that held actual beneficial ownership of the Fund.

GRANT SCOTT

11. I initially selected Grant Scott for the Control Position, a person I have known for years who also has great integrity.
12. From 2010 until the 2015 Transaction, the Fund operated as a non-discretionary advised account of Highland, meaning Highland provided back-and-middle-office staff to the Fund and also provided recommendations regarding potential investments to Mr. Scott as the Control Person. However, Mr. Scott had complete discretion in adopting or rejecting the

investment recommendations provided to the Fund by Highland. He also had final discretion over payments made by the Fund to third parties. In his position as the Control Person, Mr. Scott was paid \$60,000 per annum.

13. After the 2015 Transaction, my affiliates and I no longer owned a majority stake in Highland. Subsequently, I was advised that, as a result of the change of ownership, the Fund was permitted to enter into a paying Investment Advisory Agreement with Highland. This form of investment advisory agreement was in place from January 2017 until it was terminated effective March 2021.

MARK PATRICK

14. Mark Patrick was hired as Tax Counsel at Highland in 2008. His job duties included maximizing tax saving to Highland's limited partners, including me and my affiliates. In that role, Mr. Patrick directly represented me as my personal tax counsel. He represented me in tax efficiency planning and tax- deductible charitable giving, among other things. He provided the same services for various trusts and companies affiliated with me. Mr. Patrick served that role at Highland from 2008 until his departure in February 2021.
15. In March 2021, Mr. Patrick was hired by Skyview as Tax Counsel and continued to perform substantially similar tax counsel duties for me. At Mr. Patrick's request, his job title was changed to "Managing Director, Tax" in September 2021, although his role with respect to me and my affiliates remained substantially the same.
16. The legal structure of the Fund (including as regards its partners and ultimate beneficiaries as discussed above) was created in 2011 on the advice of Mr. Patrick working with outside counsel. Mr. Patrick advised me that, to avoid potential negative findings by the U.S. Internal Revenue Service, as the donor/grantor of assets to the Fund, I could not have any control over the Fund or its entities. I followed his advice as my tax counsel.

17. In March 2021, Mr. Scott informed me that he wanted to resign from the Control Position. The Fund had become engaged in certain disputes arising from the bankruptcy of Highland filed in 2019, and he did not believe he was equipped to handle those disputes. Mr. Patrick suggested to Mr. Scott and me that he was prepared to take on the Control Position and, in that role, to handle the litigation related to the Highland Bankruptcy as it affected the Fund. At the time, Mr. Patrick was my attorney and Mr. Scott was my trusted friend, and I was happy for Mr. Scott to pass the Control Position to Mr. Patrick.
18. On 25 March 2021, Mr. Scott: (i) resigned as director of the LP, (ii) appointed Mr. Patrick as director of the LP, and (iii) transferred to Mr. Patrick the Management Shares for nominal consideration. Mr. Patrick therefore assumed the Control Position from that date.
19. At some point, I understand that a person named Paul Murphy based in the Cayman Islands also was appointed as director to the LP and a portion of the Fund's subsidiaries, giving those entities two directors. However, I understand that in the event of a dissenting vote by Mr. Murphy, Mr. Patrick's vote counts as the tiebreaker for corporate voting.

MR. PATRICK'S CONTROL OF THE FUND

20. In the initial period following Mr. Patrick's assumption of the Control Position, there was no noticeable change in the management of the Fund. NexPoint provided, without charge, investment ideas to the Fund, as Highland previously had done, and Mr. Patrick was free (as Mr. Scott had been) to decide whether or not the Fund wished to follow NexPoint's recommendations. This approach was similar to the non-discretionary advised account status of the Fund prior to 2017.
21. Subsequently, however, communications between Mr. Patrick, Skyview, and me began to become less frequent, and over time I came to suspect that Mr. Patrick was utilizing the Control Position not for the benefit of the Supporting Organizations, the Charities or the

Fund, but rather for his own personal enrichment.

22. On 28 June 2023, Mr. Patrick sent an email to Lauren Short, an employee of NexPoint, requesting that the Highland Dallas Foundation (i.e. the Supporting Organization that supports the Dallas Foundation) “*direct \$10,000*” to Creative HEARTS TX, a non-profit entity formed on 13 June 2023. Following due diligence, Ms. Short learned that the directors of the entity were Mr. Patrick, Darees Patrick and Alyse Patrick (his daughter and wife). Mr. Patrick had made the grant request without disclosing his and/or his family’s involvement.
23. Ms. Short discussed the matter with Mr. Patrick, who did not provide many details, but said the non-profit was formed to facilitate paying for trainers or speakers on self-defense training for teenage girls. Ms. Short understood that Patrick’s expectation was that this would be an annual donation to a “club” at his daughter’s school. While Ms. Short inquired, there was no detail forthcoming as to whether or not Creative Hearts would be a pass-through donating the monies to other charities or would directly do any work with the trainers or speakers itself. There also was not clarity if Creative Hearts’ members intended to take a salary from the grant. The grant payment was authorized on September 5, 2023, but Mr. Patrick was informed that further payments were unlikely. I was informed of this process by Ms. Short and her supervisor. Contemporaneously with the grant approval, my team also informed the Dallas Foundation of the situation.
24. As another example, in or around September 2023, I was contacted by Kevin Cronin of Fortaris Capital Advisors (*Fortaris*). Fortaris provides litigation support services including due diligence, internal investigations, fraud detection, asset verification and in-depth background checks. Mr. Cronin is a former police sergeant and Special Agent with the Department of Homeland Security.

25. Fortaris was at the time engaged by the Fund in respect of an unrelated matter and Mr. Cronin was known to me personally. In September 2023, Mr. Cronin and I met, and he informed me that he had been approached by Mr. Patrick with a proposition whereby Mr. Patrick (on behalf of the Fund) would engage an entity controlled by Mr. Cronin (other than Fortaris) at a monthly fee of between \$25,000 and \$50,000, and that this fee would be split between Fortaris and Mr. Patrick as a supplement to Mr. Patrick's compensation. Mr. Cronin informed me that he had asked Mr. Patrick if this arrangement would amount to fraud, and that Mr. Patrick's response had been: "*you can't steal from yourself.*"
26. Mr. Cronin informed me that he understood from this statement that Mr. Patrick believed he owned the Fund and could use the funds controlled by it however he pleased. Mr. Cronin further informed me that he was uncomfortable about Mr. Patrick's proposal and that he subsequently communicated this to Mr. Patrick, whereupon Mr. Patrick cut off all further communications between them.
27. Mr. Cronin's allegations that Mr. Patrick was seeking to make a secret, undisclosed personal profit from the Fund were extremely concerning. I have subsequently been informed by my attorneys in the United States that, had Mr. Cronin agreed with this proposal, it would have likely constituted U.S. federal wire fraud, and/or violations of the Texas Penal Code's prohibitions on bribery and misapplication of fiduciary property. Shortly after Mr. Cronin contacted me, I met with Mr. Patrick and confronted him about the allegations, which he admitted to me were true. I informed the Supporting Organizations about the matter and Mr. Patrick's admission. However, at the time, both the Supporting Organizations and I were concerned that under the Articles, the Supporting Organizations did not have the power (in their capacity as Participating Shareholders) to limit Mr. Patrick's powers or remove him from his position.

28. Given the situations described above, and the lack of communication about the Fund, I became increasingly concerned about Mr. Patrick's management of the Fund, including the potential misuse and/or misappropriation of its assets. In June 2024 therefore I requested that my team at NexPoint analyze the financial information of the Fund that I had in my possession, covering the calendar years ending 2018 to 2023 and the first half of 2024. My team produced an annual expense summary of that information (the *Expense Summary*) which indicated substantial increases in expenditures during Mr. Patrick's tenure, particularly during early 2023 and mid-2024, as follows:
- (a) Directors' fees increased from around \$40,000 in 2022 to almost \$600,000 in 2023 – and increased even further to around \$2.25 million in the first half of 2024 alone.
 - (b) Expenses overall for the first half of 2024 were around \$18.3 million – roughly the same amount spent over the entire course of 2023 (i.e. \$18.6 million).
29. The Expense Summary reinforced my concern that Mr. Patrick is using the Control Position for his own enrichment rather than to benefit the Supporting Organizations and the causes they support. I therefore directed my employees at NexPoint to provide the Expense Summary to the Supporting Organizations, and which they promptly did.
30. In August 2024, I became aware of yet another issue concerning Mr. Patrick. NexPoint and its affiliates, through their investment activities, regularly obtain material non-public information (*MNPI*) related to those investments. As a service provider to NexPoint and its affiliates, Skyview employees also obtain the same MNPI. Trading on the basis of MNPI amounts to 'insider trading' which is prohibited under U.S. securities laws. As a result, NexPoint and its affiliates, and Skyview, all have the same robust regulatory compliance program to prevent, among other things, insider trading (*Compliance Policy*). NexPoint and its affiliates, and Skyview, require their employees to abide by the

Compliance Policy at all times and employees are required to confirm in writing on a quarterly basis that they will not use MNPI while trading. Mr. Patrick completed the annual 2023, Q4 2023, Q1 2024, and Q2 2024 certifications, among others.

31. I was informed that my director of charitable giving had been contacted by Ms. Diaz, the CEO of the Highland Dallas Foundation, Inc. (*Dallas Foundation*), one of the Charities. Ms. Diaz stated that on August 28, 2024, Mr. Patrick contacted the Dallas Foundation's attorney to provide information about an asset held by the Dallas Foundation, which was held directly and separately from the Fund. This information was obtained by Mr. Patrick through his employment at Skyview and constituted MNPI, which is prohibited by U.S. securities laws from being disclosed and/or acted upon. On the basis of this MNPI, Mr. Patrick advised the Dallas Foundation to exercise a put option it held in a NexPoint affiliated asset. The Dallas Foundation did not act on the information or recommendation provided by Mr. Patrick, but in the event it had exercised the put option, both the Dallas Foundation and Mr. Patrick would have committed violations of the U.S. securities laws that prohibit insider trading.
32. Upon receipt of the allegations against Mr. Patrick, Skyview's compliance department commenced an internal investigation which, due to the serious nature of the allegations, was conducted without Mr. Patrick's knowledge, so as to avoid potentially tipping off Mr. Patrick about the investigation. By the end of September 2024, the investigation was substantially complete, and the conclusion had been reached that Mr. Patrick's actions constituted a serious breach of his compliance and employee obligations. On October 1, 2024, as part of the finalization of the investigation report, Skyview's chief compliance officer interviewed Ms. Diaz about the allegations against Mr. Patrick, which I understand confirmed Skyview's conclusions. The final investigation report was issued on October 11,

2024 and concluded that Mr. Patrick had attempted a serious breach of U.S. securities laws.

33. On October 2, 2024, Mr. Patrick abruptly resigned his position from Skyview and thereafter became openly hostile towards the Charities, my affiliated companies, and me. Although neither I nor anyone at Skyview has direct evidence of Mr. Patrick having been tipped off about the investigation, the timing of his resignation causes me to conclude that Mr. Patrick became aware of the investigation into his behavior and resigned before the report was published.
34. On the same day that Mr. Patrick resigned his position at Skyview, he also terminated Skyview's service agreement with the Fund, and as a result all legal, compliance, back office and other services provided to the Fund. Mr. Patrick and Mr. Murphy have stated that that they intend to take on the role of investment advisors for the Fund. I am not aware of Mr. Murphy's qualifications for this role, nor am I aware of any third-party investment advisor that has been retained by the Fund to fill this role. Based on my knowledge and expertise in investment management, and my sixteen years working with Mr. Patrick as my counsel, I believe that Mr. Patrick is a well-qualified tax counsel, but does not have the experience, training, or expertise to be an investment professional.

FUNDING OF PROCEEDINGS

35. As stated above, I do not hold a controlling interest in any of the Charities or the Supporting Organizations. However, I sit on the boards of the Supporting Organizations for the purpose of understanding how the Charities are deploying the Fund's assets for charitable purposes, and the impact of those donations in the community. I am only one of three votes, and the other two votes on each board are held by the respective Charity. Historically, the boards have had no hesitation in exercising their powers to chart

independent courses even if those decisions differ from my preferences.

36. The Supporting Organizations approached me about the costs associated with legal action and their reticence to use funds that should and otherwise would be used for charitable purposes, and asked whether I would be prepared to fund the action personally. I agreed to do so. I have not and will not at any time receive a benefit, nor do I have control of the proceedings, because of this funding arrangement. The Supporting Organizations have decision making authority in relation to these proceedings. My concern is solely to ensure that the Fund, and the funds that I have donated over time that are held in the Fund, are used only to benefit the Charities and the causes they support.

*****REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*****

My name is James David Dondero, my date of birth is June 29, 1962, and my address is 300 Crecent Court, Dallas, Texas 75201. I declare under penalty of perjury that the foregoing is true and correct. Executed in Dallas County, State of Texas, on the 1st day of July 2025.



JAMES DAVID DONDERO

EXHIBIT 17



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO.: FSD 116 of 2025 (JAJ)

IN THE MATTER OF SECTION 110(3) OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

FIRST AFFIDAVIT OF MARK ERIC PATRICK

I, **MARK ERIC PATRICK**, of 6716 Glenhurst Drive, Dallas, Texas, United States of America, 75254, do say as follows:

1. I am a registered director, president and sole member of DFW Charitable Foundation, a Delaware 501(c)(3) nonprofit corporation (**DFW**). DFW is the majority Participating Shareholder of Charitable DAF Holdco, Ltd. (**Holdco** or **Company**) of which I am both a director and the sole Management Shareholder. The remaining Participating Shareholders of Holdco are Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., Highland Kansas City Foundation, Inc., and HCMLP Charitable Fund (collectively, **Highland Foundations** and also referred to as the **Supporting Organisations**).
2. In addition, I am the sole director of CDH GP Ltd. (**GP**), a Cayman Islands limited company incorporated in or around 7 February 2024 which is the general partner of Charitable DAF Fund LP (**DAF**).
3. This affidavit is provided pursuant to the Orders of Justice Asif KC handed down at the directions hearing on 23 May 2025 (**Directions Order**) made with respect to an

application of the joint official liquidators (**JOLs**) of Holdco issued by Summons dated 22 May 2025 (**JOLs Summons**), and amended as of 30 May 2025 seeking sanction from the Court for the engagement of Cayman attorneys, Cayman conflict counsel and US legal counsel (**Application**).

4. I am duly authorized to provide this affidavit for and on behalf of DFW to:
 - (a) Oppose the engagement of Johnstone Law as Cayman Islands attorneys to the JOLs on the basis that Johnstone Law is subject to a conflict of interest;
 - (b) Address the proposed appointment of Maples (**Maples**) as Cayman Islands conflict counsel to the JOLs; and
 - (c) Oppose the engagement of US legal counsel pending determination of the Holdco estate, as addressed in section 60 herein.

5. In this affidavit I refer to the supervision hearing on 6 May 2025 (**Supervision Hearing**) at which this Honourable Court brought the voluntary liquidation of Holdco under its supervision on uncontested basis and refer to the order appointing the JOLs on 6 May 2025 as the **Appointment Order**.

6. The contents of this affidavit are, save where stated otherwise, within my own knowledge and are true. Where the contents of this statement are not within my own knowledge, they are true to the best of my knowledge and belief and I have indicated the source of my information. In making this affidavit I do not waive legal professional privilege in respect of any documents, information or advice referred to herein and no such waiver shall be implied.

7. There is now produced and shown to me a paginated bundle of documents marked "**MP1**". References in this affidavit are to pages in MP1 are in the form [**MP1/page number**]. The majority of the documents comprised in MP1 are materials that I and Mr Paul Murphy requested that our US attorneys compiled and made available in a data room to the JOLs following their appointment. As such, much of the material referred to in this affidavit is already and has been available since around

9 May 2025 to the JOLs. To illustrate this fact, I exhibit an index to the documents in the data room that was made available to the JOLs (**MP1/ page 1 - 3**).

8. I respond in this affidavit to the Second and Third Affidavits of Ms MacInnes dated 13 and 26 May 2025 respectively (**MacInnes 2** and **MacInnes 3** respectively), that were filed by the JOLs in support of the Application which I have reviewed. I have also reviewed the unsworn, undated and unsealed affidavit of Mr Andrew Johnstone of Johnstone Law (**Johnstone 1**) which was served on Baker and Partners (Cayman) Limited (**Baker & Partners**) as legal counsel to DFW on 26 May 2025. To the extent that any assertion made in Johnstone 1, MacInnes 2 or 3 go unanswered in this my first affidavit in these proceedings, that should not be taken as my agreement, acceptance or acquiescence of the position asserted by Ms MacInnes or Mr Johnstone.
9. There will be matters in this affidavit which relate to certain decisions and actions Mr Murphy and I have taken as directors of Holdco. I have noted that certain critical remarks have been made by Johnstone Law about the fact that I have played a central role in controlling and managing several entities within the charitable structure of which the Company previously formed part. These remarks are unfounded in circumstances where the DAF Structure and the entities within it have always operated through a single human agent. This was by design so that Mr Dondero was able to draw on the economies of having a single point of contact across the entire structure. My role was exactly the same as that occupied by my predecessor, Mr Grant Scott, however my approach was and remains to ensure that each entity's role in the DAF Structure was professionally managed.
10. In light of the foregoing insofar as this affidavit deals with matters relating to my role in managing Holdco with Mr Murphy as well as other entities within the structure that is because of the architecture of the structure itself.
11. In light of the wider context in which the position of DFW should be considered, I have reviewed the evidence prepared by Johnstone Law in connection with the winding up of Holdco and filed on behalf of the Highland Foundations namely the

First Affidavit of Mr James Dondero filed on 16 April 2025 (**Dondero 1**), the First Affidavit of Ms Julie Diaz (**Ms Diaz**) filed on 16 April 2025 (**Diaz 1**) and the Second Affidavit of Ms Diaz filed on 29 April 2025 (**Diaz 2**), which was relied on by the Highland Foundations for the purposes of the Supervision Hearing. On my review I note there are a number of mischaracterisations and inaccuracies in the evidence relied on by the Highland Foundations.

12. These create an inaccurate picture of DAF, the DAF Structure (as defined below) and Mr Dondero's dealings with the same. To ensure the facts are accurately before the Court on these matters, and where not otherwise addressed in the content of my affidavit, I include in Sections E and F below specific responses to the inaccuracies set out in Dondero 1 and Diaz 1. I realise that the purpose of the Application is not to resolve complex issues of law or fact. However, I believe it is critical for this Honourable Court to have an understanding of the relevant contextual issues, even if disputed, in order to determine both the question of whether the proposed engagement of Johnstone Law will at the very least undermine the appearance of neutrality in dealing with these issues.
13. Equally, the objection of DFW to the engagement by the JOLs of US legal counsel at this juncture requires the Court to appreciate the facts and circumstances which required Mr Murphy and I to implement the DAF Restructuring (defined at paragraph 18 below).
14. This affidavit proceeds as follows:
 - (a) Objections to the JOLs' Summons
 - (b) Professional background and dealings with Holdco / DAF
 - (c) Function of Holdco and DAF Structure
 - (d) DAF as alter ego of Mr Dondero
 - (e) Responses to First Affidavit of Ms Diaz
 - (f) Responses to First Affidavit of Mr Dondero

A. OBJECTION TO JOLS' SUMMONS

15. In summary, DFW:

- (a) Opposes the engagement of Johnstone Law as Cayman Islands attorneys to the JOLs on the basis that Johnstone Law is subject to a conflict of interest.
- (b) Does not object to the proposed appointment of Maples (**Maples**) as Cayman Islands conflict counsel to the JOLs, subject to the conflict committee of Maples confirming that on considering the ability of Maples to act for the JOLs they gave specific consideration to the prospect that Maples would need to review and opine on the issuance
- (c) Opposes the engagement of US legal counsel pending determination of the Holdco estate, as addressed in section 60 below.

16. DFW objects to the appointment of Johnstone Law as Cayman Islands legal counsel to the JOLs. This opposition is based on Johnstone Law's immediately prior engagement by the Highland Foundations in seeking the just and equitable winding up of Holdco and the appointment of provisional liquidators, on the erroneous basis that the DAF Restructuring was a fraudulent scheme which resulted in assets in excess of US\$250 million in value being misappropriated from the Company, to the detriment of the Highland Foundations. For the avoidance of doubt and as explained in Section C of my confirmatory affidavit, the Highland Foundations never had a traditional ownership economic interest in the DAF and its assets; they only had a right to discretionary dividends if and when paid.

17. The Highland Foundations are companies that are owned and controlled by Mr Dondero who is the President, Individual Member and Director of each of the Highland Foundations. The complaints and allegations made by the Highland

Foundations and the arguments advanced on their behalf by Johnstone Law ignore the real prospect that it is Holdco which may have causes of action against the Highland Foundations and/or Mr Dondero, for the reasons articulated below (see also Section D).

18. At the Supervision Hearing the Highland Foundations, through Johnstone Law characterised the following steps as a fraudulent scheme:

- (a) The allotment of 318 Participating Shares in Holdco to DFW on 7 February 2025 which constituted DFW the single majority Participating Shareholder of Holdco.
- (b) On 27 March 2025, redeeming Holdco's interest in CDMCFAD LLC.
- (c) On 2 April 2025, distributing the proceeds of the aforementioned redemption to the Highland Foundations in their capacity as Participating Shareholders.

19. I refer to these steps collectively as the **DAF Restructuring**.

20. I reject any suggestion that the DAF Restructuring was improper, inappropriate or fraudulent. As I explain in further detail below, the DAF Restructuring was necessary to protect the DAF and its charitable intent from the retaliatory actions that can be traced back to Mr Murphy's and my refusal to accept Mr Dondero's demands to use the DAF's assets to invest in several opportunities that were inappropriate, arguably unlawful and to his personal benefit. I also discuss Mr Dondero's attempts to influence me to transfer approximately US \$1.5 million to an offshore firm owned by Mr Dondero to settle outstanding legal fees which were not related to the DAF at paragraph 116(a) below.

21. For the avoidance of doubt and without waiving legal privilege, the DAF Restructuring and each of the steps forming that transaction, was / were undertaken with the benefit of thorough and extensive legal, tax and financial advice from third-party professionals and for the principal purposes of: (i) ensuring the DAF structure continues to fulfill its charitable purpose of supporting

community-focused, non-profit foundations; and (ii) protecting DAF and the DAF Structure from being used by Mr Dondero or attacked by his creditors as his *alter ego*.

22. As a result of Mr Dondero's conduct, the Highland Foundations may not retain their non-profit status under the laws of the US. According to tax advice I sought for and on behalf of Holdco, the Highland Foundations were susceptible to being found as the *alter ego* of Mr Dondero or facilitating other claims against entities within the DAF Structure based on *alter ego* theories which are set out further at Section D, paragraph 78 onwards and paragraphs 145 onwards of this affidavit. Significantly, the Highland Foundations may also have liability as co-conspirators if Mr Dondero is found to have used them in a way which contravenes the US Internal Revenue Code (**IRC**). It was in recognition of this risk that Participating Shares were issued to DFW. As stated in the resolutions authorizing the issuance and allotment to DFW, this was necessary to ensure that DAF could continue to further its charitable mission where, upon advice, it seemed the Highland Foundations could not. I refer to the first affidavit of My Murphy and to Section V(ii) which addresses the DWF share issuance.

(i) Objections to Johnstone Law on the basis of a conflict of interest

23. The question of Johnstone Law's ability to advise the JOLs independently and impartially was a matter I instructed counsel for DFW to raise at the Supervision Hearing. While I had not opposed the making of a supervision order, nor found at that stage there was a need to object to the appointment of Ms MacInnes or Mr Bhowmik as JOLs, it was my firm belief that due to Mr Johnstone's prior engagement for the Highland Foundations he and his firm would not be sufficiently independent to act as legal counsel to the JOLs. My reasonable belief was founded on both my prior experience of how Mr Dondero conducts his arrangements and litigates aggressively (I refer the Court to the examples of such behaviour in Section D *DAF As Alter Ego of Dondero* (below) and to Section IV of Mr Murphy's affidavit); and on the allegations of fraud and misconduct which have been central to the

applications persuade by the Dondero controlled and managed Highland Foundations.

24. At the Supervision Hearing, and as is set out in the letter from Baker & Partners to the JOLs dated 14 May 2025 and exhibited at **MP1/ pages 4 – 7 (14 May Letter)**, the pleadings before the Court characterised the DAF Restructuring as a “*fraudulent Scheme*” and that the former directors (myself and Mr Murphy) appeared to be “*implementing a calculated and ultimately fraudulent scheme to dissipate the Company’s assets to prevent thorough independent investigation*”.
25. The pleadings prepared by Johnstone Law characterise the Highland Foundations as “*victims of the apparent fraud*” and, with specific regard to the skeleton argument that Johnstone Law filed in support of the *ex parte* application for the appointment of provisional liquidators, Johnstone Law addressed the proposition that “*There is no hard evidence of fraud or defalcation*” by clearly refuting that suggestion as “*not true*” and that “*it will not take the Court long to see that Mr Patrick and Mr Murphy’s blocking tactics hide more nefarious conduct*” (see 14 May Letter at **MP1/ pages 4 - 7**).
26. Johnstone Law also prepared and filed Diaz 2 which was given in support of the Highland Foundations application for the voluntary liquidation of the Company to be brought under the supervision of the Grand Court. In this respect, the terms of relief and basis for the need for supervision was allegedly due to a “*cloud hanging over Mr Patrick and Mr Murphy, as directors of Holdco*” (**Diaz 2, para 15(b)**). Ms Diaz goes on to incorrectly described the Highland Foundations / Supporting Organisations as “*the owners of 100% of the economic interest in the Company*” and that the need for supervision of the Grand Court is primarily for a “*(a) proper investigation*” “*...(e) into the allegations of misconduct on the part of the management of the company*” (**Diaz 2, para 15.(a), (e)**). Ultimately and as I consider to be indicated by the terms of the **Diaz 2 (paragraph (f))**, the case advanced by Johnstone Law for the Highland Foundations envisaged and anticipated that transactions undertaken by Holdco would likely need to be set aside.

27. While I was not present at the Supervision Hearing I am informed by and understand that in accordance with my instructions, counsel for DFW foreshadowed the potential conflict of interest at the Supervision Hearing. After the DAF Restructuring, and subject any claims accruing to the Company, Holdco has no or de minimis assets. The central issue in the liquidation of Holdco is whether the DAF Restructuring was lawfully carried out by myself and Mr Murphy acting in the best interests of Holdco and exercising our powers as directors for a proper purpose. It simply cannot be the case that Mr Johnstone can review the DAF Restructuring impartially and with a fair-mind having already formed the view that that transaction amounted to a calculated and fraudulent scheme.
28. From my consideration of **Johnstone 1 (paragraphs 14,15 and 17)** I understand that:
- (a) Mr Johnstone appeared as legal counsel to the Highland Foundations at the Supervision Hearing,
 - (b) After Justice Asif KC made the Supervision Order the engagement of Johnstone Law was terminated and at the same time the Highland Foundations consented to the engagement of Johnstone Law by the JOLs.
 - (c) I understand that the engagement with the JOLs is dated 7 May 2025. Having read MacInnes 2 I understand that the letter of engagement was executed by the JOLs on 13 May 2025 (see **MM2/ page 4**).
 - (d) Mr Johnstone asserts that he *“no longer [has] obligations to the SOs (save for my ongoing duties of confidentiality), and as former client, rather than current clients” (Johnstone 1, paragraph 39)* and that there is no *“suggestion that in my capacity as attorney to the SOs, I obtained confidential information that would make it unfair for me to know represent the JOLs” (Johnstone 1, paragraph 40)*.

29. As is discussed in detail in Section IV of Mr Murphy's affidavit and Section D below, it was necessary for Mr Murphy and I to implement the DAF Restructuring so as to preserve the DAF assets and charitable standing of the DAF Structure. Given the potential civil and criminal consequences which may befall Holdco, DAF and its assets there is a real possibility that on investigation into the restructuring claims of Holdco are identified against the Highland Foundations and / or Mr Dondero.
30. I believe it is highly likely that Mr Johnstone holds confidential information relating to the operations of the Highland Foundations (being owned and controlled entities of Mr Dondero) that are highly relevant to the central issue in the liquidation, as presented by the Highland Foundations themselves.
31. It appears that the very real potential for Mr Johnstone and his firm's duty of confidentiality to the Highland Foundations as former clients, to conflict with the obligations to their current clients the JOLs has not been addressed in the discussions between Johnstone Law and the Highland Foundations; nor between Johnstone Law and the JOLs.
32. Significantly Mr Johnstone is "*happy to confirm I have never been instructed by James Dondero and/or JP Seville*". This statement itself may refer to the specific terms of any engagement letters entered into by Mr Johnstone and/or his law firm, however, Johnstone Law has recently been engaged by the Highland Foundations who are under the ownership and control of Mr Dondero in his capacities as the individual member, president, and director of each, not to mention the influence he may wield by promising additional donations. Furthermore, Mr Dondero has put in evidence for and on behalf of the Highland Foundations in support of the petition to wind up Holdco and it was in that engagement and in part on the evidence of Mr Dondero that Mr Johnstone formed the view that "*it appeared on the evidence available that a fraud had been perpetrated*" (**Johnstone 1, paragraph 35**). Furthermore, as I refer to in paragraph 187 below, there is reason to be concerned that Johnstone Law has been engaged by entities likely to be controlled, owned or associated with Mr Dondero.

33. Insofar as the question of Johnstone Law / Mr Johnstone's independence is addressed in MacInnes 2, Ms MacInnes does not confirm that the JOLs have made independent enquiry or sought the views of legal counsel on the issue of conflict, save for relying on the view of Mr Johnstone.
34. **Johnstone 1, paragraph 41** notes that Mr Johnstone is "*surprised*" that the engagement of his law firm has elicited such opposition from DFW because it is usual for attorneys who have previously acted for the petitioners to take on the role of advising the liquidators. Mr Johnstone explains "*This has the advantage that the attorneys already have considerable understanding of the case, and so do not approach the task from a 'standing start', which saves time and costs*". This point is also supported at **paragraph 11(a) of MacInnes 2** where Ms MacInnes states it to be her professional experience that liquidators frequently engage the firm of attorneys who acted for the petitioner upon their appointment, and the mere fact that a firm has previously acted for a petitioner does not of itself provide a basis for asserting that a firm lacks independence.
35. I do not accept this is correct in the context of liquidations arising from the breakdown of a shareholder relationship as is the case with Holdco. This evidence disregards the complex issues which arise in the context of this matter. I am informed by Cayman counsel and understand this issue will be addressed in submissions that while that general position as stated in Johnstone 1 and MacInnes 2 may be true where the winding up petition is premised on an undisputed debt, the position here is markedly different. There is a clear and contentious dispute brought by the Highland Foundations in the terms of the just and equitable petition that was filed against Holdco.
36. Insofar as MacInnes 2 asserts that the JOLs have concluded that Johnstone Law is independent and that the position of DFW in objecting to their appointment is without substance I note that:
- (a) It is Mr Johnstone himself who has informed the JOLs that his prior engagement by the Highland Foundations and that his own law firm had

no conflict in acting. The JOLs do not appear to have made independent enquiry into the potential conflict nor taken independent advice on the point (**Paragraphs 11(b)-(d) of MacInnes 2**).

- (b) Johnstone Law has also confirmed that they “*have no preconceptions before accepting an engagement by the JOLS, and are not subject to any external pressure or influence*” (**paragraph 11(c) MacInnes 2**). However, it remains the case as per Mr Johnstone’s own evidence that he is of the view that a fraud has been perpetrated and *that “that does appear to be an obvious explanation for what has occurred, and because those were my instructions” (Johnstone 1, paragraph 35)*. I do not accept that fraud was the “*obvious explanation*” let alone a reasonable one had Mr Johnstone considered whether any underlying factual basis was reasonably credible. He does not appear to have considered the extraordinary legacy of the very person behind the Highland Foundations or the person funding his engagement, here Mr Dondero.

37. In the circumstances I fail to see how it could be considered reasonable or fair-minded (as **Johnstone 1** suggests at **paragraph 42**) for Johnstone Law’s engagement to be sanctioned.
38. I am further informed by the Cayman attorneys to DFW that during the Supervision Hearing, Mr Johnstone submitted to the Court that the submissions of Baker & Partners with regard to the terms of Order ought not to be given weight because DFW is controlled by a person subject to investigation – that person being myself - and suggested I would seek to limit the powers of the liquidators. I refute the negative assertions that have been cast on my character advanced by Johnstone Law in written argument, and further at the Supervision Hearing. Additionally, recognizing that there is an investigation which needs to be conducted into the DAF Restructuring and its propriety, the conclusory view of Mr Johnstone that DFW’s views should not be given weight because of that investigation itself indicates a

position of partiality which DFW believes requires that the JOLs have the benefit of independent, unconnected legal counsel.

39. The engagement of Johnstone Law specifically was not a matter that was before the Court at the Supervision Hearing. I understand from legal counsel to DFW that it was submitted at the Supervision Hearing that the identity of Cayman Islands attorneys for the JOLs was not then known, and that Reed Smith were identified during the Supervision Hearing as US legal counsel.
40. However, the terms of the Draft Supervision Order provided to the Court on 6 May 2025 did seek sanction for the JOLs to engage attorneys. I exhibit at **MP1/ page 9 - 11** a copy of the original draft order that was circulated on 6 May. It was this general sanction to engage attorneys that was denied and for which this Honourable Court directed the JOLs to make a sanction application for the specific firms to be engaged and the terms on which that engagement would proceed. Neither Johnstone 1 nor MacInnes 2 or 3 address the non-disclosure of Johnstone Law as proposed Cayman counsel to the JOLs. However, in the absence of independent legal counsel being identified I understand that (i) Johnstone Law's engagement with the Highland Foundations terminated after Supervision Hearing and (ii) Johnstone Law had issued a letter of engagement dated 7 May 2025 to Grant Thornton. There is a necessary inference that at the time of the Supervision Hearing Johnstone Law had been selected to act as Cayman legal counsel to the JOLs.
41. The concerns of DFW have been further compounded by steps immediately taken by the JOLs following their appointment.
42. Firstly, the clear overreach of their powers under the Appointment Order, insofar as the JOLs have sought to exercise authority and jurisdiction over entities which are neither Holdco, nor entities that are owned or controlled by Holdco. In this regard I refer to correspondence issued by the JOLs to Skyview Group (**Skyview**, legally incorporated as Highgate Consulting Group, Inc. and doing business as Skyview Group) dated 9 May 2025, in which the JOLs purported to have authority to request books and records from Skyview not only of Holdco but also to its current and

former subsidiaries (**Skyview Notice**). In doing so the JOLs also sought to exercise their powers in the jurisdiction of the United States where, I am informed by legal counsel, the JOLs have no legal standing or authority. A copy of the notice and correspondence issued to Skyview is exhibited at **MP1/ page 12 - 18**.

43. These steps are value destructive to DAF and its direct and indirect subsidiaries (**DAF Structure**) insofar as the JOLs have caused banks and other service providers to the DAF and related entities to freeze the operative accounts of the DAF. As an example, email correspondence from Hancock Whitney is exhibited at **MP1/ page 19 - 26**. In turn, this prevents DAF from operating its business (i) making (and receiving payments on) investments and (ii) carrying out its charitable purpose and fulfilling obligations which DAF has assumed to support selected charities.
44. Second, on 12 May 2025 Baker & Partners issued a letter to the JOLs identifying the impropriety and overreach of the requests set out in the Skyview Notice. No response to that correspondence has been received. I exhibit at **MP1/ page 27 – 29** a copy of the correspondence issued to the JOLs in response to the Skyview Notice.
45. Following the Supervision Hearing Mr Doug Mancino, a leading US tax attorney whose CV is exhibited at **MP1/ page 30 - 41**, informed me that he had agreed to a meeting with the JOLs. That meeting took place virtually on 12 May 2025 (**12 May Meeting**). I understand from Mr Mancino that Mr Johnstone of Johnstone Law was present at the virtual meeting. Mr Mancino also informed me that he was not informed during the call who Mr Johnstone was or in what capacity he was attending, that Mr Johnstone had represented (or was representing) the Highland Foundations, or that the JOLs had purported to engage Mr Johnstone as their counsel pursuant to a letter of engagement dated 7 May 2025 (despite the court requiring the JOLs to seek court approval for the appointment of legal counsel). I understand there to be a factual dispute relating to the 12 May Meeting and that Mr Mancino will directly address the assertion made in **MacInnes 3 (paragraph 12)** that at that meeting Mr Macino was informed that Mr Johnstone attended in his capacity as the JOLs' attorney.

46. On 14 May 2025, Baker & Partners wrote to ask who Mr Johnstone acted for while attending the 12 May Meeting. That same letter outlined to the JOLs the concern of DFW which arose from the representations made during the course of these proceedings by Mr Johnstone (see **MP1/ page 4 - 7**). As the letter of 12 May 2025 to the JOLs makes clear, DFW has serious and justifiable concerns that where conduct which Mr Johnstone has described as a fraudulent scheme are the very actions that will inevitably be investigated and considered by the JOLs, there is not only the appearance of a conflict but a serious question over the ability of Johnstone Law to impartially advise the JOLs on matters concerning the legality and propriety of the DAF Restructuring.
47. This extends to the very real possibility that on an independent and thorough investigation into the DAF Restructuring, causes of action may have accrued to HoldCo against the Highland Foundations and potentially Mr Dondero. DFW's position will be deeply prejudiced if the JOLs are unable or unwilling to act or even unable or unwilling to consider acting against the Highland Foundations and Mr Dondero. The timing of Johnstone Law's termination as counsel for the Highland Foundations as of 6 May, and appointment by the JOLs pursuant to a letter of engagement dated 7 May, in circumstances where Johnstone Law had already made accusations of fraud makes it difficult, if not impossible, to believe that Johnstone Law can advise the JOLs with a view to ensuring they investigate the affairs of Holdco fairly and independently.
48. Following the 12 May Meeting and the correspondence that was issued by Baker & Partners for DFW and on behalf of the Management Shareholder and directors by Kobre & Kim issued on 14 May 2025 (see **MP1/ page 42 - 44**) Johnstone Law made the Letter Application seeking the sanction of their appointment as legal counsel to the JOLs, without first seeking the formal views of DFW. I do not know if the Highland Foundations who are also participating shareholders of Holdco were notified.
49. I am informed by my legal counsel, without waiving privilege, that the usual course in making a sanction application is for the stakeholders of the liquidation to be

consulted with, and for a hearing to be set down for that application to be heard, including the views of stakeholders. While I also understand that there may be circumstances in which it may be appropriate to seek to have a sanction application determined on the papers, the views of the stakeholders interested in the application should provide their consent to proceeding with an application without sanction. The fact that the Court properly directed that DFW and all relevant stakeholders be given notice of the application and a hearing set down only indicates that this sanction application was not one suitable to be determined on the papers.

50. I note at **paragraph 20 of Johnstone 1** that the application for sanction of Johnstone Law was initially “*made by letter to the Court dated 14 May 2025 (Letter Application)*”. At the time of swearing this affidavit I understand that a copy of the Letter Application has been requested from Johnstone Law but not yet provided to DFW. I refer the Court to **MP1/ page 49 - 47** being a letter from Baker & Partners dated 20 May 2025 (**20 May Letter**) relating to the sanction application made by the JOLs and making specific requests for “*copies of all correspondence between Johnstone Law and the Grand Court regarding the proposed sanction application*”.
51. I note that **Johnstone 1 (at paragraph 55)** outlines requests for documents and information that were made by Baker & Partners in the 20 May Letter but lists only 3 or the 4 categories that were requested. Johnstone 1 makes no reference to the request that was made by Cayman counsel for DFW for a copy of Johnstone Law’s correspondence with the Court, which would necessarily include the Letter Application.
52. Significantly, if the concerns of myself and Mr Murphy regarding Mr Dondero’s dealings with DAF are found on an independent investigation to have been well founded, there is a real prospect that Holdco would have actions against the Petitioners in respect of distributions that were made which did not actually comply with the charitable purpose for which the assets of DAF ought to have been deployed. Even in the absence of such causes of action, if my concerns about Mr Dondero, the Highland Foundations are vindicated through an independent

investigation, the JOLs will be required to reach adverse conclusions about Johnstone Law's former clients. Given Johnstone Law at the very least holds confidential information about those parties, it is reasonable to infer that Johnstone Law will be strongly predisposed (or have the appearance of being strongly predisposed) towards their former clients. Indeed, Johnstone Law has already characterised his former clients as the "*victims of fraud.*" (**Supplementary Skeleton Argument, 28 April 2025, para, 17**).

53. Once again, this raises a justifiable concern that Johnstone Law is not in a position to act independently in advising the JOLs to commence proceedings against the former clients of Johnstone Law or take adverse positions against them. Given the pervasive nature of the required investigation into the history of the DAF Structure, its connection with Mr Dondero and indeed DAF Restructuring, I do not see how the issue can be cured by the appointment of Maples as *ad hoc* conflict lawyers.
54. As I explain in further detail below a serious underlying concern of DFW as well as a concern Mr Murphy and I have held as directors appointed by the Management Shareholder to exercise its entitlements and functions, is that Mr Dondero historically misused DAF, the DAF Structure, and its assets for his own personal U.S. tax advantages and gain and intends to leverage the liquidation of Holdco to ultimately wrongfully require the DAF Structure and its assets.
55. Furthermore, I understand from the evidence filed by the Highland Foundations that Mr Dondero is funding the JOLs' fees and is privately financing these proceedings including meeting the fees of the Highland Foundations. In circumstances where Johnstone Law has been remunerated by Mr Dondero and indeed where they appear to have acted with certain entities associated with him, this inevitably gives rise to the real prospect that without instructing independent counsel, Johnstone Law and by extension the JOLs may not be in a position to reach fair and impartial findings against Mr Dondero or indeed the Highland Foundations with respect to any investigations of misuse or attempted misuse of the DAF Structure. Such findings would almost certainly be contrary to the position adopted by Johnstone Law on behalf of the Highland Foundations (and ultimately Mr Dondero).

56. Mr Dondero is a serial litigant. Since 2007 he has been locked in substantial litigation with UBS and since 2019 has been pervasively involved in the now infamous “Highland Bankruptcy” Chapter 11 proceeding in Texas. Mr Dondero is currently exposed to a summary judgment determination from the Southern District of New York which may imminently result in an award against him in the amount of US\$1.2 billion (as more fully discussed below in paragraph 153). I believe the prospect of such a significant adverse judgment against Mr Dondero provides ample reason for him to seek to have the DAF Restructuring unwound and seek to control – directly or indirectly – that process. In simple terms Mr Dondero may need access to significant liquidity in the short term.

(ii) Engagement of Maples

57. I note from the Amended Summons provided by Johnstone Law on 26 May that the JOLs now seek sanction for the appointment of Maples as conflict legal counsel to the JOLs. As noted in **MacInnes 3 (paragraph 19-24)**, Maples were previously retained by the Company to provide advice in connection with the power and ability of the directors of Holdco to issue and allot shares in Holdco to DFW.

58. Given the centrality of the DAF Restructuring and the DFW share issuance to the liquidation of Holdco, I was concerned that Maples would be in a position of conflict to the extent that Maples were instructed by the JOLs to assess or impunge the validity and propriety of the issuance of shares from Holdco to DFW. However, I also understand from both the terms of MacInnes 3 that Maples have cleared conflicts and do not regard the previous, advice provided to the Company as presenting a conflict of interest.

59. In the circumstances, I on behalf of DFW would not object to the engagement of Maples by the JOLs providing confirmation could be provided that the conflict committee had, on considering the engagement for the JOLs, specifically addressed the ability of Maples to advise on the validity and propriety of the share issuance to DFW by Holdco.

(iii) No requirement for US Counsel at this stage

60. DFW objects to the application for sanction by the JOLs to engage US counsel at this juncture. As is accepted by the JOLs, Holdco presently holds no assets in Cayman or anywhere else.
61. The issues that are raised by the Highland Foundations and which have been assumed by the JOLs, concern the validity and potential ability to unwind the DAF Restructuring.
62. In due course DFW intends to seek a declaration as to the validity of the DAF Restructuring from this Honorable Court and to make that application within the liquidation. Until such time as a determination has been made that would result in assets being conveyed to the Holdco estate, DFW objects to the sanction and engagement of US counsel for the reason that it is neither proportionate nor necessary.

B. PROFESSIONAL BACKGROUND AND DEALINGS WITH HOLDCO /DAF

63. I am a US tax attorney and have practiced as US tax counsel from 1998 until 2008. I hold a bachelors degree from the University of Miami Herbert Business School (BBA, Finance, Cum Laude); an LLM in Taxation from the New York University School of Law and am a Juris Doctor from the Boston University (Cum Laude).
64. For a significant part of my career through until October 2024 I have been employed by companies connected with or controlled by Mr Dondero. From January 2008 to February 2021 I was employed as Tax Counsel by Highland Capital Management, L.P. (**Highland**). During my employment with Highland, I provided tax consulting advice to Highland and engaged outside tax lawyers to provide legal advice to Highland relating to the management of its tax liabilities and the ability to make use of tax efficient structures.
65. Contrary to the assertion made by Mr Dondero (**Dondero 1, paragraph 17**) I have not and did not represent Mr Dondero as his personal tax counsel while employed at Highland or at any time thereafter. During this time, I held a license to practice

law but my role within Highland was as a tax professional and not as an attorney and I was assigned to the tax department, not the legal department. To the extent that Mr Dondero required tax or trust advice in respect of his assets, external tax counsel were hired to fulfil that role. It is well understood in the U.S. that attorneys who are employed by a company represent the company and not its officers or directors.

66. Highland was an entity formerly owned and controlled by Mr Dondero, which was later placed into Chapter 11 Bankruptcy in the United States (**Highland Bankruptcy**). It is my understanding that the bankruptcy of Highland in 2019 was precipitated by Highland incurring significant exposure in what has been characterised as vexatious and oppressive litigation which Mr Dondero was instrumental in prosecuting. In particular in 2019 it was expected that a judgment would be made against Highland in favour of certain of its investors in the amount of US\$189.3m. Highland was not in a position to satisfy this judgment and Mr Dondero placed the Company into Chapter 11. Following the collapse of Highland, Mr Dondero set up a new investment manager under the name NexPoint. Skyview was formed to provide back-office services to NexPoint and its managed funds.
67. I was employed by Skyview from March 2021 to October 2024.
68. I note that Mr Dondero refers to many of the former back-office employees of Highland becoming employees of the newly formed Skyview (**Dondero 1, paragraph 7**), Mr Dondero does not accurately describe the business of Skyview. From my time employed by Skyview I understand that almost all the clients of Skyview are entities owned and controlled by Mr Dondero.
69. Further, the Chief Executive Officer and owner of Skyview is Mr Scott Ellington, a longtime business associate of Mr Dondero and former General Counsel of Highland. During my employment at Skyview it was well understood by those working there including myself, that Mr Dondero had actual control of Skyview. By way of example, the compensation determination for all of Mr Dondero's companies' employees is carried out in January-to February. During this time the

Head of Human Resources and a member of the Executive Board of Skyview would attend Mr Dondero's office at the Crescent where he would set the pay of every Skyview employee.

70. I provided tax advice to Skyview. In September 2021 my title was formally changed from "Tax Counsel" to "Managing Director, Tax". I requested this title change to make it objectively clear that I was not providing any legal services for Skyview, Mr Dondero, nor any of Mr Dondero's companies, which met no resistance from Skyview.
71. Contrary to the assertions made in **Diaz 1, para 25(b)** and **Dondero 1, para 18**, at no point during my tenure at Skyview was I retained by Mr Dondero to advise in respect of his personal tax liability. As with my employment at Highland, external legal counsel was engaged to advise Mr Dondero in respect of his personal tax affairs and trusts. I submitted my resignation to Skyview by letter dated 2 October 2024, a copy of which I exhibit at **MP1/ page 48**. The significance of my resignation which I explain in further detail below has a direct correlation to the rapid deterioration of the ensuing interactions with the Highland Foundations.
72. During the course of my employment with Highland I, along with outside advisor Mr Douglas Mancino (**Mr Mancino**), was instrumental in the establishment of Holdco, DAF and the DAF Structure. Mr Mancino and I exchanged a series of letters exhibited at **MP1/ pages 49 – 52, 53 – 55, 56 – 58 and 59 - 61** commissioned a memorandum exhibited at **MP1/ page 62 - 66** and had in-depth discussions regarding the most advantageous structures, compliance implications, and outreach to potential recipients of the Participating Shares. This runs contrary to **paragraph 9 of Dondero 1**, where Mr Dondero over-states his involvement in establishing the DAF.
73. Contrary to the assertions made at **paragraphs 8 and 9 of Dondero 1**, Mr Dondero does not have the ability to use or influence the DAF to donate to charitable organizations. Furthermore, DAF entities are all for-profit entities and to the best of my knowledge and belief, Mr Dondero has never donated to.

74. At best, Mr Dondero is an indirect donor to DAF. Specifically, Mr Dondero donated assets to Highland Capital Management Partners Charitable Trust #2 (“Trust #2”), which was a charitable remainder trust and was required by law to donate all its assets to a charity by a certain date. My understanding is that a few years later, Trust #2 placed all its assets to an entity it owned called CLO HoldCo, Ltd. Trust #2 then contributed CLO HoldCo, Ltd. to Charitable DAF HoldCo, Ltd. in exchange for 300 participating shares in Charitable DAF HoldCo, Ltd. Trust #2 in turn gifted these 300 participating shares to the Highland Foundations. Mr Dondero’s “donation” was in fact to Trust #2¹. I am also aware that Mr Dondero or his trusts have made other donations to Highland Dallas Foundation from my work at Highland and Skyview.

C. FUNCTION OF HOLDCO AND DAF STRUCTURE

75. The DAF Structure was established in late October 2011 to provide a permanent capital offshore structure that would manage assets on a long-term basis, during which it would make discretionary distributions to the benefit of various charitable entities and their charitable endeavors. The structure was established for the purpose of reorganizing investment assets from Trust#2 and distributing such assets to non-profits when the trust expired per its term, and reducing the burden to pay US federal tax. It was never an investment fund.
76. In my experience these structures serve to mitigate the tax exposure of assets under management, while also permitting any donors of assets to have non-binding input on the investment of such donations and charitable contributions to charitable entities. It is important to stress that these arrangements, to avoid material tax liability and violations of criminal tax laws, must be conducted at arm’s length and with strict adherence to the principle that the donor must totally relinquish dominion and control over the contributed assets.

¹ In 2011, Mr Dondero also owned and controlled Charitable DAF GP, LLC, a Delaware limited liability company, which was the General Partner of Charitable DAF Fund, LP and effectively had control over the DAF Structure (other than Charitable DAF HoldCo, Ltd.). Mr Dondero could not maintain control of the General Partner because, in order for his charitable deduction that he obtained when he donated assets to Trust #2 to remain legally valid, he had to cede dominion and control of the transferred assets.

77. From my background as a tax professional advisor I am aware of the importance of avoiding inferences of “dominion and control”. These derive from the fact that under U.S. tax law, when someone donates to charity, they must forfeit “dominion and control” of the donated assets, meaning the donor must completely and irrevocably transfer ownership and control of the property to the charity. To qualify for a charitable deduction, the donor cannot reclaim the property or dictate how it is used, directly or indirectly (such as with the DAF Structure). This includes relinquishing any power to change the use or disposition of the donated assets.
78. Furthermore, for the donation to be tax-deductible, the donor must (i) intend to permanently give up control of the property, (ii) transfer legal title and control of the property, (iii) deliver the property, and (iv) ensure the charity accepts the donation. I exhibit at **MP1/ page 16 - 83** a memorandum of advice prepared by Carrington for Holdco addressing the issue of dominon and control of assets provided to charity (**Carrington Memo**).
79. The charitable distributions to DAF were to be made through the Highland Foundations as the Supporting Organisations of the DAF Structure. I know from my involvement in establishing the DAF Structure that Mr Dondero is the President, Director, and Individual Member of each Supporting Organisation and wields further influence as a purported donor to the Highland Foundations. If, for example, the IRS were to make a finding that Mr Dondero never intended to part with dominion and control over the “gifts” he made to DAF, then they would likely disallow the income and gift tax deductions that he has benefited from and impose civil penalties, as outline in the Carrington Memo (ref to page in exhibit).
80. The charitable distributions made would be from the DAF through Supporting Organisations exempt from federal taxation under Section 501(c)(3) of the US IRC providing the DAF structure was administered and managed independently of any donor (including Mr Dondero’s in his capacity as an indirect donor through the charitable remainder trust). At the time Mr Dondero and I discussed the establishment of the DAF Structure, I informed Mr Dondero that the structure required the complete divestiture of assets and that the terms of the DAF and its

related entities could not provide Mr Dondero with any dominion or control over the structure or the distributions made by DAF.

81. For example, when I articulated to Mr Dondero that the investment income reported to each of the foundations which held the DAF was US \$22,875,944 to Highland Dallas Foundation, Inc.; US \$22,961,382 to Highland Santa Barbara Foundation, Inc.; and US \$22,883,319 to Highland Kansas City Foundation, Inc., Mr Dondero's response was "*They don't think of that money as their own do they???*". In fact, the Highland Foundations as Participating Shareholders were only entitled to cash distributions, if and when made. Following my review of this correspondence I was concerned that Mr Dondero had evaluated the prospects of DAF to advance financing to his current and future projects in a way which may be contrary to Mr Dondero relinquishing dominion and control in respect of the DAF Structure. A copy of this email exchange is exhibited at **MP1/ page 84 - 85**.
82. In fact, the Carrington Memo at **MP1/ page 76** advised that there was a "*significantly heightened risk that the IRS could severely penalize and/or revoke the tax-exempt status of one or more*" of the Supporting Organisations which could in turn imperil the status and assets of the DAF, for the reasons which I explain below.
83. My concerns which arose at a later date (again, the justifications for which are articulated more fully below) were that should Mr Dondero attempt, through his control of the Highland Foundations, to exert dominion and control over the cash and property that he previously (indirectly) donated to DAF (and for which I understand he claimed personal charitable deductions for U.S. tax purposes) and the IRS were to make that determination, then the IRS would likely disallow the income and gift tax deductions that Mr Dondero took, and impose civil penalties, such as, a penalty on underpayments under Code Section 6662 and potentially the civil fraud penalty authorized by Code Section 6663, as referred to in the Carrington Memo (insert page ref from exhibit).
84. In addition and as mentioned above, I understand that significant penalties can be imposed on self-dealings between a private foundation (such as each of the

Highland Foundations) and a “disqualified person”. The term disqualified person” includes an officer, director, or trustee of a foundation. Given Mr Dondero’s involvement with the Highland Foundations, and further to the evidence which I give below, by late 2024 I harbored concerns that the IRS may consider Mr Dondero to be a “disqualified person” with respect to each and every Highland Foundation, which could expose each of those entities to revocation by the IRS of its tax-exempt status and possible criminal prosecution.

85. To the extent that the DAF’s assets could have been used in such a way, my further concern was that creditors of Mr Dondero could view the DAF as Mr Dondero’s financial alter ego under U.S. law. In turn that could expose DAF and its assets to creditor claims unrelated to the DAF Structure. Such claims could risk depleting the pool of assets held by DAF, which would result in depriving current and future charities from the benefit of those assets. I note that significant amounts of DAF’s liquid assets are held in the U.S. and whilst I understand (without waiving privilege) that concepts of alter ego are different under Cayman Islands law, that would not prevent attachment of DAF’s assets held in the U.S.
86. Quite simply, the assertions made on behalf of the Highland Foundations by the evidence of Ms Diaz show a fundamental misunderstanding of the corporate structure and charitable purpose of DAF. Primarily, the Highland Foundations assume that DAF was a “consolidated entity” when in fact the fundamental scheme of the corporate group intentionally, and necessarily, delineated between control of and economic interest in the DAF Structure.
87. In this regard, Holdco was incorporated and registered as a Cayman Islands exempted limited company on 27 October 2011 with registration number 263805 (see **MP1/ page 86**). Since its incorporation and until the DAF Restructuring in March 2025 (discussed below) Holdco was the Limited Partner of DAF through which it indirectly owned the entities in the DAF Structure. However, Holdco did not hold voting, control, or management rights in respect of DAF. Its sole purpose was to act as a conduit through which discretionary, charitable donations would pass.

88. DAF, an exempted Cayman Islands limited partnership was controlled and operated by its former general partner, Charitable DAF GP, LLC (**Original GP**) between October 2011 through to the Restructuring. From February 2024 DAF has been operated by the GP. The Original GP was arranged in Delaware and also registered in the Cayman Islands under Part IX of the Companies Act (as revised). The control of the Original GP and the Replacement GP are also explained below.
89. The characterization by the Highland Foundations through the evidence of Ms Diaz of DAF as a 'Fund' (**Diaz 1, paragraph 12**) is therefore misleading and liable to create confusion. DAF is not an investment fund but is a charitable vehicle and properly understood, DAF:
- (a) Did not solicit capital from investors;
 - (b) Had / has no subscription agreements through which interests are taken up. Notably, the Highland Foundations did not "subscribe" to DAF in the way, I am informed by counsel (without waiving privilege), commonly used by investment funds in the Cayman Islands, but were granted Participating Shares in Holdco by way of a gift at the inception of the DAF Structure.
 - (c) Holdco as Limited Partner had restrictive rights in its participation and management of DAF, including restricted rights to information.
 - (d) Had no entitlement to make capital calls against the Supporting Organisations or indeed against Holdco;
 - (e) Does not have a registered investment advisor;
 - (f) There are no investment hurdles or reporting requirements;
 - (g) There are no marketing brochures, private placement memorandums or other materials relating to solicitation for investments;
 - (h) The economic substance filing lists business of Holdco; and

- (i) There is no wind down date or term within which shareholders are entitled as of right to distributions.

90. Accordingly, to describe DAF as a fund, as the JOLs, Mr Johnstone, Mr Dondero and MS Diaz assert, is incorrect. Holdco was a passive holder and would receive cash distributions from time to time but purposefully did not enjoy any governance or fixed economic rights over the entities comprising the DAF Structure.
91. The constitutional documents of Holdco and DAF maintained the necessary distinction between the economic interest in the DAF Structure and control over the same. In the evidence of Ms Diaz the Highland Foundations incorrectly rely on the Amended and Restated Memorandum and Articles of Association of Holdco dated 19 January 2015 (**2015 Articles**) (**Diaz 1, paragraph 15**). The Articles have been amended and restated twice since the 2015 Articles both as of 24 January 2024 and again since 20 February 2025 (**2025 Articles**). It is the 2025 Articles which regulate the affairs of Holdco and are exhibited at **MP1/ page 87 - 123**.
92. Notwithstanding that the Holdco constitution has been amended, the provisions relating to the rights and interest of the shareholders of Holdco have not been modified. Holdco has issued both Participating Shares and Management Shares. The interests and rights conferred by these shares maintain a distinction between control of Holdco and an economic interest in Holdco.
93. Management Shares are *“voting, non-participating share in the capital of”* Holdco *“that shall be non-redeemable at the option of the holder but redeemable by”* Holdco. As stipulated in Art. 11 of the 2025 Articles, the Management Shares *“shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of”* Holdco. Notably, Management Shares *“confer no other right to participate in the profits or assets of”* Holdco.
94. In contrast Participating Shares, being those held by the Highland Foundations, are *“a non-voting, participating non-redeemable share in the capital of”* Holdco. Specifically, Participating Shares confer the right upon the Participating Shareholders to participate in the profits or assets of Holdco in accordance with

the terms of the 2025 Articles (**Art. 12, 2025 Articles**), which is subject to the sole discretion of the Directors of Holdco.

95. The distinction between Management and Participating Shareholder rights is evident throughout the 2025 Articles:

- (a) it is for the Directors of Holdco to exercise their sole discretion to consider if a dividend ought to be paid to the Participating Shareholders, or whether the available funds ought to be set aside as a reserve. The Participating Shareholders have no ability to vote on whether a distribution would be made from Holdco (**Arts 102, 105, 2025 Articles**).
- (b) Participating Shares do not confer the right to remove or appoint directors to Holdco. The right to appoint Directors to Holdco is reserved for the Management Shareholder and Directors, whereas the ability to remove Directors of Holdco is limited solely to the Management Shareholder (**Arts 64, 65, 69, 2025 Articles**).
- (c) The Directors of Holdco have discretion to issue further shares in Holdco, and by the 2025 Articles the dilution of the Participating Shares *“shall not be deemed to be materially adversely varied or abrogated by [the]...issue of further Participating Shares”* (**Arts 7, 14, 2025 Articles**).
- (d) Participating Shares do not confer a general right to inspect any account or book or document of Holdco, except in very limited circumstances being if such a right is granted by law or the Directors of Holdco otherwise authorize such inspection (**Art 111, 2025 Articles**).

96. At the time the DAF Structure was being established the limited nature of the Participating Shareholders’ rights caused some charities who may have benefitted from the structure to reject the proposed gift of Participating Shares. I travelled and met with various charities, including the Greater Houston Community Foundation and Communities Foundation of Texas. These charities carried out extensive due diligence on the Participating Shares and ultimately rejected the gift. These

charities determined that the shares did not confer sufficient economic rights to qualify as a gift because they provided only discretionary dividends, carried no liquidation rights, and were susceptible to being diluted at any point.

97. In contrast, the Dallas Foundation, the Great Kansas City Community Foundation and the Santa Barbara Foundation also undertook extensive due diligence and, through the Highland Foundations, accepted the Participating Shares by way of a gift in full knowledge of the very limited rights conferred by these shares. Having regard to **paragraph 20(b) of Diaz 1**, it appears that the Highland Foundations are seeking to assert some form of fixed or proprietary economic interests in DAF which they knew were at best (i) discretionary; (ii) subject to dilution; and (iii) not controlling rights. The assertion of the Highland Foundations in these respects are refuted. The Highland Foundations were cognizant of these limitations when they accepted the gift of Participating Shares. For example, I recall meeting with Mary Jalonick (now-retired former president of The Dallas Foundation, which is supported by the Highland Dallas Foundation, Inc.), who understood the limitations. The current effort by the Supporting Organisations therefore subverts the intention, understanding and terms of the agreement of the parties at the time the Participating Shares were gifted by the Company.
98. The Highland Foundations, Ms Diaz and Mr Dondero were and/or should each have been well aware of the ability of Holdco to issue new Participating Shares. In July 2015, I understand that Mr Dondero had encouraged Grant Scott to cause Holdco to issue 5 Participating Shares to Community Foundation of North Texas (now known as North Texas Community Foundation) in exchange for US\$.05. A copy of the correspondence admitting North Texas Community Foundation as a Participating Shareholder is attached at **MP1/ page 120 - 128**. I am aware that Mr Dondero was frustrated with (what he considered to be) the “woke”, liberal, California-based Santa Barbara Foundation and their priorities, so Mr Dondero and Lane Britian requested that I find a replacement charity. At the time, I spoke with the El Paso Foundation and the Miami Foundation, who both rejected the gift of Participating Shares. North Texas Community Foundation was willing to accept a modest number of shares (5) to be held in a donor-advised fund account.

99. I explained to Mr Dondero in November 2014 that the Highland Foundations did not think of DAF's assets as their own and understood they were only entitled to discretionary cash distributions, if and when made. A copy of the email correspondence is exhibited at **MP1/ page 84 - 85**.
100. The operations of DAF are regulated by the Second Amended and Restated Exempted Limited Partnership Agreement of DAF, dated 11 March 2024 (**Amended LPA**). Again, the Highland Foundations rely on an outdated version of the governance document for the DAF. A copy of the Amended LPA is exhibited at **MP1/ page 129 - 146**.

D. DAF AS ALTER EGO OF JAMES DONDERO

101. From October 2011 until March 2021, Mr Scott was Managing Member and Sole Member of the Original GP and was the holder of the Management Shares issued in Holdco. As such Mr Scott was the control person over DAF and the related structure (**Control Person**). The function of the Control Person was and is to ensure DAF made independent investment decisions for the ultimate benefit of charitable beneficiaries and the charities they support. From my professional experience and expertise I understood that if the Control Person fails to act independently, the charitable and tax-exempt status of the supporting organisations would be compromised. The mere illusion of lack of independence could also expose DAF and its assets to adverse tax treatment and penalties from the Internal Revenue Service as well as creditors and other adverse parties if independence were not maintained.
102. Prior to 2021 Mr Scott and Mr Dondero were longstanding friends and acquaintances. I am aware from my associations with both Mr Scott and Mr Dondero that they were college roommates and that Mr Scott acted as Best Man at Mr Dondero's wedding with Rebecca (Becky) Dondero in 2005, which ended in divorce and extensive public litigation all the way to the Supreme Court of Texas. Mr Scott and Mr Dondero continued to be friends following the divorce litigation.

103. In or around March 2021 I approached Mr Scott to assume the role as Control Person of the DAF. This required me to take on the directorship of the Original GP and be registered as holder of the Management Shares issued by Holdco. I assumed the role of Control Person as of 24 March 2021. Therefore, the concept of their being a sole human agent in control of the DAF is one that has represented the status quo since its inception in 2011. The aspersions and innuendos cast by Johnstone Law on behalf of the Highland Foundations and more recently the JOLs are therefore inappropriate and are also consistent with their prevailing inaccurate view that DAF should be regarded as a "consolidated entity."
104. At this time I understood from my conversations with Mr Scott that he and Mr Dondero had suffered a falling out because Mr Scott refused to take a step at the request of Mr Dondero which would have caused him to breach his fiduciary duties to DAF.
105. It is my understanding and belief that Mr Scott's refusal to act at the direction of Mr Dondero angered him and that, as a result of Mr Scott's opposition to Mr Dondero's instructions, Mr Dondero wanted Mr Scott to resign. I exhibit an email from Mr Scott to John Kane on 30 January 2021 at **MP1/ page 147** which, contrary to the assertion made by Mr Dondero at **paragraph 20 of Dondero 1** that Mr Scott informed him that he wished to resign in March 2021, Mr Dondero and Mr Scott reached a mutual agreement on a call on 30 January 2021 that Mr Scott would resign as a result of being at a "cross-roads" with Mr Dondero. In fact, Mr Dondero had stated to Mr Scott that "*The releases and non objection to the plan was all Seery cared about ... accusations of non independence was tweaking and always alleged against all trustees, very hard to prove ... not a real threat but Seery got a lot for it, look what you signed*". Mr Scott is not prepared to provide me with a copy of the unredacted email due to privilege but has intimated that he would be prepared to give evidence in these proceedings. My understanding is that Mr Dondero did not have the power to remove Mr Scott from his position, but he nonetheless encouraged Mr Scott to resign because he was displeased that Mr Scott had done something to benefit Seery as outlined above (the Highland Capital Management, L.P. chief restructuring officer after Mr Dondero was ousted from Highland Capital Management).

106. The appointment and subsequent resignation of Mr Scott as described by Mr Dondero in **paragraphs 14 and 20-21 of Dondero 1** is misleading. Contrary to the impression conveyed at **paragraph 14, Dondero 1** while Mr Dondero may have known and regarded Mr Scott for many years as a person of “*great integrity*” Mr Dondero did not select and nor could he select the Control Person of the DAF. To have such a level of decision-making in respect of the DAF Structure would have compromised the charitable standing and purpose of the structure from the outset.
107. At **paragraphs 20-21 of Dondero 1**, Mr Dondero deposes that Mr Scott volunteered his resignation due to the fact that he was ill-equipped to handle various disputes which had arisen in connection with the Highland Bankruptcy proceedings on foot in the United States. Mr Dondero further and wrongly deposes to the effect that he was consulted on the transfer of Control Person from Mr Scott to myself, and that he was “*happy for Mr Scott to pass the Control Position*” to me.
108. For the avoidance of doubt, Mr Dondero was not consulted regarding my assumption as Control Person. This was a matter communicated by email between Mr Scott and myself. Mr Dondero learnt that I had been appointed as the Control Person on or after the relevant corporate transfers as of 25 March 2021. Once again, the impression wrongly conveyed by Mr Dondero is that the DAF and DAF Structure are subject to or under his control.
109. Mr Dondero’s account of how I came to act as the Control Person in these proceedings directly contradicts testimony he gave under oath on June 1, 2021. In that testimony Mr Dondero testified to the fact that I had replaced Mr Scott a month after it happened and Mr Dondero did not know beforehand (see extracts from Mr Dondero’s deposition dated 1 June 2021 at **MP1/ page 148 - 158**). Mr Dondero was clear that he learned of my appointment after the fact and that I was the one who told him. As set out in the transcript exhibited at **MP1/ page 149 - 150** Mr Dondero says, “*And unbeknownst to me, [Mark and Grant] agreed, and [Grant] sent over the appropriate documentation...and Grant signed it, and Mark Patrick became the trustee.*” Mr Dondero goes on to say that, prior to learning about me taking over for

Grant Scott, Dondero had no knowledge discussions were underway pursuant to which that would occur.

110. After assuming the role of Control Person I quickly formed the belief that Mr Scott had created potential liabilities for DAF and the DAF Structure as a result of failing to manage DAF and its assets independently of Mr Dondero, particularly where I suspected that Mr Scott had simply been authorizing investments proposed by Mr Dondero without due consideration for their appropriateness or any financial due diligence.
111. As set out in my evidence below, I have good reason to consider these investments may in fact have been for Mr Dondero's personal benefit and/or to further Mr Dondero's commercial interests, which were not aligned with the best interests of DAF, or the charitable purposes it was intended to serve. In effect, during Mr Scott's tenure as Control Person both the Highland Foundations and DAF were in effect under the common control of Mr Dondero which enabled Mr Dondero to utilize DAF and its assets as a private line of credit. As examples, (i) NexBank Capital Inc. (**NexBank**), which is a privately held bank where Mr Dondero has a significant ownership interest, sold land to DAF for tax benefits to NexBank, emails of which are exhibited at **MP1/ PAGE 159 - 162** and (ii) Highland (then under the control of Mr Dondero) sold or caused to be sold so many assets to DAF that DAF had no money to fund other proposed Highland investments, emails of which are exhibited at **MP1/ page 163 - 168**.
112. I knew that should this be the case, this would have profound legal, compliance, and tax consequences for DAF and DAF's assets. I also became aware that Mr Scott's compensation for DAF was determined by Mr Dondero without consulting any compensation study or expert advice, a copy of which communication is exhibited at **MP1/ page 169 - 170**.
113. My concerns that Mr Scott may have come under pressure to authorize transactions which may not have been in the best interest of the DAF (but rather Mr Dondero) were duly reinforced when I was unduly pressured by Mr Dondero. In mid-

2024, Mr Dondero (via his employees at NexPoint) proposed various investment opportunities that involved using DAF's assets, which would have been to the benefit of Mr Dondero and/or his affiliates but which in my opinion were not suitable investment opportunities for DAF. These unsuitable investment opportunities included rescue financing for a NexPoint fund in connection with an SASB refinancing and a NexPoint-led Delaware Statutory Trust investment regarding storage facilities. In response to DAF turning down these investment opportunities, Mr Dondero (through his assistant) demanded in August 2024 that I meet him three times per week to discuss DAF management and investments. In accordance with my fiduciary duties to DAF, I refused these demands but strongly suspected Mr Dondero sought to exert control over DAF, contrary to its tax compliance requirements and charitable purpose.

114. My review of the investments and dispositions from DAF revealed that Mr Scott had historically approved every related party transaction between DAF and entities owned or controlled by Mr Dondero. If I were to characterise the history of the way in which Mr Dondero treated DAF and the DAF Structure from 2011 until my appointment in March 2021, Mr Dondero used DAF through influencing Mr Scott's position as Control Person to (i) generate income for Mr Dondero's commercial gain; (ii) provide liquidity to Mr Dondero and his affiliate entities to advance his commercial interests and/or to reduce the tax exposure of Mr Dondero affiliated entities; and (iii) take high risk positions for below market returns in order to generate significant profit for his affiliate entities whilst retaining the upside for Mr Dondero's affiliate entities and continuing to enjoy significant personal tax benefits.

115. With respect to point (i) above:

(a) I understand that Highland had previously charged investment manager fees to DAF. From my review of the investment management arrangement it does not appear that Mr Scott took any step during tenure as DAF's Control Person to independently review or assess the fees that were being charged to DAF.

- (b) As mentioned above, NexPoint is an alternative investment firm founded by Mr Dondero in 2012 and in which Mr Dondero admits he holds an interest (**Dondero 1, paragraph 7**). I also recall in the first month of my tenure as DAF's Control Person, that Mr DC Sauter (general counsel of NexPoint) and Mr Isaac Leventon demanded DAF pay NexPoint a 2% base fee and 20% upside for managing DAF investments. I rejected this demand whilst fully appreciating that paying management fees would be a way for Mr Dondero to circumvent the "dominion and control" issues which would otherwise arise from a tax perspective. I was clear that my role as the DAF's Control Person was not to rubber-stamp Mr Dondero's proposals but rather to advocate for the DAF and its charitable purposes.
- (c) When Mr Dondero or his entities needed capital and wanted to offload an illiquid or undesirable investment at a premium rate, such assets have been sold or donated to the DAF. By way of an example, the DAF currently has exposure of US \$85 million to a syndicated debt facility where the borrower's sole investment is two wavelength spectrum licenses issued by the Federal Communications Commission. Such licenses are illiquid and speculative. In this case, I believe Mr Dondero (through both Highland and NexPoint entities) and his affiliates realised they were overleveraged in that investment and required DAF to buy it at par. I do not believe that DAF would be able to sell it at par because a maturity date extension signed in January 2025 required the borrower to pay steep fees and provide an increased interest rate, which are characteristic of troubled debt holdings.

116. With respect to point (ii) above:

- (a) I recall that in November 2023, Mr Dondero attempted to exert influence over me as the Control Person, by asking me to transfer (on behalf of DAF) approximately US\$1.5 million to offshore entities owned by Mr Dondero which I believed would be provided to Sentinel Reinsurance,

Ltd., a Cayman Islands limited company, (Sentinel) (or another entity above it in the Sentinel Structure) which I believe was then majority owned by Mr Dondero. I understand that the transfer was to settle the payment of outstanding legal fees which were wholly unrelated to DAF and its charitable purposes. The effect of this request would have meant that funds would be diverted from DAF and its charitable beneficiaries to further Mr Dondero's unrelated commercial interests. On the basis of advice received from Parsons McEntire McCleary PLLC and without waiving privilege, I determined the proposed transfer would be "impermissible and illegal" (as stated in the Carrington Memo at pages **MP1/ page 68**). It is important to note that at this time there were a number of outstanding lawsuits being conducted in the US in which the DAF Structure was being characterized as the alter ego of Mr Dondero. In accordance with my fiduciary obligations to DAF and in light of the real risk posed to the integrity of the DAF Structure by Mr Dondero's attempts to exert control, I refused to effect the transfer as directed.

- (b) Similarly in the fiscal year 2024, I noted that Mr Dondero was experiencing liquidity issues and did not want Skyview Group to pay my bonus compensation. As such, Mr Dondero directed human resources at Skyview to email Shawn Raver (at the time, an independent consultant who helped me with DAF matters) and instruct him to have the DAF advance 90% of my bonus with Skyview paying the remaining 10%. Under this arrangement, such payments were likely characterized as director fees and is yet another example of how DAF was used by Mr Dondero to resolve third party liquidity issues.
- (c) I understand that NexPoint (and other Dondero entities) had at various intervals sold to DAF its undesirable land situated in flood plains land and directed that investment funds related to Mr Dondero would sell other under or non-performing assets to the DAF to generate liquidity for Mr Dondero's entities. Again, the viability of these transactions does not appear to have been independently evaluated by Mr Scott in his

capacity as the Control Person. As a general matter, DAF's balance sheet was full of former NexPoint and other Mr Dondero-affiliated investments.

117. I also understand that Mr Dondero directed Mr Scott to send US \$1 million of DAF funds to the Tall Pine Group, in order to pay Mr Dondero's affiliates (such as Mr Ellington and Isaac Leventon) their bonuses at a time when paying those bonuses was blocked by the US Courts in the Highland Bankruptcy (see an invoice issued by Tall Pine Group LLC issued on 3 April 2020 at **MP1/ page 171**). Mr Scott caused DAF to make the US \$1 million payment, which was flagged in the Highland bankruptcy proceedings as part of a larger US \$17 million fraudulent transfer (see **MP1/ page 172 - 305**). With respect to point (iii) above, examples of the value destructive dealings and transactions that were imposed on DAF are set out in a report prepared by ValueScope dated 20 November 2024 (**ValueScope Report**). The ValueScope Report is exhibited at **MP1/ page 307 - 315**.

118. In summary, I observed that NexPoint would devise a scheme whereby it needed capital to consummate an initial investment and would engage DAF to provide bridge financing in exchange for a fixed rate of return with no upside beyond the fixed rate of return or repayment timeline. Under this arrangement, NexPoint would retain the upside (typically the common equity interests) and DAF would receive a preferred equity that would be extinguished upon repayment with a fixed interest rate. From industry experience, I do not believe that other lenders would agree to transactions on these terms, which is why I believe NexPoint would attempt to solicit funding from DAF. In effect, the DAF provided access to millions of dollars of its own assets to support NexPoint's (and by extension Mr Dondero's) commercial ventures.

119. The ValueScope Report also provides an overview of transactions and events (in terms similar to those described above) concerning DAF, which includes reference to the:

(a) The Campus at Legacy (TCAL) transaction - This was characterised in the ValueScope Report as “NexPoint’s request to DAF shifted US \$45 million of downside risk to DAF, while NexPoint retained full upside. Development of TCAL would accrue significant benefits to NexPoint and Dondero by enhancing their adjacent Texas Research Quarter...project” (**TRQ**) (**MP1/ page 308**). By way of background:

- (a) In September 2024, NexPoint requested that DAF acquire the TCAL property, which was advertised primarily as a land investment comprising approximately 80 acres, and featuring two office buildings generating approximately US \$800,000 in annual net operating income at 59.4% occupancy.
- (b) NexPoint had TCAL under contract for US \$45 million and it was anticipated that the acquisition would close in November 2024. After closing, I understand (see **MP1/ page 308**) that NexPoint intended to control the TCAL property and gradually wind down the tenant leases, with a view to demolishing the site to construct new life science manufacturing facilities.
- (c) TCAL would also be integrated into TRQ, a planned 135-acre life sciences innovation district centered around the former Electronic Data Systems campus in Plano, Texas, United States, which borders the TCAL property.
- (d) I understand that NexPoint and its related entities owned substantial debt and equity interests in the TRQ properties.
- (e) Due to insufficient cash flows generated from the office buildings on the TCAL property, DAF requested a two-year ground lease with NexPoint as the master tenant as part of the property acquisition. Additionally, DAF required that NexPoint be contractually obligated to purchase TCAL from DAF at the end of the ground lease and requested a security interest.

- (f) However, NexPoint declined, which would have left DAF with full downside exposure and limited upside potential.

(b) Preferred Dividend Financing

- (a) In August 2024, NexPoint approached DAF to provide NexPoint Storage Partners (**NSP**), which was managed by NexPoint Advisors, with US \$11 million in unsecured financing. DAF was told that the funds were required as a bridge loan for the sale and refinancing of NSP properties. However, DAF learned after conducting some due diligence that the real use was to make a US \$6.4 million payment on an upcoming preferred equity dividend payment NSP owed to an investor, Extra Space Storage. DAF ultimately turned down the deal, but this is another example of how Mr Dondero tried to use DAF as a personal banking facility to support his commercial ventures whilst I was the Control Person.
- (b) I also understand from the ValueScope Report that there was a failure to reduce risk in the deal by providing collateral, reducing outstanding NexPoint DST exposure, or by providing any put options.
- (c) The deal structure and the purpose for the funds also changed several times during the 2-week negotiation period.

(c) Small Bay II DST bridge loan – with respect to DST investments, the ValueScope Report states that: *“all three DST Investment made under prior leadership failed to be repaid from DST equity raise proceeds after full syndication, as opposed to full repayment on all new DST bridge loans that have been syndicated since Mark Patrick become the control person”* (see **MP1/ page 311**). By way of background and in relation to the Small Bay II DST bridge loan:

- (a) In or around June 2024, Mr Dondero caused NexPoint to demand that DAF roll over its equity from a prior transaction while, simultaneously, Mr Dondero’s trust, The Dugaboy Investment Trust (**Dugaboy**), (of which

Mr Dondero's family are the income beneficiaries and his sister, Nancy Dondero, is the trustee) which held a subordinate class of equity in the prior transaction, was paid at closing in full. In other words, Dugaboy received a payment in full despite being at a lower position in the payment waterfall, and DAF rolled over its investment. The return to Dugaboy was listed at US \$13,650,280 and DAF rolled over two classes of equity totaling \$6,404,958.

- (b) As seen from the ValueScope Report, across the various investments DAF has made in NexPoint entities or NexPoint-related deals, DAF has also faced challenges in obtaining various repayments from NexPoint.
- (c) These DST investments followed a similar pattern: DAF provided a DST bridge loan to ensure that the Delaware Statutory Trusts were adequately capitalised from inception, and DAF was to be repaid through the sale of trust equity interests to DST investors.
- (d) However, NexPoint would regularly fall behind on these repayments to DAF by several months at a time (which were funds raised from investors). As a result, I negotiated a clause in the Small Bay II DST bridging loan agreement, which required NexPoint to pay DAF the funds that were raised within 5 business days (see an LLC Agreement of NREA SB II Holdings LLC dated 13 June 2024, exhibited at **MP1/ page 316 – 350, and page 319** which provides for the five business day window). Ultimately, Mr Dondero was upset over my handling of the transaction and exercising independence to act for the DAF, as DAF obtained multiple benefits and protections by fighting NexPoint on Small Bay II, as outlined in the ValueScope Report.
- (e) At the date of the ValueScope Report, NexPoint had not made any repayments and had retained at least US \$8.26 million in funds with respect to Small Bay II and US \$0.7 million in funds with respect to Polo Glen DST (described below) that it was contractually obligated to pay to

DAF. In a settlement related to the Highland bankruptcy, I negotiated with Mr Dondero to cause Mr Dondero to release the US \$8.26 million (as detailed further in HCLOM Claim Narrative at **MP1/ page 351 – 354**).

(d) Polo Glen DST

- (a) DAF made another bridge loan (which I refer to as the Polo Glen DST bridge loan) in December 2019 part of which, has remained unpaid for approximately five years.
- (b) As far as I am aware, there remains about US \$0.7 million which NexPoint has refused to repay to DAF, despite having collected enough in asset management and various other fees to honour the repayment.
- (c) As further stated in the ValueScope Report, I also negotiated a put option to NexPoint and related parties in June 2024 as an option to reclaim the outstanding balance, which NexPoint failed to honour when it was exercised.

120. In this respect, and contrary to the perception which Mr Dondero seeks to convey in **Dondero 1**, Mr Dondero frequently sought to utilize DAF as a means of generating liquidity for his other commercial ventures which placed DAF and the DAF Structure at risk of being characterized as the alter ego of Mr Dondero. Not only does Mr Dondero seem to be ignorant of the risks he was creating for DAF and the untenable position he was creating for anyone occupying the Control Position, but to compound his flawed thinking, once I pushed back (with the approval of Mr Muphy as independent/oversight director) on his demands, he has proceeded to retaliate by actively taking adversarial position against me and Mr Murphy through the Highland Foundations. The JOLs do not seem to be remotely attuned to what is happening and have unconditionally adopted a position that can easily be traced back to Mr Dondero through the Highland Foundations for whom Johnstone Law has acted. DAF is further at risk of being found to be the alter ego of Mr Dondero's *alter ego* given how it has been utilised in legal proceedings arising from Mr Dondero's actions. As observed in the ValueScope Report: "*All DAF litigation arises*

from Dondero. Dondero adversaries have sued DAF, claiming that DAF is an alter ego of Dondero and his various entities. Certain causes place all of DAF's assets at risk to Dondero creditors and aggrieved parties. DAF must vigorously defend itself and its assets, which can be costly and time-consuming". The extensive suits in which the DAF has been caught up are divided between those that are cases brought or initiated by adversaries of Dondero and those that were actions at the recommendation of Dondero (see **MP1/ page 313**).

121. DAF's participation in numerous litigious proceedings will also inevitably result in the depletion of DAF's assets, which is to the detriment of the charitable purposes that DAF is meant to support. Mr Dondero has also been described as a "vexatious litigant" due to numerous and frivolous lawsuits brought by him either directly or indirectly, as discussed further in Mr Murphy's First Affidavit filed which is also being filed in opposition to this sanction application.

122. For the Court's benefit, a summary of these proceedings are as follows:

Turnover Proceedings - New York County Supreme Court (Index No 650744/23)

123. This claim was brought by UBS Securities LLC and UBS AG London Branch (collectively, **UBS**) to collect on a \$1.1 billion judgment UBS had obtained against various Dondero entities. The UBS claim against DAF related to assets acquired by CLO Holdco in December 2010. Mr Dondero is a defendant in these proceedings.

124. Only DAF was dismissed as a defendant in these proceedings by the New York Supreme Court for lack of personal jurisdiction over CLO Holdco. The lawsuit proceeds against the other defendants. Whilst that outcome was positive for DAF, as I have alluded to above insofar as DAF's assets are within the U.S. I understand that if DAF is found to be the alter ego of Mr Dondero, those assets may be at risk of attachment by UBS (see further below).

125. With respect to **paragraph 54 of Diaz 1**, Ms Diaz omits the fact that Mr Dondero, together with various entities he owns, are being sued by UBS in this action for US \$1.1 billion for, among other things, a Cayman Islands Monetary Authority-

regulated company issuing a fraudulent after-the-event insurance policy in order to move assets from an advised fund of Mr Dondero to his company, Sentinel. Mr Dondero's motion to dismiss and motion for discovery in that action were both recently denied, and proceedings have been fast tracked for summary judgment².

126. As such, Mr Dondero will soon face the prospect of having to find and possibly liquidate the necessary assets in order to satisfy a potential billion dollar judgment. This is an important fact to omit, especially where DAF has a significant value of assets under management, which Mr Dondero has repeatedly exploited or tried to exploit in the past, to DAF's actual or potential commercial detriment.

127. Should a judgment be made against Mr Dondero, there is a risk that DAF's assets could be paid for distribution to creditors and/or UBS, if (a) Mr Dondero assumes control of the DAF; or (b) should creditors successfully argue that the DAF is in fact Mr Dondero's financial alter ego. It is for these additional reasons that establishing independence between DAF and Mr Dondero was critically important to obtain.

Turnover Proceedings - Bankruptcy Court, Northern District of Texas (Index No 20-03060)

128. These proceedings were brought by Acis Capital Management (**Acis**) and Josh Terry (**Mr Terry**) as part of Acis Bankruptcy (**Acis Bankruptcy**).

129. An action against Mr Scott was also brought in the Acis Bankruptcy, and Mr Scott was indemnified by DAF as former Control Person.

Declaratory Judgment - District Court, Southern District of New York (Index No 5. 21-11059)

130. This action was brought by Mr Terry, a former business partner of Mr Dondero, alleging that DAF and CLO Holdco did not have standing to bring claims related to

² Please note that summary judgment in these proceedings could result in three different outcomes: (1) the Turnover Petition is granted and the property is delivered up to UBS; (2) the Turnover Petition is declined; or (3) the Court finds that there are facts at issue which would result in discovery being ordered and a hearing is listed.

Acis's management of assets held by Highland CLO Funding, Ltd. (of which CLO Holdco held a 49.015% interest).

131. Acis and Mr Terry sought this relief on the basis that, prior to my accession as DAF's Control Person, DAF had fallen into a pattern of commencing multiple lawsuits and then dismissing them before discovery commenced.

132. Notably, I understand that attempts to settle this litigation were hindered by Mr Dondero and / or NexPoint's involvement each of which was against any settlement because I believe they wanted the litigation against Mr Terry to continue.

Derivative Action - Royal Court of Guernsey (Civil Number 2479)

133. These proceedings were brought on behalf of a Guernsey domiciled entity called HCLOF seeking the distribution of cash being withheld from HCLOF by Acis , Mr Terry and U.S. Bank, **National Association**.

Bankruptcy Litigation - Bankruptcy Court, Northern District of Texas (21-03073)

134. The purpose of these proceedings was to seek an Order to reverse the cancellation of DAF's ownership interest in Highland Crusader Fund II, Ltd.

Bankruptcy Litigation - Bankruptcy Court, Northern District of Texas (21-03076)

135. In these proceedings, DAF was sued by the Litigation Trustee of the Chapter 11 Proceedings of Highland (**Highland Bankruptcy**) in connection with certain contributions received by DAF in 2016.

Bankruptcy Litigation - Bankruptcy Court, Northern District of Texas (19-34054)

136. These proceedings concerned general matters related to the Highland Bankruptcy, including recovery of redemptions payable that were withheld by Highland.

General Litigation - District Court, Northern District of Texas (24-00498)

137. This action (styled Highland Employee Retention Assets LLC v. James Dondero et. al.) was brought by Patrick Daugherty (former partner of Highland), who sued

Hunter Mountain Investment Trust, an entity managed by Rand Advisors, LLC, which is a DAF subsidiary, related to actions undertaken by Mr. Dondero.

The Business Court of Texas First Division (25-BC01B-0004)

138. Separately, Atlas IDF, LP, a Delaware limited partnership and, a DAF controlled entity, is suing an entity affiliated with Mr Dondero (NexPoint Real Estate Partners, LLC) and Dugaboy to collect on US \$13 million in demand notes, which were guaranteed by Dugaboy (the validity of these guarantees is now being contested in litigation). I understand that through Deborah Dietsch-Perez (Mr Dondero's counsel), Mr Dondero has attempted to delay the hearing in that matter on the basis that he anticipates gaining control of DAF as a result of these Cayman liquidation proceedings (which would enable him to control Atlas in those proceedings). DAF performed a valuation study and discovered that the notes have a heavy discount due to concerns with collectability. In other words, the valuation experts were concerned that Mr Dondero would not pay his debts. Upon demand (with ten days' grace provided), they were not paid; given they are demand notes, that was a default.

139. Mr Dondero has since tried to acquire Atlas's demand notes for US \$600,000 (see **MP1/ page 355 to 356**).

140. Atlas will continue to litigate against Mr Dondero for the collection of the demand notes in full.

United States District Court for the Northern District of Texas, Dallas Division (3:25-cv-477)

141. I am also aware of another example whereby Mr Dondero is utilising these Cayman liquidation proceedings in an attempt to delay collection efforts by DAF. In this case DAF is suing another entity affiliated with Mr Dondero to collect on a \$1 million debt obligation. Mr Dondero controls an entity, Highland Capital Management Services, Inc., that defaulted on an approximately \$1 million promissory note because Mr Dondero directed payment to a personal friend of his, Patrick McCabe (**Mr**

McCabe), who Mr Dondero may have believed that DAF owed money to, although I am not aware of any DAF obligation to or demand for payment from McCabe.

142. Broadly speaking, if Mr Dondero is successful at controlling the proceedings brought by DAF, I harbour concerns that he will direct the Highland Foundations to cease litigation and enter into settlements on terms that favour him. As a result, the Highland Foundations would provide Mr Dondero with an improper “private benefit” to the detriment of DAF.

143. Otherwise, I believe DAF has actively settled the other cases it had involvement with in 2025, and that its litigation expenses only relate to those cases mentioned above.

144. Shortly after my appointment as Control Person, Mr Dondero encouraged me to cause DAF to enter into litigation relating to Dondero’s former company (Highland - in bankruptcy), which led to me being found liable for sanctions for breaching a gatekeeper order for filing a lawsuit recommended by Mr Dondero. This was later overturned by the U.S. 5th Circuit Court of Appeals. DAF and I were frequently referred to as:

- (a) as an alter ego of Dondero,
- (b) part of Dondero’s web of entities, and
- (c) under the direct control and influence of Dondero.

145. I also exhibit a letter from Seyfarth Shaw LLP to the IRS dated 20 March 2025 at **MP1/ page 357 - 374 (Seyfarth Letter)**, which notifies the IRS that Mr Dondero has an inappropriate donor relationship with representatives of the Highland Dallas Foundation (**HDF**), which is the Supporting Organization of the Dallas Foundation (which is a tax-exempt community foundation under US law, and whose president is Julie Diaz), which potentially jeopardizes the tax exempt status of HDF. Specifically, the Seyfarth Letter drew the IRS’ attention to the fact that Mr Dondero

exerts direct control over HDF as a director, substantial contributor and president, and indirectly through his and his associates' influence over Highland Dallas' supported organization representatives on the HDF Board of Directors and the Dallas Foundation itself.

146. The Seyfarth Letter also provided the IRS with background on Holdco as HDF is a Participating Shareholder of Holdco, and ergo, Mr Dondero's attempts to control Holdco could have impacted HDF financially.

147. Having appreciated the precarious situation DAF and the DAF Structure had been placed in as a result of the conduct of Mr Dondero both generally and in exercising control over the structure, I immediately took the following actions to protect and mitigate against what I would characterise as "Dondero-recommended transactions":

- (a) I hired independent law firms (law firms that had not been previously engaged by Mr Dondero) to negotiate with Mr Dondero's investment professionals and counterparty lawyers on every transaction. This is something which, to the best of my knowledge and belief, Mr Scott never did during the decade he acted as the Control Person.
- (b) In order to verify any potential investment was properly underwritten, I hired and consulted with investment analysts such as ValueScope to make independent judgments before agreeing to a transaction. I believe that Mr Scott did not take steps to independently verify the potential investment opportunities presented to DAF by Mr Dondero. The ValueScope Report demonstrates the increased value and performance of DAF after I assumed the role of Control Person and retained investment analysts such as ValueScope to negotiate the financial terms for proposed transactions (see *Historical Performance*, ValueScope Report, **MP1/ page 310**). In particular the ValueScope Report notes that "*Under Mark Patrick's leadership, the DAF has delivered higher returns on bridge lending deals to NexPoint DSTs, all*

while managing risks more effectively than in transactions executed before Mark took over”.

- (c) DAF retained Paul Murphy as an independent director of Holdco and other DAF entities.
- (d) We adopted institutional grade investment committee guidelines.
- (e) We formed an investment committee to advise on investments with best-in-class managers, including the former Head of Harvard’s fixed income portfolio.
- (f) By terminating Skyview Group’s servicing contract, the DAF saved US \$1 million annually in service fees.

148. I took these steps knowing that the IRS would look favourably on any and all attempts made by the DAF to maintain its independence from Mr Dondero under the circumstances.

149. However, I realized that, despite the protocols I had established early in 2021, as the variety of litigation against the DAF was filed (including also DAF’s litigation against a Guernsey entity, HCLOF referred to above at [x]), that a common theme and refrain was clear: the DAF was regarded as Mr Dondero’s alter ego regardless of my legitimate actions to establish systems and protocols to attenuate that conclusion.

150. Additionally, I followed the various legal actions by UBS against Dondero relating to the Sentinel Fraud (as defined below), and I realized by early 2023 that both the Kirschner complaint against the DAF and potentially a future and significant claim to be brought by UBS (which eventually materialized) could jeopardize the DAF’s assets and expose them to Mr Dondero’s creditors and adversaries.

151. It is important to ensure the Court is appraised on the prior business dealings of Mr Dondero insofar as they demonstrate that in conducting his business affairs, Mr Dondero has previously placed himself in positions of influence and control for the

purposes of personal gain through unlawful transaction. This is demonstrated by the adverse rulings that were made against Mr Dondero (amongst others) during the course of the bankruptcy of Sentinel (a Cayman Islands based reinsurance company which is ultimately owned by Mr Dondero and Mr Ellington).

152. In summary, UBS Securities LLC and UBS AG London Branch (**UBS Entities**) alleged that the specific transfers of assets to Sentinel during 2017 (set out and defined below as the **2017 Transfers**) were executed after the UBS Entities obtained an order for summary judgment against Highland and other entities owned or otherwise affiliated with Mr Dondero. I refer to case *UBS Secs. LLC v Highland Cap. Mgmt. , L.P. ,* (index No. 650097/2009) (Supreme Court of the State of New York, New York County) (the **Underlying Action**).

153. In the Turnover Petition (as defined below) the New York court accepted that the 2017 Transfers took place at a time when the named respondents in the Underlying Action anticipated a US \$1.2 billion judgment against them. The judgment was awarded in UBS' favour in the Underlying Action, but since the entry of the judgment, UBS has only been able to collect a fraction of the interest (and none of the principal) on that judgment. The assets compromising the 2017 Transfers were transferred pursuant to an attendant Asset Purchase Agreement, as payment of the premium for an after-the-event insurance policy (the **ATE Policy**) to insure Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company and Highland CDO Holding Company against liability in the Underlying Action. It was also claimed that the ATE Policy was outside the usual course of business for Sentinel, as Sentinel had never previously issued this type of policy or one as large as the ATE Policy and would not have had the means to pay on the ATE Policy without the assets received following 2017 Transfers (the **Sentinel Fraud**).

154. In connection with the Sentinel Fraud, Stephanie Vitiello (author of the Vitiello memo) and other affiliates of Mr Dondero received an indemnity for their role in the Sentinel Fraud, a copy of which indemnity is attached at **MP1/ page 375 - 384**. It is my understanding that UBS's counsel also used this indemnity as evidence of

Stephanie Vitiello and other affiliates of Mr Dondero participating in the Sentinel Fraud.

155. In *UBS Securities LLC, UBS AG London Branch v. James Dondero, Scott Ellington, Highland COO Holding Company, Highland COO Opportunity Masters Fund, L.P., Highland Financial Partners, L.P., Highland Special Opportunities Holdings Company, CLO HoldCo, Ltd., Mainspring, Ltd., Motage Holdings, Ltd* (Index No. 6507 44/2023), the Supreme Court of the State of New York, New York County made a decision and order on 26 March 2025 (the **Turnover Petition**), finding that the Turnover Petition sufficiently alleged that:

- (a) Mr Dondero and Mr Ellington undertook fraudulent conveyances under DCL 276, when they devised and implemented a scheme to move all the remaining assets of, but not limited to, Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company and Highland Financial Partners, L.P. that could be subject to an impending judgment to Sentinel (the **2017 Transfers**). To the extent that Mr Dondero and Mr Ellington sought to dismiss these claims, their motions were denied.
- (b) Mr Dondero was the alter ego of another corporate vehicle called Mainspring, Ltd and that it was sufficiently alleged that Mr Dondero “*used Mainspring to enter into fake service agreements in order to pay HCM [Highland Capital Management, L.P.] insiders bonuses that they were otherwise ineligible to receive in HCM’s bankruptcy*” and “*used Mainspring to reward HCM employees who were loyal to him*”.
- (c) Mr Dondero “*used his dominance over Mainspring “to commit a fraud or wrong against the plaintiff, resulting in the plaintiff’s injury”*”, with respect to allegations that Mr Dondero used his position as the ultimate beneficial owner of Mainspring, “*to compel Sentinel to issue dividends, thereby draining assets that would have otherwise been available for collection by UBS*”. To the extent that Mr Dondero pursued a motion to dismiss claims which sought to hold him liable as the alter ego of Mainspring, that motion was dismissed by the Court.

156. In 2022, at a hearing in the Bankruptcy Court for the Northern District of Texas, where the Sentinel fraud was discussed, Judge Stacey Jernigan (**Judge Jernigan**) noted that she may make a referral to the U.S. attorney given the criminal conduct by Mr Dondero, Mr Ellington, and others to fraudulently hide assets from UBS and lie about it. I exhibit at **MP1/ page 385 – 517**, HCMLP Motion to Withdraw, Case No. 19-34054-sgj-11, Adversary Proceeding 21-3020-sgj.
157. I am also aware that Mr Dondero has a hatred of Judge Jernigan, who has consistently ruled against Mr Dondero. I understand it has been reported that a SEC whistleblower complaint was made against Judge Jernigan and I believe Mr Dondero subsequently directed an employee of one of his entities, Lucy Bannon (who is also an officer of the Highland Dallas Foundation) to leak the SEC whistleblower complaint to the press so they would cover it (see **MP1/ page 670 – 677**).
158. The actions by UBS (which I anticipated) underscore the need for clear independence between Dondero, his entities and affiliates on the one hand, and the DAF, including Holdco on the other.
159. In the middle of 2023, DAF's exposure to Dondero owned and controlled investments exceeded US \$100 million. I successfully worked to reduce this exposure throughout 2024. At the end of 2024, exposure was about US \$8 million. It was my belief that this exposure posed a material risk to the DAF because it could be used as alter ego evidence. This risk is also reflected in the ValueScope Report.
160. My actions to reduce the DAF's exposure to Dondero owned and controlled investments from US \$100 million to US \$8 million in the span of 18 months required DAF to turn down multiple deal proposals from Mr Dondero and his entities. In turn this led to increasing frustration from Mr Dondero at the beginning and throughout this period.
161. I managed the DAF while balancing (i) the legal and compliance need to reduce exposure (based on advice of Mr Alex McGeoch and Mr Mancino) to Mr Dondero owned and controlled investments and (ii) avoiding upsetting Mr Dondero and his

affiliates as I was acutely aware of Mr Dondero's litigious nature and believed that Mr Dondero would stop paying amounts due on DAF investments if a clean break between Mr Dondero and DAF was implemented.

162. These concerns were clearly well founded. Immediately following my resignation from Skyview (which was made on advice (privilege in which is not waived) and in order to assert more independence from Mr Dondero to better protect the best interests of the DAF) Mr Dondero directed the entities he controlled to cease all payments to DAF, including US \$8 million Mr Dondero owed on a deal called Small Bay II (referred above). In the following months, DAF sent letters attempting collection on three other investments. Mr Dondero has not met any of his obligations under them, requiring DAF to commence three lawsuits against Mr Dondero's entities for payment, each of which are ongoing.
163. Mr Dondero has, several times, commenced extensive, harassing litigation and/or engaged in other misconduct against his former employees and business partners. At **MP1/ page 553**, in the "Plaintiff Highland Employee Retention Assets LLC First Amended Complaint" records that Mr Dondero engaged in similar behavior against Joshua Terry, examples of Dondero and his affiliates' behavior is shown, which includes lying, fraud, and other types of misconduct and/or vexatious litigation against his former business partners Joshua Terry and Patrick Daugherty.
164. For the reasons set out herein, the background leading to the DAF restructuring is both factually and legally complex, as I understand counsel for DWF advanced at the Supervision Hearing.

E. RESPONSES TO FIRST AFFIDAVITS OF MS DIAZ

165. Save where already covered above, I address inaccuracies in Diaz 1 below. Paragraph references in this section are to paragraphs in Diaz 1.
166. With respect to Ms Diaz's evidence, she is wrong to describe and refer to DAF as a Fund for the reasons set out section x to above.

167. With respect to **paragraph 27 of Diaz 1**, this statement is inaccurate and misleading. I had informed several people affiliated with Highland Dallas Foundation, including Lucy Bannon and Lauren Short (NexPoint employees involved in personal relationships and charitable giving) that my daughter had formed this charity and I had asked whether they could donate US \$5,000. Furthermore, no director or officer of Creative HEARTS TX has received or will receive any compensation, as these roles are strictly voluntary.
168. I understand that Ms Bannon and Ms Short approached Mr Dondero and obtained his approval. Creative HEARTS TX was then added to the approved list of charities of the Highland Dallas Foundation, which I had not requested. However, these facts may not have been known to Ms Diaz at the time she swore Diaz 1 and I have done nothing ethically and legally wrong and/or inappropriate as Ms Diaz suggests.
169. With respect to paragraph 28, Fortaris is owned by Kevin Cronin, a private investigator used by Mr Dondero and a trusted advisor of Mr Dondero. As I explain further in this affidavit, Mr Dondero determined my compensation whilst I worked at Skyview. After I assumed the role of Control Person of DAF I performed my functions as an employee of Skyview and as Control Person simultaneously. Accordingly, I was concerned that Mr Dondero would attempt to exert influence over my actions at DAF by controlling my compensation received from Skyview.
170. My concerns were well founded in this regard. As mentioned above, the Court found that it was sufficiently alleged in the Turnover Petition that Mr Dondero had rewarded those who were loyal to him, which was suggestive that Mr Dondero had controlled remuneration as a means of leverage. I also exhibit at **,MP1/ page 708** a confidential update with respect to Mr Dondero's negotiations with the Santa Barbara Foundation (**SB Foundation**) which illustrates how Mr Dondero threatened to withdraw US \$1 million of funding to the SB Foundation because it elected to reject channeling funds to causes identified by Mr Dondero in favour of community causes. In response to the threat of having funding withdrawn, SB Foundation

agreed that a full slate of grants would be presented that were desirable to Mr Dondero, and would be allocated to the US \$1 million funding.

171. This emerging pattern of coercing others through financial control compounds my concerns that Mr Dondero may leverage the private funding which he is providing to run this liquidation, as a means of influencing the direction of the liquidation itself. He could do so by threatening to withhold funding (which the JOLs and their counsel depend on to cover their costs and expenses) from the JOLs and/or their counsel, thereby placing undue pressure on the JOLs and/or their counsel, which may affect the JOLs and/or their counsel's ability to conduct themselves impartially in this liquidation.

172. As previously mentioned, I had identified that it was imperative that DAF was and was seen to be operated independently from Mr Dondero. Given my employment at Skyview it was my view that I should be paid from DAF in respect of services I provided to DAF and its related entities as the Control Person. Not only would the compensation need to be provided independently of Skyview but the level of compensation would need to be based on an objective third party compensation valuation. An independent compensation review was provided for the role as Control Person. This was then independently verified by Mr Murphy.

173. Given my concerns that the influence and control that was being asserted by Mr Dondero over DAF may have given rise to allegations of DAF being an alter ego of Mr Dondero, I sought to consider ways in which my remuneration in respect of DAF could properly be paid without being subject to Mr Dondero's oversight, precisely because of the alter ego risk. I recall having two brief telephone conversations with Mr Cronin, as I explored whether my compensation (which would be paid by DAF) could be routed through Fortaris. I believed that, given historical payments by Mr Dondero's entities to Mr Cronin and Fortaris, payments by DAF to Fortaris would not raise suspicion with the Skyview employees monitoring DAF's finances. I shared with Mr Cronin an organisational chart and legal advice from Alex McGeoch, a tax expert at Hunton Andrews Kurth LLP, asserting that DAF can independently compensate me.

174. My intention in raising this suggested compensation structure with Mr Cronin was to insulate DAF from potentially significant tax liabilities if the charitable structure of DAF was not operated separately from Mr Dondero. In any event, this arrangement did not come to fruition because Mr Cronin told Mr Dondero about my proposal. However, any actions I took in relation to Mr Cronin were taken in good faith.
175. I may have flippantly said something similar to Dondero 1 where Mr Cronin said “*you can’t steal from yourself*”. The context was that I was speaking to Mr Cronin and attempting to describe that, in my capacity as DAF’s control person, I would be authorizing paying myself and that I was not “stealing” funds from anywhere. The basis for that statement was the written legal advice from Alex McGeoch (long-time DAF counsel) that I provided to Mr Cronin and attached at **MP1/ page 645**.
176. With respect to **paragraphs 29 to 30 of Diaz 1**, I believe that Mr Mancino did not mention material non-public information in his conversation with Mr Rosenberg and only mentioned the share price of NHT, which was public information of a public company. This did not constitute a MNPI and I note that Ms Diaz only says that it “could have” been. Counsel at Eversheds Sutherland, a respected firm with securities law expertise, concluded that the material shared was not MNPI and did not constitute a breach of Skyview’s policies and procedures, a copy of which is attached at **MP1/ page 647 - 650**.
177. With respect to paragraphs 31 to 35, Mr Mancino sent Holland & Knight a letter on February 14, 2025 informing them the numbers, specifically that “millions in director fees”, were incorrect. He also said that the legal fees (the vast majority were DAF expenses) did not exceed US \$10 million in 2024 and that they would continue to fall in 2025 and 2026.
178. My compensation was based on my role as CEO, CIO, and GC of DAF, and not my sole role as a director. As such these fees have been misclassified as “Director fees”. It was also calculated based on a third-party independent report which took into account compensation packages for similar roles and responsibilities. The

final decision to approve my compensation was reviewed by Mr Murphy, in his capacity as an independent director, following his consultation with the third party expert. My compensation was only made after Mr Murphy executed written resolutions taking into account all of the relevant matters.

179. Both Mr Dondero and Ms Diaz make much of my “irresponsible management” of DAF by spending too much on expenses. However, US \$6 million of the alleged US \$18.3 million in expenses are not in fact expenses. Rather, Mr Dondero purposefully omitted that there was also US \$6.1 million in income from a NexPoint-led transaction that more than offset the US \$6 million in expenses, so Mr Dondero falsely inflated the expense number by omitting the offsetting income and the net gain to DAF from the transaction and those expenses. These are lease payments a DAF subsidiary receives in connection with an investment led by Mr Dondero called Skorpios (also known as NexPoint Life Science III). DAF is both lessee and lessor and generates around US \$6.1 million per year from the arrangement. As such, DAF nets a profit each year (US \$127,937 in 2024 and US \$131,775 is anticipated in 2025, increasing substantially each year and maxing out at \$364,815 in year 14), which is reflected in the spreadsheet attached at **MP1/ page 651 - 669** and provided by NexPoint.

180. I also met with Ms Diaz and Torrey Littleton on October 10, 2024 and Ms Diaz did not raise any concerns with respect to those now raised in Diaz 1. At that meeting, I also suggested that I would like audited financials of DAF (which had never been provided before) within the next two years and I had hired a third party accounting service provider for that purpose. On the same day, I also had a phone call with Debbie Wilkerson, the CEO of the Highland Kansas City Foundation, Inc. who similarly did not raise any concerns with me. Furthermore, on November 20, 2024, ValueScope and Mr Mancino spent several hours presenting to Holland & Knight (counsel to the Highland Foundations) on the finances of DAF, its investments, and its outlook which I understand from discussing with ValueScope and Mr Mancino afterward was received very positively by Holland & Knight.

181. The next communication from the Highland Foundations that I received was the No Confidence Letter (as defined in Diaz 1) which was not actually received until December 2024 and left me in disbelief given that no questions or concerns had been raised with me previously. I was left confused why they had not voiced any concerns with me directly despite repeated affirmative outreach. Regardless, following the No Confidence Letter, on December 11, 2024, Mr Murphy presented to Holland & Knight regarding the DAF's corporate governance and investments, and which I understand was so well received, that Mr Murphy was invited by Michael Stockham, a partner at Holland & Knight, to provide the same presentation directly to the Highland foundation CEOs. The ValueScope Report also shows that the DAF had outperformed the S&P 500 during my tenure at DAF, and the Highland Foundations had been receiving quarterly financial updates from ValueScope for years.
182. With respect to paragraph 38, Ms Diaz had received an asset list via the ValueScope DAF quarterly financial update on January 7, 2025 and I found her request for the same information again on 23 January 2025 to feel quite orchestrated. Historically, these reports were the only information the Highland Foundations received and, in any event, exceeds what they are entitled to under the organizational documents given their status as passive discretionary holders.
183. With respect to paragraphs 46 to 49, the Highland Foundations were not entitled to notice but this change was done to use a Cayman (instead of Delaware) General Partner and to create more independence from Mr Dondero, for all the reasons above. I understand that under Cayman Islands law, a general partner of an exempted limited partnership must be a Cayman-registered entity whether as an exempted company or a company registered under Part IX of the Companies Act.
184. With respect to **paragraphs 50 to 52 of Diaz 1**, Ms Diaz omits to explain Highland Foundations' role in opening the Texas AG (as defined in Diaz 1) investigation but in any event, the Texas AG has taken no action outside of sending an initial letter to request that certain DAF entities preserve documents. I believe the Highland Foundations and Mr Dondero reached out to the Texas AG to open an investigation

and use that as a data point in this matter. Mr Dondero's propensity to abuse a "complaint" filing is well known. As an example, refer to the SEC whistleblower complaint against Judge Jernigan described at **MP1/ page 670 - 677**. DAF is actively attempting to cooperate with Texas AG, but the Texas AG has been non-responsive to repeated requests to meet with me and my advisors.

185. As such, there is no dispute between myself and Mr Dondero, but simply a dispute between Mr Dondero and the assets under DAF's management which he seeks to control. To illustrate that point, in November 2024, I was offered through Mr Dondero's attorneys at the Ashcroft Law Firm (and its partner Johnny Sutton), a Caribbean Island and large sums of money if I agreed to step down from the DAF during a call on 22 November 2024. It was also intimated to me by Ashcroft that this offer was also made on behalf of the Highland Foundations. I believe Mr Dondero's intention in causing his attorneys to propose this was to remove me and insert someone who would not second guess his investment recommendations and would permit Mr Dondero to again use DAF (as was the case under Mr Scott's tenure as Control Person) for Mr Dondero's personal benefit. Needless to say, I turned down Mr Dondero's offer.

186. For these reasons, it is vitally important that the JOLs obtain independent counsel to ensure they are properly and impartially advised. The central issues in this liquidation concern the actions I took, with Mr Muphy's oversight, to attenuate direct and indirect influences from Mr Dondero, including through his control of the Highland Foundations whom Johnstone Law previously represented.

187. Furthermore, I understand that Mr Andrew Johnstone of Johnstone Law contacted My Murphy on February 12, 2025, purporting to represent "*Charitable DAF Fund 2 LP (DAF 2)*". I understand that Mr Murphy referred this enquiry to Walkers, who were legal counsel to Holdco and DAF at the relevant time.

188. The purpose of this unsolicited outreach was unclear but it is evident that Johnstone Law as DAF 2 lawyers wanted to discuss DAF's assets. Why they wanted to do so and to what end has never been revealed. Critically, even assuming DAF 2

was a legitimate entity (presumably another exempted limited partnership), there is nothing in Johnstone Law's email to indicate (a) who the general partner of DAF 2 was (b) who the limited partners of DAF 2 were and (c) what possible interest any of them would have in confidential information concerning the assets of DAF. As if these concerns were not concerning enough, it subsequently transpired that DAF 2 does not even exist.

189. Following an entity search, Walkers determined that DAF 2 did not exist. I understand that Walkers followed up with Johnstone Law to clarify which entity they represented and where it was domiciled. Johnstone failed to respond to repeated follow ups and failed to provide context. It is my belief that through Johnstone Law, as was the case with Ashcroft, Mr Dondero was seeking to access Mr Murphy as a director of Holdco with a view to exercising control over DAF and its assets.

F. RESPONSES TO FIRST AFFIDAVIT OF MR DONERO

190. With each section that to the extent I do not specifically respond to the assertions made in Dondero 1 above, I wish to address the inaccuracies of that evidence below. Paragraph references in this section are to references in Dondero 1.

191. With respect to **paragraph 13 of Dondero 1**, there are no restrictions in the organizational documents of DAF that prevent the admission of additional charitable beneficiaries. Furthermore, DAF exists to benefit charities, not only the Highland Foundations.

192. With respect to **paragraphs 29 to 30 of Dondero 1**, I own shares in Holdco in my personal capacity, and any reference to me owning the DAF would be a reference to my ownership of the GP and the HoldCo Management Shares. However, it is completely inaccurate to say that I could pay myself however I pleased; that represents a fundamental misunderstanding of exempted limited partnerships generally but also misunderstands the nature of the DAF structure. I expressed to Mr Dondero that DAF needs to independently determine the value of my services without Mr Dondero's input, or input from an entity controlled by Mr Dondero. My

reasons for this were to reduce any susceptibility to coercion from Mr Dondero (both directly and indirectly), which could have been exercised by interfering with my compensation, and create independence for DAF.

193. In relation to **paragraph 31 of Dondero 1**, it is highly unlikely that the expense summary could have been produced in June 2024 because, due to a lag in reporting times, June numbers would not have been available until later in the year. I received June 2024 numbers in October 2024.
194. With respect to **paragraph 35 of Donder 1**, the Vitiello memo **referred to in Dondero 1** correctly concludes that I did not engage in insider trading under U.S. securities laws. This is in relation to a put option that was not exercised under a contract. Failure to exercise the put option jeopardizes Highland Dallas Foundation's tax-exempt status and, according to the Seyfarth Letter at **MP1/ page 361**, may have been an attempt to protect Mr Dondero from having to address the precipitous fall in fair market value shortly after the gift was made, as there would have been a requirement to file Form 8282 "*Donee Information return*" that would have revealed this information.
195. By way of background with respect to the Put Option, and as explained in the Seyfarth Letter at **MP1/ page 360**:

Mr. Dondero's family trust, The Dugaboy Investment Trust ("Dugaboy"), a grantor trust, allegedly owns 99.9% of NexPoint Advisors. Mr. Dondero is the income beneficiary of Dugaboy and his sister, Nancy Dondero, is the family trustee of Dugaboy.

One of the entities affiliated with and advised by NexPoint Advisors is NexPoint Hospitality Trust, an open-ended real estate investment trust (the "REIT") based in Ontario, Canada. The REIT was formed in 2018 for the purpose of acquiring and operating income-producing hotel properties in the United States. The REIT's investment interests (called "Units") were listed for public trading on the TSX Venture Exchange of the Toronto Stock Exchange ("TSXV").

Dugaboy contributed 1,500,000 Class B non-voting Units of the REIT to Highland Dallas on , December 24, 2019 and also granted Highland Dallas an "embedded" put option to sell them back to Dugaboy for \$6.19 per share (the "Put Option"). The net asset value of the REIT as of December 24, 2019 was \$6.19 per share. The Put Option is exercisable at any time prior to December 24, 2026...

196. The Seyfarth Letter concluded that based on public filings with the U.S. Securities and Exchange Commission, REIT had approximately 29,353,66- Units, of which 82.52% were owned by entities affiliated or controlled by Mr Dondero. Furthermore, I understand that the REIT is to be dissolved which means that if the Put Option is not exercised before that point, then, according to the Seyfarth Letter, this will result in a US \$9 million *"inappropriate windfall to both Dugaboy and Mr Dondero"*.

197. As explained in the Seyfarth Letter at **MP1/ page 360**:

"The significance of the Put Option at that time is that the Class B non-voting Units could be treated for valuation purposes as equivalent to the Class A voting Units, which were owned or controlled by Mr. Dondero. Therefore, for purposes of determining their fair market value on the date of the charitable contribution, the valuation firm could value them as if they were voting Units unreduced by a 2.9% discount for lack of control. That allowed Dugaboy to claim a charitable deduction in 2019 of \$11,505,000, which we assume passed through to Mr. Dondero as the income beneficiary of Dugaboy."

198. It was public information that NHT had declined from a price per unit of \$7.67 in December 2019 (when the donation occurred) to \$0.20 in August 2024, representing a 99.7% decline. In fact, whilst the figures quoted in the Seyfarth Letter vary slightly, it was calculated that as of 22 November 2024, 1,500,000 Units were only worth \$22,500, which is less than 1% of the Put Option value of US \$9,285,000. Additionally, NHT disclosed on August 2, 2024 (26 days before I spoke with the Dallas Foundation) in a document titled "Management's Discussion and Analysis

of Financial Condition and Results of Operations that there was “a potential risk about [its] ability to continue as a going concern and, therefore, realize its assets and discharge its liabilities in the normal course of business.” A copy of the NHT disclosure is attached at **MP1/ page 678 - 707**. Therefore, the information I disclosed was not “material” or “non-public” and would not have resulted in a violation of U.S. securities laws even if traded upon by Highland Dallas Foundation. This is also confirmed by the Eversheds Memo exhibited at **MP1/ page 647 - 650**.

199. Furthermore, and with reference to the Seyfarth Letter, it is important to not lose sight of the fact that the Put Option was in effect an interest free loan of US\$9,285,000 for Mr Dondero and Dugaboy while the Put Option remains outstanding and unexercised.
200. For the purpose of responding to the JOLs’ sanctions applications, I do not expand here on the factual inconsistencies which I have identified between the Vitiello memo and Dondero 1 and Diaz 1, but reserve all my rights to do so during the course of these liquidation proceedings.
201. With respect to **paragraph 36 of Dondero 1**, my resignation was not abrupt. It was the culmination of actions I had been working toward to create independence between the DAF and Mr Dondero for almost two years. I was not aware of any investigation or any accusation of wrongdoing on my part. The Vitiello memo was finalized after my resignation, not before.
202. With respect to **paragraph 37 of Dondero 1**, the Skyview services agreement required 180 days’ notice to terminate, and was not terminated effective until March 31, 2025. Whilst I have 4 years of investment management experience, DAF also has a wealth of other investment advisors, including:

- (a) Investment committee
- (b) Investment advisors
- (c) Investment houses and banks with investment functions

- (d) Real estate advisors
- (e) Security and portfolio monitoring

203. With respect to **paragraphs 38 to 39 of Dondero 1**, Hunter Mountain's interest was sold to a DAF subsidiary based on an independent third-party valuation report and because it was sold to a DAF subsidiary, there was no dissipation of assets.

204. Furthermore, Mr Dondero's proposal that he is a potential buyer of Hunter Mountain is misleading. Mr Dondero's attorneys (Ms Dietsch-Perez at Stinson) have argued that Hunter Mountain owes Dugaboy and other trusts US \$65 million in debt obligations. These debt obligations were released by the plain language of a settlement agreement entered into in 2022, although I understand that Mr Dondero disputes this. Given this dispute, it is doubtful whether Mr Dondero would have paid any meaningful amount for Hunter Mountain, outside of credit bidding the debt he believes he is owed.

205. As mentioned above, a valuation study was performed on the Hunter Mountain interests, and the purchase price is in accordance with this valuation study. The seller made an attempt to find other buyers by contacting distressed asset buyers, but there was little interest given that there was a contingent claim in the Highland Bankruptcy that would not be paid out until litigation ceased.

206. For the purpose of responding to the JOLs' sanctions applications, I do not expand further on the issue here but I again reserve all my rights to do so during the course of these liquidation proceedings.

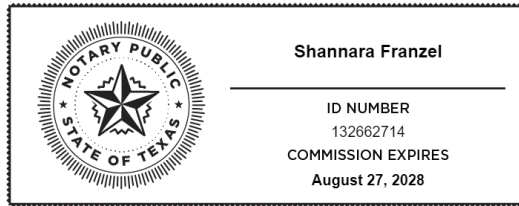
CONCLUSION

207. For the reasons stated above, I respectfully request that the JOLs' sanction application is denied.

SWORN to at Wise Texas)
on this 4th day of June 2025) *MRP*
) **MARK ERIC PATRICK**

BEFORE ME: *Shannara Franzel* 132662714
08/27/2028

NOTARY PUBLIC



Electronically signed and notarized online using the Proof platform.

EXHIBIT 18



GRAND COURT OF THE CAYMAN ISLANDS
SERVICES DIVISION

CAUSE NO.: FSD 116 of 2025 (JAJ)

IN THE MATTER OF SECTION 107 OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF ORDER 5 OF THE COMPANIES WINDING UP RULES
(2023 CONSOLIDATION)
AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL
LIQUIDATION)

SUMMONS

Let all parties concerned attend before the Honourable Justice Asif KC in Chambers at the Law Courts, George Town, Grand Cayman on _____ 2025, upon an application by DFW Charitable Foundation (**DFW**) being a non-profit, charitable corporation registered in the State of Delaware, United States of America, under s.501(c)(3) of Title 26 of the United States Code (the Internal Revenue Code 1986) and a contributory of the Company, Charitable DAF Holdco, Ltd (in official liquidation) for the following orders and directions, namely that:

1. Margot MacInnis and Sandipan Bhowmik, the current Joint Official Liquidators of the Company (**Previous JOLs**) be removed as joint official liquidators and Jeffery Stower and Neema Griffin of Teneo (Cayman) Ltd, Ground Floor, Harbour Place, 103 South Church Street, P.O. Box 10245, George Town Grand Cayman, KY1-1003, Cayman Islands be appointed as the replacement joint official liquidators of the Company (**Replacement JOLs**).

This Summons was issued by Baker & Partners (Cayman) Limited, PO Box 636, Buckingham Square, 720 West Bay Road, Cayman Islands, KY1-1107 for and on behalf of DFW Charitable Foundation.

2. Save for paragraph 2 of the Order dated 6 May 2025 appointing the Previous JOLs (**Appointment Order**), the Appointment Order shall apply mutatis mutandis to the Replacement JOLs.
3. The Previous JOLs shall, forthwith, deliver to the Replacement JOLs the Company's books and records and a copy of the Previous JOLs' liquidation files.
4. The Previous JOLs shall, within 28 days of the Replacement Order, prepare and deliver to the Court a report and accounts.
5. Such other orders and directions as this Court considers appropriate.
6. Further or other relief.
7. An order that the costs of and occasioned by this Summons be provided for.

Dated this 19th day of August 2025

Baker & Partners (Cayman) Limited

Baker & Partners (Cayman) Limited

TO: The Registrar of the Financial Services Division

AND TO: Maples & Calder (Cayman) LLP, Attorneys-at-Law for the Previous JOLs

Kobre & Kim (Cayman), Attorneys-at-Law Paul Murphy

Campbells, Attorneys for Mark Patrick (Management Shareholder of the Company) and CDM CFAD LLC; CDH GP, Ltd (as General Partner for and on

This Summons was issued by Baker & Partners (Cayman) Limited, PO Box 636, Buckingham Square, 720 West Bay Road, Cayman Islands, KY1-1107 for and on behalf of DFW Charitable Foundation.

FSD2025-0116

Page 3 of 3

2025-08-19

behalf of Charitable DAF Fund, LP and in its capacity as General Partner);
CLO Holdco, Ltd.

Carey Olsen, Attorneys-at-Law for Highland Dallas Foundation, Inc., Highland
Kansas City Foundation, Inc. and Highland Santa Barbara Foundation, Inc.

TIME ESTIMATE: The estimated length of the hearing of this Summons is 2 days

This Summons was issued by Baker & Partners (Cayman) Limited, PO Box 636,
Buckingham Square, 720 West Bay Road, Cayman Islands, KY1-1107 for and on behalf of
DFW Charitable Foundation.

FSD2025-0116

2025-08-19

EXHIBIT 19



Fourth Affidavit
Mark Eric Patrick
On behalf of DFW Charitable Foundation
Sworn on 19 August 2025
Exhibit MP4

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO.: FSD 116 of 2025 (JAJ)

**IN THE MATTER OF SECTION 110(3) OF THE COMPANIES ACT (2025
REVISION)**

**AND IN THE MATTER OF CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL
LIQUIDATION)**

FOURTH AFFIDAVIT OF MARK ERIC PATRICK

I, **MARK ERIC PATRICK**, of 6716 Glenhurst Drive, Dallas, Texas, United States of America, 75254, do say as follows:

1. I am duly authorized to provide this fourth affidavit in these proceedings on behalf of DFW Charitable Foundation (**DFW**).
2. I am the same Mark Patrick who swore and filed my first affidavit for and on behalf of DFW in these proceedings of on 4 June 2025 (**DFW Affidavit**) made in support of DFW's position at the sanction hearing heard by the Grand Court on 24 June 2025 (**Sanction Hearing**).
3. As set out in the DFW Affidavit, I am the registered director and sole shareholder of DFW which is the majority Participating Shareholder of Holdco.

THIS AFFIDAVIT is filed by Baker and Partners (Cayman) Limited, attorneys for DFW Charitable Foundation, whose address for service is Buckingham Square, 720 West Bay Road, PO Box 636, Grand Cayman KY1-1107, Cayman Islands (Ref: DFWC.001.001)

4. The contents of this affidavit are, save where stated otherwise, within my own knowledge and are true. Where the statements made in this affidavit are not within my own knowledge, they are true to the best of my belief, and I have indicated the source of my information. In making this affidavit I do not waive legal professional privilege in respect of any documents, information or advice referred to herein and no such waiver shall be implied.
5. There is now produced and shown to me a paginated bundle of documents marked “MP4”. References in this affidavit to pages in MP4 are in the form [MP4/Tab [xx]/page [xx]].
6. I address herein certain facts and matters that have taken place during the conduct of the liquidation and in light of the events described in Ms MacInnis’ Fifth Affidavit filed on 15 July 2025 (**MacInnis 5**), Ms MacInnis’ Sixth Affidavit sworn on 11 July 2025 (**McInnis 6**), the First Affidavit of Ms MacInnis filed in the FSD Proceedings (as defined below) and sworn on 15 July 2025 (**FSD Affidavit 1**) and Second Affidavit of Ms MacInnis filed in the FSD Proceedings, sworn on 24 July 2025 (**FSD Affidavit 2**).
7. DFW reserves the right to provide further evidence to supplement the issues canvassed in this affidavit in support of the application for removal of the Current JOLs.
8. This affidavit proceeds as follows:
 - (a) Introduction and Background
 - (b) Dondero Control and Influence over the Highland Foundations
 - (c) JOLs lack the requisite impartiality and independence:
 - (i) Misuse of *ex parte* jurisdiction of the Court
 - (ii) Advancement of the interests of the Highland Foundations / Mr Dondero
 - (iii) Funding Arrangements:
 1. Misleading representations

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2. Inappropriate in all the circumstances

(iv) Leveraging of the Cayman liquidation and profligate litigation

(d) Appointment of Replacement JOLs

(e) Conclusion

A. INTRODUCTION AND BACKGROUND

9. This affidavit is made in support of a summons dated and filed on [] August 2025 (**Removal Summons**) which seeks the removal and replacement of the current joint official liquidators Ms Margot MacInnis and Mr Sandipan Bhowmik (**Current JOLs or JOLs**) of Grant Thornton Specialist Services (Cayman) Limited on the terms set out in the Removal Summons. As set out in paragraph 1 of the Removal Summons and paragraphs 193 to 198 below, on seeking the removal of the Current JOLs DFW nominates Mr Jeffrey Stower and Ms Neema Griffin as replacement JOLs (**Replacement JOLs**). Their qualifications are set forth in paragraphs 195 to 196 below.

10. In connection with these matters and for the reasons I set out herein, DFW is of the view that the JOLs have failed to conduct the liquidation of the Company with the requisite independence such that there is a complete breakdown of trust and confidence between the Court's officers and DFW.

11. For the reasons I depose to herein, it is my belief that the conduct of the Current JOLs is such that a fair-minded, objective stakeholder would reasonably conclude that the Current JOLs are lacking the impartiality and independence required for the office such that they should be removed. I provide further detail in respect of these matters in **Section C** below but in summary, the JOLs have:

- a. Persistently and without proper cause invoked the Courts jurisdiction *ex parte*
- b. Failed to provide full and frank disclosure on making applications on an *ex parte* basis

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- c. Adopted and pursued the agenda of the Highland Foundations / Mr Dondero to the prejudice of DFW
 - d. Failed to engage meaningfully with proposed terms of a Protocol
 - e. Made misleading representations regarding the Funding of the JOLs and their advisors
 - f. Failed to safeguard the Cayman liquidation process and prevent profligate litigation
 - g. Failed to disclose relevant US claims pending against Mr Dondero and Mr Ellington
 - h. Operated the liquidation of the Company to the advantage of the Highland Foundations / Mr Dondero
12. The conduct of the JOLs since their appointment has demonstrated not a circumspect attitude as to the DAF Restructuring and all relevant parties but a biased, concluded view that the transactions comprising the DAF Restructuring were improper exercises by myself and My Murphy of the powers and authority vested in us as directors of the Company. This is compounded by the fact that in the same breath that the Current JOLs purported to be investigating the DAF Transactions as referred to in their First Report to Contributors as of 2 July 2025 (**First Report**), they had prepared and would imminently seek leave to commence the FSD Proceedings (as defined and addressed in the following paragraph 13). In all the circumstances, it is my honest belief that a fair-minded objective stakeholder would reasonably consider the Current JOLs to lack the requisite impartiality and independence to effectively fulfil the duties conferred on them by their office.
13. I have given three affidavits in these liquidation proceedings and note that, since my third affidavit was filed the following procedural developments that are relevant to the conduct of the Company's liquidation have occurred:

(a) **24 June 2025:**

THIS AFFIDAVIT is filed by Baker and Partners (Cayman) Limited, attorneys for DFW Charitable Foundation, whose address for service is Buckingham Square, 720 West Bay Road, PO Box 636, Grand Cayman KY1-1107, Cayman Islands (Ref: DFWC.001.001)

- (i) Without setting out the legal basis on which they had any interest in the proceedings, the JOLs sought to intervene in a settlement agreement in the Dallas Bankruptcy Court which is accretive to the asset base in the DAF Structure by asking the Dallas Bankruptcy Judge to adjourn the settlement hearing for 45 days and that the judge “*may consider whether a brief adjournment of the Settlement Motion Hearing would be appropriate to afford the JOLs additional time to progress their investigation of the HMIT Entities.*” I exhibit at **MP4/Tab 1/Pages 1 to 3** a copy of that correspondence issued by the JOLs and referred to as the **HMIT Adjournment Letter**.
 - (ii) This application was made in circumstances where Mr Dondero, on behalf of his family trust – The Dugaboy Trust - had made an identical application on 9 June 2025 which was refused (discuss this further at paragraph 52(b) herein).
 - (iii) The JOLs request was heavily relied on by The Dugaboy Trust in opposing the settlement application but was rightly ignored by the Dallas Bankruptcy Court and the settlement agreement was approved.
- (b) **2 July 2025:**
- (i) The Current JOLs issued the First Report
 - (ii) the Highland Foundations issued a Petition in the Dallas Business Court seeking temporary restraining orders (TRO) and temporary injunction (TRI) and the emergency appointment of a receiver (**TRO Proceedings**).
 - (iii) The Dallas Business Court heard the TRO Proceedings and declined to make the orders sought by the Highland Foundations and those proceedings remain pending.
- (c) **4 July 2025:** the Current JOLs prepared an *ex parte* application seeking leave of the Court to commence proceedings on the (**FSD Sanction**) in the

form set out in the Writ of Summons subsequently filed on 15 July 2025 (**Writ**) and supported by the fifth affidavit of Ms MacInnis (**MacInnis 5**).

- (d) **9 July 2025:** the JOLs convened and conducted the First Meeting of Contributors and constituted a Liquidation Committee.
- (e) **11 July 2025:** the Current JOLs issued an *ex parte* Summons seeking sanction for the JOLs to enter into a funding agreement with a Cayman incorporated LLC by the name of Crossvine Litigation Funding LLC (**Crossvine**) (**Funding Application**), which is supported by the sixth affidavit of Ms MacInnes (**MacInnis 6**).
- (f) **15 July 2025:** the Current JOLs:
 - (i) Filed the Writ, supported by two Affidavits of Ms MacInnis and exhibits (respectively, **FSD Affidavit 1** and **FSD Affidavit 2**; **FSD Exhibit 1** and **FSD Exhibit 2**) (exhibited at **MP4/Tab 2, Tab 3, Tab 4** and **Tab 5 at pages 4 to 1617**) and referred to herein as the **FSD Proceedings**);
 - (ii) Made an application for an injunction in support of the FSD Proceedings pursuant to a Summons (**Cayman Injunction**).
- (g) **21 July 2025:**
 - (i) The Current JOLs filed a Petition seeking Chapter 15 Recognition of their appointment as liquidators of the Company.
 - (ii) The CDM Entities, as defendants to the FSD Proceedings, issued a Summons for Directions in respect of the Cayman Injunction.
- (h) **31 July 2025:** The Parties to the FSD Proceedings presented a Consent Order to the Hon. Justice Parker providing a procedural timetable for the hearing of the Cayman Injunction along with the summons issued by DFW

on 9 June 2025, and the Summons issued by the CDM Entities dated 12 July 2025¹.

14. I repeat **sections B, C and D** of the **DFW Affidavit** and refer this Honourable Court to **paragraphs 18 to 22, 29, 87 to 96** of the **DFW Affidavit** for background concerning the DAF Restructuring. My evidence canvassing the nature of the dispute relating to the DAF Restructuring can be found at **paragraphs 38, 46, 56, 61 to 62** of **DFW Affidavit**.
15. Furthermore, the validity of the Assignment Agreement (as defined and described further at paragraphs 71 to 73 of Mr Paul Murphy's First Affidavit sworn and filed on 4 June 2025 (**Murphy 1**)) is also in dispute.
16. I also exhibit at **MP4/Tab 6/pages 1618 to 1620** an opinion obtained by CDMCFAD, LLC (**CDM**) from a tax, assurance and advisory firm called Weaver dated 30 May 2025 (**Weaver Opinion**). The Weaver Opinion considers the fairness of the redemption proceeds paid to the Highland Foundations in their capacity as Participating Shareholders following the Company's redemption of its Limited Partnership interest.
17. The Weaver Opinion concurs with both the ValueScope and FTI conclusions mentioned in **FSD Affidavit 1**. The Weaver Opinion goes further and indicates that the redemption payments made to the Participation Shareholders in the amount of US \$1.6 million to the Participating Shareholders (other than DFW), was fair consideration for the Company's redemption of its limited partnership interest in DAF LP (see **MP4/Tab 6/page 1620**).
18. A copy of the Weaver Opinion was provided to the Current JOLs on 1 July 2025 when it was uploaded to a data room hosted by US attorneys, Shields, and which the Current JOLs have access to. The Current JOLs have had the benefit of the Weaver Opinion for some 4 weeks but fail to make any mention of this in their First Report, creating substantial doubt over the assertions made by the Current JOLs in the FSD Proceedings. Further I note that in the evidence for leave to bring the Injunction

¹ At the time of swearing this affidavit, the Cayman Injunction has not been listed but the Court has been asked to list the matter for 11-12 November 2025.

Application, no mention is made of the Weaver Opinion notwithstanding its relevance to the veracity of the claims that are asserted in the Writ which the Injunction Application has been brought to protect.

19. In essence, the dispute at the core of the liquidation of the Company centres on the validity of the DAF Restructuring, which has been mischaracterised as invalid or void and it is wrongfully allegedly by the Current JOLs to be part of a scheme to defraud the Highland Foundations of their alleged interests in the DAF Structure (see **paragraph 14, Diaz 2**).
20. The JOLs have, in certain material instances, simply parroted the complaints expressed by the Highland Foundations in the just and equitable Petition filed on 10 April 2025 - under the influence of Mr Dondero - without properly engaging with the evidence. For example, at **paragraphs 20 and 23, MacInnis 5**, it is asserted that the DAF Restructuring deprived the Highland Foundations, as the Indirect Charitable Owners of “*their interests in the Charitable DAF Fund LP (Fund)*” and that the Highland Foundations were the “*ultimate beneficial owners of the Fund and its substantial investment assets*”. These allegations are lifted from the Highland Foundations allegations set out in the just and equitable petition dated 10 April 2025 which was supported by Dondero 1 and Diaz 1. However, the assertions made in MacInnis 5 do not take into account the evidence outlined in Murphy 1 and the DFW Affidavit which the JOLs have had the benefit of since 4 June and which outline in clear terms (i) that the assets of DAF LP were neither the assets of either the Company nor the Highland Foundations; and (ii) that Dondero was also fully aware that assets and investments held through DAF LP were not the assets or property of the Highland Foundations.
21. Furthermore, at **paragraph 49.1, MacInnis 5**, Ms MacInnis refers to the directors’ remuneration of US \$600,000 per annum. This again mirrors Ms Diaz’s summary of the position (see **paragraph 32(a)** of Diaz 1 which, in turn, is copied directly from Mr Dondero’s expense report). Mr Dondero has wrongfully sought to contrast my remuneration described at **paragraph 49.2, MacInnis 5**, with Mr Scott’s remuneration (see paragraph 15 of Dondero’s 1) in a misplaced attempt to establish that I pose a risk to the Company’s assets. The Current JOLs have since adopted that position too, for example, at paragraph 169 of the Writ and Statement of Claim where it is expressly

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averred that “[b]y contrast, Mr Scott’s annual salary and entire benefits during his tenure in the Control Position was US\$60,000”. Neither Mr Dondero nor the JOLs have offered any objective evidence to support the inference that Mr Scott was reasonably remunerated during his tenure. In fact, and contrary to the statements of Ms MacInnis, email correspondence between Mr Dondero and Highland Capital Management’s General Counsel J.P Sevilla on 31 July 2014 illustrates the arbitrary manner in which Mr Scott’s remuneration was determined by Mr Dondero (see **MP4/Tab 7/Pages 1621 to 1622**). This correspondence also suggests that Mr Scott may have been paid from DAF LP’s assets for services rendered to unrelated companies such as the Get Good Trust and other trusts. It also fails to take into account the engagement and payment of supposedly third-party service providers, like Highland Consulting Group, Inc. d/b/a Skyview Group (**Skyview**). Skyview – an entity controlled and managed by Scott Ellington, charged baseline fee of US \$250,000 but incurred actual costs for administrative services which averaged US \$1.5m a year. The engagement was terminated on 2 October 2024. I exhibit at **MP4/Tab 8 and Tab 9/pages 1623 to 1640** Skyview’s Service Agreement and Termination Agreement. These are only two of several examples where DAF LP and its subsidiaries have been treated as a bank account by Dondero to pay the bonuses and salaries of individuals not employed by the Company or by the Fund or where entities affiliated or controlled by Mr Dondero and/or Mr Ellington were only too happy to charge large administrative fees as long as it ultimately inured to their personal benefit.

22. Similarly, there is no objective evidence to show that my compensation is unreasonable despite the allegations to the contrary. The only independent evidence on this point is outlined below in the following paragraph, which for reasons known only to the Current JOLs, they have chosen to disregard arbitrarily finding that my defences and justifications on this point not to be “*availing or credible*.”².
23. I have responded to the allegations in respect of my remuneration in detail (see, for example, **paragraph 173, DFW Affidavit**) and outlined how I followed best practice by commissioning an independent, third-party assessment of the appropriate compensation for my role, which Mr Murphy then reviewed. A report prepared by

² See Footnote 8 of the Chapter 15 Verified Affidavit.

Heidi Jensen O'Brien of Mercer, a firm which specializes in preparing reports for charitable organisations and are regularly commissioned by advisers and the Internal Revenue Service (IRS), is exhibited to **MM-5, pages 555 to 574** and **FSD Exhibit 1, MP4/ Tab 4/pages 1068 to 1087 (Mercer Report)**. At **paragraph 66, MacInnis 5**, Ms MacInnis does not engage with the substance of the report or its methodology, instead she finds cause to query the timing of the report primarily and the fact that "*the effect of the transactions pursued in reliance on the...Report resulted in a significant cash outflow from the Company.*" This is a conclusory, pejorative statement that fails to stand up to scrutiny nor is it based on expert independent US evidence.

24. The Writ misrepresents my compensation position when compared with the role that was assumed by Mr Scott. As is deposed to in the DFW Affidavit, Mr Scott's role and activities in respect of the Company were limited and his remuneration reflected this limitation. When I assumed the role of Control Person, which included but was not limited to being the registered director of the Company, I took on the responsibility of managing the DAF asset investments; administering the structure and managing significant litigation which had been instigated or induced by the conduct of Mr Dondero (I outline the extensive litigation in the **DFW Affidavit (paragraphs 123-141, and at paragraphs 35.6, 35.8-3.17)**).
25. In contrast, and as set out in the Mercer Report, which is exhibited at **MM-5, pages 555 to 574**, during Mr Scott's tenure these functions were performed by Highland Capital Management (a Mr Dondero related entity) and then Skyview (which was also under the *de facto* control of Mr Dondero). The Company paid some US \$28.5 million over the course of 2014 to 2020. I exhibit at **MP4/Tab 10/page 1641** a summary of fees paid from the DAF Structure to Highland Capital Management / Skyview. As addressed in the Mercer Report, my rate of compensation reflects not only my role as Director to the Company but also the wider investment management functions I undertook which Mr Scott never assumed (but rather outsourced to Highland Capital Management to the ultimate benefit of Mr Dondero). Specifically, the Mercer Report acknowledged "*the complexity of my role*" at page 3 of their report, in that I held the following roles with the Company:

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- (a) Chief Executive Officer (which involved managing the Company's operational issues, managing the DAF corporate structure and determining charitable disbursements);
 - (b) Chief Investment Officer (which involved complex fund management and investment strategy);
 - (c) Legal (which involved handling complex and contentious litigation and asset recovery); and
 - (d) Compliance (which involved navigating regulations internationally and across multiple states domestically).
26. Conversely, Mr Scott did not devote his full time and attention to the role of Management Shareholder or General Partner. Mr Scott was and still is to the best of my knowledge, a practicing patent attorney. This was not a full-time job for him and during the same period, Mr Scott also functioned as trustee for some of Mr Dondero's personal trusts, notably the Get Good Trust as reflected in **MP4/Tab 7/page 1621**.
27. Mr Scott was also not involved in active investment management. My understanding is that Mr Scott's duties consisted primarily of approving wires sent for his sign off by Mr Dondero's assistants. I refer to the potential liabilities for the Company and the DAF Structure which I believed were created by Mr Scott's inability to maintain independence from Mr Dondero by virtue of simply authorizing transactions and investments proposed by Mr Dondero at **paragraphs 110 to 143, DFW Affidavit**.
28. On a proper and impartial consideration of the Mercer Report and upon a more meaningful and fuller investigation, the differences in roles this would be apparent to the Current JOLs. It is my belief that they have elected:
- (a) to present a misleading account of the very different roles fulfilled by myself and Mr Scott and suggest incorrectly that these roles were in fact the same. I infer that the purpose of this approach is to sustain the allegation that during my management and supervision significant value has been

taken out of the DAF Structure, which is in fact contrary to the evidence before the Court (**DFW Affidavit at paragraph 181**); and

(b) not to have regard to the evidence, diligence, and professional judgment by Mercer in issuing its report. Instead, they cite the US \$60,000 paid to Mr Scott (and arbitrarily determined by Mr Dondero) as if it carries more evidential weight than the Mercer Report which was produced independently and featured heavily in the Company's authorisation process.

29. Separately, Mr Dondero's written evidence in **Dondero 1** regarding the manner in which Mr Scott came to leave his role as control person directly contradicts his sworn oral evidence given during his deposition in separate proceedings (see **paragraph 109 of the DFW Affidavit** sworn on 4 June 2025). And yet, the Current JOLs have not seen cause to stop and consider what weight (if any) should be given to the information provided by the Highland Foundations / Mr Dondero. I pause here to note that not only has Mr Dondero provided inconsistent evidence and testimony, as explained further at **paragraph 35.15-35.20, Murphy 1**, he has been described as a vexatious litigant, held in contempt of court, and restrained by a gatekeeper injunction to prevent vexatious litigation, a matter which he appealed all the way to the U.S. Supreme Court.
30. In truth, and as deposed to in the DFW Affidavit and Murphy 1, the steps taken to implement the DAF Restructuring were necessary to (i) protect assets diverted from the charitable structure to the satisfaction of Mr Dondero's personal creditors; and (ii) ensure the assets of the structure could be applied in accordance with the terms of the ARLPA insofar as discretionary distributions were made to entities that were "*Indirect Charitable Owners*" providing those persons fulfilled the qualifying criteria of being eligible to receive distributions from the DAF Structure.
31. As stated in the Company's Memorandum and Articles of Association, dated 20 February 2025 (Article 21) "*If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles.*" (see **Exhibit MP1/page 99**). It is my honest belief that had Mr Murphy and I sought to procure the voluntary transfer of the shares held by the Highland Foundations notwithstanding

there was a basis and need for us to do so, that request would have been refused. This would further have exposed Mr Murphy and me to retaliatory action from the conduits of Mr Dondero's wishes, and placed us in the position of needing to take action outside of the control and influence of the Highland Foundations in order to fulfil our fiduciary obligations to the Company.

32. A "Restricted Person" within the Articles means "... any Person holding Participating Shares....which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered." Specifically, the "Restricted Person" clause (b) also requires each Participating Shareholder to be an entity or organization exempt from taxation under Section 501(c)(3) of the Code. With leave of the Court I make reference to **FSD Affidavit Mancino 1** (exhibited at **MP4Tab 11/Pages 1642 to 1687**) at paragraphs 42 to 46 and 154 to 155 below which illustrates the real and immediate concerns which required implementation of the DAF Restructuring and further highlights how the Current JOLs are unable to consider the DAF Restructuring from an independent and unbiased perspective.
33. As is deposed to in the DFW Affidavit and Murphy 1, the information and advice with which I and Mr Murphy were presented at the relevant time indicated that the Highland Foundations came within the meaning of "Restricted Persons" which disqualified them from being entitled to receive distributions from the DAF Structure, due to their associations with Mr Dondero which in turn placed the Company at risk of penalties and liabilities. These were not concerns limited to the Supporting Organisations but of material concern to the Company of which Mr Murphy and I were directors, for example:
- (a) The actions previously taken by Mr Dondero and the Highland Foundations could expose the Company, and its now former directors, to potential breaches of US tax laws and regulations especially where Mr Dondero was seeking to exert "*dominion and control*" over the DAF Assets (**paragraph 46.1, Murphy 1**);

- (b) I believe that Mr Dondero evaluated the prospects of the DAF Structure financing his current and future projects in a way which was contrary to Mr Dondero relinquishing dominion and control in respect of that structure (**paragraph 81, DFW Affidavit**);
- (c) The Company had received advice from Carrington Coleman that “*there was a significantly heightened risk that the IRS could severely penalize and /or revoke the tax-exempt status of one or more*” of the Supporting Organizations which would in turn imperil the assets of the DAF (**paragraph 82, DFW Affidavit**);
- (d) Mr Dondero has an inappropriate donor relationship with the representatives of the Dallas Foundation, which is the Supported Organization of the Highland Dallas Foundation (which is a tax-exempt community foundation under US-tax law, and whose president is Julie Diaz), which potentially jeopardizes the tax-exempt status of the Highland Dallas Foundation (**paragraph 145, DFW Affidavit**).

B. DONDERO CONTROL AND INFLUENCE OF THE HIGHLAND FOUNDATIONS

Governance and structure

- 34. I set out in **paragraphs 17, 22, 29, 32**, of the **DFW Affidavit** the relationship between Mr Dondero and the Highland Foundations. In response to the **FSD Affidavit 1** sworn by Ms MacInnis, I set out herein how the Highland Foundations should be regarded more factually as an instrument of Mr Dondero in the context of this liquidation and the FSD Proceedings, and I identify the inaccuracies in the JOLs’ evidence.
- 35. As I explain at **paragraph 17 of the DFW Affidavit**, Mr Dondero controls the Highland Foundations. Ms MacInnis attempts to sanitize this relationship in **paragraphs 13-22, FSD Affidavit 1** (see **MP4/Tab 2/page 8 to 13**) to state that Mr Dondero has only 1 of 3 of the board of directors’ voting rights for each of the Highland Dallas Foundation, Inc., Highland Kansas City Foundation, Inc., and Highland Santa Barbara Foundation, Inc. However, in doing so Ms MacInnis ignores

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that Mr Dondero is also the President of each of the Highland Foundations, as also deposed to at **paragraph 17, DFW Affidavit**.

36. Under the By-laws governing the Highland Foundations which are exhibited to the FSD Affidavit 1 and referred at **FSD Affidavit 1, Paragraph 18.1 and 18.6** (see **MP4/Tab 2/page 9 and 11**), the President is also the Chief Executive Officer of each of the Highland Foundations and has all powers that are delegated by the Board of Directors. Publicly available information confirms this. My understanding, based on advice of Delaware counsel, is that under the governing law of the Highland Foundations an officer including the President may generally cause a corporation (including the Highland Foundations) to take a wide variety of actions, including bringing lawsuits. It is striking that in the FSD Proceedings, the Current JOLs (see **paragraphs 13-22, FSD Affidavit 1** at **MP4/Tab 2/page 8 to 13**) contest at length that Mr Dondero has control over the Highland Foundations due to being only one of three Directors on each of their respective Boards but fail to address the matters which I raise immediately above.
37. It is also my belief that Mr Dondero has leveraged his influence as a donor to the Highland Foundations and President of those foundations to procure both proceedings before the Grand Court and the Dallas Business Courts with a view to taking control over the assets held in the DAF Structure to (i) bring an end to litigation which Mr Murphy and I have properly instituted against Mr Dondero and entities related to him; and (ii) access assets of value to meet potentially significant liabilities accruing to Mr Dondero, not least in the Turnover Petition proceedings instigated by UBS. I refer the Court to **paragraphs 123-127, DFW Affidavit** for a summary of those proceedings.
38. Structurally, the Highland Foundations are the conduits through which specific charitable foundations were supported. For example, the Highland Dallas Foundation provides donations to the Dallas Foundation. To the best of my knowledge, Mr Dondero does not have direct *de jure* control over the Dallas Foundation but in my experience, he is able to exert significant influence over the charitable foundations who previously received distributions from the DAF, through his control of the Highland Foundations. On several occasions, I witnessed Mr Dondero promising additional financial donations to the Highland Foundations in order to extract favors from them, including tax write-offs that benefited him personally like the NHT put option of US

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\$9,285,000 described below at paragraph 41. It is immaterial whether Mr Dondero in fact controls the underlying charities, as my concerns as the Company's director stemmed from the extent to which Mr Dondero wielded control and tried to influence to cycle the value of his settling donation from Trust #2 out of the DAF structure and back to businesses and transactions which were either related to or of benefit to him.

39. While FSD Affidavit 1 may give the appearance, at first blush, that the Highland Foundations are independent, in reality and far from keeping it a secret, Mr Dondero's control of the Highland Foundations is public knowledge and seemingly accepted by the Current JOLs. For example, in Highland Dallas Foundation's 2019 and 2020 tax filings, it listed "*300 Crescent Court, Suite 700, Dallas, Texas*", which was the same address as Highland Capital Management while under Mr Dondero's control and is the newest address for NexPoint, Mr Dondero's current investment group.
40. The JOLs also confirm at **paragraph 11.2 and in footnote 4, FSD Affidavit 1** (see **MP4/Tab 2/Pages 7 and 15**), that NexPoint is an investment management firm of which Mr Dondero is the President, and that Mr Dondero caused the Highland Dallas Foundation to assume the name "*NexPoint Philanthropies Dallas Inc.*" in June 2024, rather than do business under the 'Highland' name. This was previously deposed to at **paragraph 66, DFW Affidavit**.
41. The Current JOLs also ignore my evidence at **paragraphs 194 to 199, of the DFW Affidavit**, where I set out how Highland Dallas Foundation, Inc. has failed to request US \$9,285,000 owed to them by Mr Dondero's personal trust, at a time when, according to Ms MacInnis at **paragraphs 53 to 59, of the FSD Affidavit 1** (see **MP4/Tab 2/Pages 31 to 34**), there are holes in the charities balance sheets and they are unable to pay their overheads.

No economic interest justification

42. In response to Ms MacInnis' sworn evidence in the FSD Affidavit 1, and so far as her evidence relates to matters of U.S. non-profit corporation and tax law, and the U.S. Internal Revenue Code (the **Code**), Mr Mancino of Seyfarth Shaw LLP (**Seyfarth**), who is considered to be one of the United States' most pre-eminent tax attorneys, swore

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- an affidavit in the FSD proceedings on 30 July 2025 exhibited at **MP4/Tab 11/Pages 1642 to 1687 (FSD Affidavit Mancino 1)**.
43. A copy of Mr Mancino's Curriculum Vitae is exhibited at **DM-1, pages 1 to 12**, filed in these liquidation proceedings.
44. In Mancino 1, he seeks to correct material factual errors and overstatements, and legal errors or distortions of U.S. tax and nonprofit corporation law made throughout FSD Affidavit 1.
45. Such corrections include:
- (a) Each Supporting Organisation was incorporated as a "nonprofit nonstock" corporation under the Delaware General Corporation Law (**DGCL**) in order to meet the organisational requirements for eligibility to be a charitable organisation for U.S. Federal income tax purposes under section 501(a) of the Code (**FSD Affidavit Mancino 1**; see **MP4/Tab 11/Page 1645**).
 - (b) Nonstock corporations are not authorized to issue capital stock. And, under section 114(d)(3) of the DGCL, a nonprofit nonstock corporation does not have membership interests, which means that the Supporting Organisations, being the Dallas Foundation, the Greater Kansas City Community Foundation and the Santa Barbara Foundation do not have any right to share in the profits and losses of their respective Supporting Organisation, and no Supported Organisation has a right to receive distributions of the Supporting Organisation's assets (**FSD Affidavit Mancino 1**; see **MP4/Tab 11/Page 1645**).
46. Holland & Knight LLP expressly acknowledged on a call with Mr Mancino in November 2024 that the then Participating Shareholders of the Company such as the Highland Foundations had no rights (**FSD Affidavit Mancino 1**; see **MP4/Tab 11/Pages 1647**). I also note at **paragraphs 64 to 66, Murphy 1** that similar comments were made by representatives of Holland & Knight to Mr Murphy at a presentation he delivered by video conference to Michael Stockham (a litigation partner) and David Rosenberg (non-profit tax partner) on 11 December 2024, who attended on behalf of

the Highland Foundations. Mr Stockham commented that he had read the constitutional documents of the Company and anticipated that Walkers (the Company's former Cayman counsel) would tell him that the Highland Foundations essentially had no rights in the Company.

- (a) Each Participating Shareholder, upon agreeing to accept the gift of Participating Shares, relinquished any right it might have to any or any specific amount of dividends, any access to information absent a decision of the Directors to exercise discretion to provide information, any right to inspect any of the Company's books and records, any right to compel an audit, and other items enumerated above and otherwise contained in the Amended and Restated Memorandum and Articles of Association (**FSD Affidavit Mancino 1**; see **MP4/Tab 11/Page 1644**).
- (b) DFW Charitable Foundation is a U.S. tax-exempt organisation classified as a private non-operating (i.e., grant-making) foundation. It played a stewardship role as a controller of the assets formerly held by the Company and disseminating them for proper charitable purposes (**FSD Affidavit Mancino 1**; see **MP4/Tab 11/Page 1652**).
- (c) My status as sole member is a common practice with U.S. private foundations. This was disclosed to the IRS multiple times in the application for recognition of its section 501(c)(3) exemption filed with the IRS (**FSD Affidavit Mancino 1**; see **MP4/Tab 11/Page 1652**).
- (d) Mr Mancino also lists out the various restrictions placed on private foundations which represent serious guardrails which debunk the Current JOLs' assertions that DFW is little more than a "creature company" of mine (**FSD Affidavit Mancino 1**; see **MP4/Tab 11/Pages 1652 to 1653**).

47. It is unclear at present what U.S. tax and non-profit corporation advice the Current JOLs have obtained and from whom when the FSD Proceedings were conceived, as there is no mention in the FSD Affidavit 1 affidavit of any specialist tax advice being

obtained. However, a thorough investigation should have made these points apparent to the Current JOLs.

48. The original allegations of “bad acts” attested to by Mr Dondero have been thoroughly refuted in evidence submitted in the DFW Affidavit. Mr Dondero testified under oath that “*we took all the bad acts and all the investigations and we gave them to the [Highland Foundations].*”³ The DFW Affidavit addresses and refutes these allegations.
49. Mr Dondero testifies that he (together with, I understand, his employees at NexPoint and his affiliates at Skyview Group) built a case and facilitated investigations and provided this case to the Highland Foundations. From the outset, before any of the correspondence between myself and DAF, on the one hand, and the Highland Foundations, on the other, Mr Dondero admits and seems to take pride in convincing the Highland Foundations to institute, winding up proceedings without first discussing with me. I described this at **paragraph 185**, of the **DFW Affidavit** and extensively in my **First Affidavit as Sole Holder of the Management Share** sworn on 4 June 2025.

Hunter Mountain Claim

50. The control and influence of Mr Dondero over the Highland Foundations is not simply a matter of conjecture and supposition but a matter of factual evidence arising from depositions and sworn testimony of Ms Diaz and Mr Dondero conducted on 22 and 25 June 2025, respectively. These depositions were held in connection with a settlement agreement entered into between HMIT and the Highland Capital Trustee in Bankruptcy in May 2025 (**Hunter Mountain Settlement**). In proceedings titled *In Re Highland Capital Management, L.P.* (case number Case No. 19-34054-sgj11) (**Hunter Mountain Claim**). HMIT’s sole beneficiary is an entity called Beacon Mountain, LLC, which is a subsidiary within the DAF Structure. A copy of the Hunter Mountain Settlement is exhibited at **MP4/Tab 12/Pages 1688 to 1699**.

51. Under the terms of the Hunter Mountain Settlement, the DAF Structure will receive:

- (a) a cash payment in the amount of US \$500,000.00

³ See Highland Capital bankruptcy hearing transcript at pg. 198 lines 10-12 and 22-23.

FSD2025-0116

Page 20 of 70

2025-08-19

- (b) the rights to a promissory note payable by Dugaboy (being the personal family trust of Mr Dondero (**DFW Affidavit, paragraph 119(b)**)) in an original principal amount of US \$24,268,621.69;
 - (c) future cash payments as provided therein; and
 - (d) the assignment of approximately US \$300 million in legal claims to pursue matters covered in the Amended Kirschner Complaint, including actions against Mr Dondero, Mr Ellington and entities owned or controlled or affiliated with Mr Dondero and Mr Ellington.
52. Mr Dondero has repeatedly sought, both directly and indirectly, to prevent and delay the consummation of the Hunter Mountain Settlement:
- (a) As deposed to at **paragraphs 75-80, Murphy 1**, in November 2024 HCLOM (being an affiliate / controlled party of Mr Dondero) sought to intervene in the Highland Capital Bankruptcy so as to dilute the recoveries of HMIT from Highland Capital, by asserting a claim under a disputed promissory note in the amount of US \$12.6 million. It is my belief that the dilution of these recoveries was attempted in bad faith in order that Mr Dondero could place HMIT under financial pressure so as to limit its ability to contest arbitral proceedings commenced by Dugaboy in respect of a promissory note in the amount of US \$62.6 million.
 - (b) On 9 June 2025, Dugaboy sought from the Dallas Bankruptcy Court an adjournment to the Hunter Mountain Settlement Hearing for a period of 90 days. Justice Jernigan rightly denied this request for the reason that Dugaboy / Mr Dondero had '*de minimis*' status in the Highland Capital Bankruptcy to be heard in respect of the Hunter Mountain Settlement.
 - (c) On 9 June 2025, the Dallas Foundation also filed an objection to the Hunter Mountain Settlement (**DF Objection**) (see **MP4/Tab 13/Pages 1700 to 1714**). During the course of her deposition on 22 June 2025, Ms Diaz, as President and Chief Executive Officer, was questioned in respect of the

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FSD2025-0116

20

2025-08-19

reasons for the objection it became apparent that there was no basis for the DF Objection to be sustained:

- (d) Ms Diaz knew of no lawful basis on which the objection to the Hunter Mountain Settlement could be asserted by Highland Dallas Foundation.
- (e) Ms Diaz, who admitted to approving the filing of the DF Objection also admitted to not having read the Hunter Mountain Settlement to which the DF Objection related.
- (f) In the DF Objection, Ms Diaz referred to the ability of the JOLs (“*Cayman Court-appointed fiduciary*”) to scrutinise the transactions which comprise the DAF Restructuring and claw-back or bring avoidance actions. However, it transpired during deposition that Ms Diaz has no expertise or understanding in respect of the potential claw-back or avoidance actions or of Cayman law and what would be required.
- (g) Ms Diaz had no basis for the assertion made in the DF Objection that Mr Patrick was acting outside the scope of his authority when entering into the Hunter Mountain Settlement.
- (h) Ms Diaz was questioned in a deposition she gave in the proceedings with Case No. 19-34054-sgj11 (**Highland Bankruptcy Proceedings**) on 22 June 2025 (see **MP4/Tab 14/Pages 1715 to 1815**) with respect to the allegations that I disclosed material non-public information as set out in Diaz 1 filed in support of the Petition for winding up the Company dated 9 April 2025, **paragraphs 28 to 30, Diaz 1**. I vigorously refute those allegations (see **paragraphs 176-177, DFW Affidavit**) and it is the case that Ms Diaz had no basis for making this allegation but was following the instructions of Mr Dondero in making such an assertion (see **MP4/Tab 14/Page 1791**):

“I’ll just tell you the quote he gave us, which was Jim Dondero’s spiraling out of control and you need to do this because nothing appears to be what it is” and “I don’t know [my basis for alleging material nonpublic information].”

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- (i) As deposed to at paragraph 13 (a)(i) above, on 24 June 2025 the JOLs issued the HMIT Adjournment Letter on 24 June 2025 in which they sought to intervening in the Highland Bankruptcy Proceedings. This interference was without the JOLs having any legal basis for doing so and presented in terms that reflected the previously failed attempts by Dugaboy and the DF Objection to prevent the Hunter Mountain Settlement.
53. As a result of the deposition of Ms Diaz, the DF Objection was withdrawn. The Hunter Mountain Settlement was approved by Justice Jernigan on 30 June 2025.
- (a) Following the withdrawal of the DF Objection, at the hearing to approve the settlement before Justice Jernigan on 25 June 2025, Mr Dondero gave clear evidence demonstrating the extent to which he can control the Foundations (see **MP4 Tab 15/Pages 1816 to 2081**, for example:
- (b) As to the question of why the other Foundations had not filed objections to the Hunter Mountain Settlement in line with the DF Objection, Mr Dondero stated: “[Ms. Diaz] got bludgeoned in depositions over the weekend and it happened last night and nobody was aware of it”. In other words, the only reason why the objection was withdrawn by the Dallas Foundation was because it had acted independently of Mr Dondero’s influence and control, and at the time to his knowledge the DF Objection was to stand such that the other Foundations would not need to also object.
- (c) Mr Dondero was questioned specifically in relation to the withdrawal of the DF Objection and stated that:
- “we only had six hours’ notice that [Dallas Foundation withdrew its objection]” and “if we had more time...[Highland Foundations] probably would object.”
- (d) In other words, had Mr Dondero had an opportunity to speak with the Highland Foundations, he believes he could have successfully persuaded them to file similarly meritless objections to the Hunter Mountain Settlement Agreement.

- (e) The efforts of Mr Dondero to stymie the Hunter Mountain Settlement have not abated, and on 17 July 2025 Dugaboy issued a motion to delay the implementation of this settlement for a period of 90 days (**Dugaboy Stay**, exhibited at **MP4/ Tab 16/Pages 2082 to 2177**) “so that it and other parties can investigate the allegations made in the recently filed request for a stay of all Highland bankruptcy proceedings made by the Texas Attorney General, and the complaint (the “JOL Petition”) the Joint Official Liquidators (“JOL”) of Charitable DAF HoldCo LTD (“Holdco”) filed on July 15, 2025, by. That Petition, annexed hereto as Exhibit A, outlines a massive fraudulent scheme”.
- (f) On 21 July 2025, Justice Jernigan denied the request to stay the Highland Bankruptcy proceedings based on this objection.

C. PARTIALITY AND LACK OF INDEPENDENCE

54. DFW harbours serious concerns regarding the Current JOLs’ objectivity and independence which has culminated in a complete collapse of DFW’s trust and confidence in the Current JOLs, arising in particular from the following conduct:

- a) Persistent and unnecessary use of *ex parte* proceedings
- b) Failure to provide full and frank disclosure
- c) Funding Arrangements:
 - a) Terms of the Funding Agreement
 - b) Crossvine is James Dondero
 - c) JOLs failure to disclose source of funding
 - d) Conflict of Interest in Dondero funding liquidation
 - e) Involvement of Scott Ellington
- d) Lack of engagement with Proposed CDM Protocol

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- e) Leveraging of the Cayman liquidation & Advancement of Dondero interests:
 - a) Failure to Sanction Highland Foundations
 - b) Solvency determination
 - c) Avoidance of the DFW Summons
 - d) Interference in Texas Bankruptcy Proceedings
- f) Inadequate or incomplete investigations:
 - a) Limited Interviews
 - b) No investigations into US Federal Tax status concerns
 - c) No investigation into Dondero related litigation
 - d) Utilisation of the DAF LP structure for benefit of Dondero

e) Persistent and unnecessary use of ex parte proceedings

55. To the best of my knowledge and belief, since their appointment on 6 May 2025 the Current JOLs have made at least two and perhaps three *ex parte* applications to the Court. In those instances, the circumstances either did not warrant the application in the first place, or did not warrant that the application be made on an *ex parte* basis.
56. It is my view that the Current JOLs have proceeded *ex parte* not for the preservation of matters in the FSD Proceedings but to deprive DFW of the ability to participate in the proceedings that are envisaged and to obtain a tactical advantage by avoiding due process where possible. From my familiarity with Dondero's litigation strategy (or that of Dondero related entities) this is consistent with his modus operandi.
- i. *Sanction of legal counsel:* I address the sequence of events surrounding the proposed sanctioning of Johnstone Law as legal counsel to the Current JOLs in the **paragraphs 23 to 51, DFW Affidavit**. I do not propose to repeat those

events in detail and will leave counsel to make submissions from the facts, but it is important to note that the procedural conduct deployed by Johnstone Law on the instructions of the JOLs demonstrated from the outset a biased disposition to the position of the Highland Foundations at the expense (literally and figuratively) of DFW. In particular it is relevant to note that:

- a. As of 6 May 2025, Johnstone Law had consulted with the Dondero-controlled Highland Foundations and Current JOLs to settle and agree the engagement of Johnstone Law as legal counsel to the Current JOLs. The terms of the consent provided to Johnstone Law from the Highland Foundations did not permit Johnstone Law to disclose to the Current JOLs confidential information which Johnstone Law came into by reason of their prior engagement by the Highland Foundations. This is deposed to in Johnstone 1.
- b. As of 6 May 2025, the proposed engagement of Johnstone Law by the Current JOLs was not shared with DFW nor the Court, notwithstanding that the JOLs had attempted to obtain the blanket power to engage legal counsel by the terms of the Supervision Order without providing terms to the Court or disclosing in pleadings which firm/firms were to be engaged.
- c. The Current JOLs, through the Letter Application (defined in **paragraph 50, Johnstone 1**) sought to have the Court sanction the engagement of Johnstone Law as legal counsel to the Current JOLs on an *ex parte* without notice basis (at least to DFW and myself as Management Shareholder), and without a hearing in circumstances where they knew the consent of DFW would not be forthcoming for reason of the submissions made by DFW at the Supervision Hearing, as subsequently committed to writing in correspondence dated 14 May 2025 issued to Johnstone Law by Baker & Partners (I refer the Court to the **paragraph 48, DFW Affidavit**).
- d. DFW only became aware that the current JOLs had sought to sanction the engagement of Johnstone Law in the manner described immediately above

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when, by an email sent on 21 May 2025 from Johnstone Law to DFW's Cayman Islands' legal counsel seeking to agree to directions for a hearing which had been directed by His Honourable Justice Asif KC to consider the sanction of legal counsel. I infer from his Lordship's direction that the Letter Application was not procedurally appropriate in the circumstances, and in my view indicative of an attempt to undermine the position of DFW by denying the procedural fairness which DFW as a stakeholder in the liquidation of the Company would be entitled to.

- e. Despite requesting a copy of correspondence between Johnstone Law and the Grand Court regarding the proposed sanction application (I refer to **paragraph 50, DFW Affidavit**), DFW was not provided with a copy of the Letter Application. In fact, legal counsel to DFW was only able to consider the Letter Application when served with the hearing bundles for the Sanction Hearing of 24 June by Maples (the now sole Cayman attorneys to the JOLs). Clearly Maples had been provided with a copy but I do not believe that counsel to any other stakeholder was so provided. I would invite the JOLs to confirm if the Highland Foundations were provided with a copy of the Letter Application prior to service of the hearing bundles by Maples.
- f. When I was finally able to consider the Letter Application, I was struck by how similar the substance of that correspondence was to the Second Affidavit of Ms MacInnis, suggesting that the evidence of the Current JOLs was heavily if not entirely drawn from the Letter Application which was prepared by legal counsel which DFW maintains is conflicted having first been engaged by the Highland Foundations, who I know to operate under the significant influence of Mr Dondero, and which is deposed to at **paragraphs 56.i and 57.ii herein**.
- g. Although the JOLs eventually resiled from seeking sanction for the engagement of Johnstone Law on the business day before the Sanction Hearing (24 June), it is my belief that the manner in which the Current JOLs sought to obtain sanction for the engagement of Johnstone Law on

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an *ex parte* basis in the face of known opposition is indicative of conduct which lacks the requisite independence and impartiality.

ii. Sanction of FSD Proceedings

- a. The JOLs again applied *ex parte* without notice for the Court's sanction to commence the FSD Proceedings (*ex parte* Application 2). On 22 July 2025 Maples provided a heavily redacted note of the remote hearing for *ex parte* Application 2 (*ex parte* Note). A copy of that note is **exhibited at MP4/Tab 17/Pages 2182 to 2185**, along with a substantially redacted copy of MacInnis 5 which was sworn in support of that application (**Tab 17/Pages 2186 to 2234**).
- b. The extent to which the *ex parte* Note has been redacted makes it incomprehensible such that I cannot ascertain the documents and information that were provided to the Court to obtain leave; the specific leave sought and relief granted by the Court. The Note refers to "*a new affidavit of Michael Murillo*" but which has also not been served on or otherwise provided to DFW. Finally, DFW has not been provided with a copy of the 4 July Summons by which *ex parte* Application 2 was brought nor a copy of the Order as made. I am informed by DFW's Cayman Islands legal counsel to DFW that those documents have been made the subject of confidentiality orders.
- c. On 20 July 2025 DFW, through Baker and Partners, specifically raised a query with Maples as to whether the Highland Foundations were put on notice of the JOLs' *ex parte* sanction application, which went unanswered in Maples' response received on 22 July 2025 (see **MP4/Tab 18/Pages 2235 to 2240**). While I note that **paragraph 9 of MacInnis 5** states "*For the following reasons, the JOLs have brought this Application ex parte and respectfully request that it is not appropriate for any of the Company's shareholders to be on notice of the Application*", it is not apparent what directions were given in this respect, nor if the Highland Foundations were otherwise made aware of *ex parte* Application 2.

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- d. Also at **paragraph 9, MacInnis 5** seeks to justify proceeding *ex parte* for leave to commence the FSD Proceedings as to “*Communicate the substance of this application, together with evidence and submissions which addresses its merits would seriously undermine the proper course of the Proposed Proceedings in the event that they are sanction*”. No explanation for this position is given in this regard and, in circumstances where the DFW Summons had been filed with the Court more than a month before, the preparation of the FSD Proceedings (which had clearly been in progress for some time) are unnecessary and in my view a clear attempt of Dondero – through the JOLS - to procure costly litigation that enable an application for an injunction to be made.
- e. I understand that *ex parte* Application 2 was granted on 14 July 2025 and on 15 July 2025 the Current JOLs commenced the FSD Proceedings which are:
- (i) outside of the liquidation proceedings;
 - (ii) before a new judge who is unfamiliar with the context of the Current JOLs’ appointment and the Company’s history or liquidation generally;
 - (iii) has none of the evidence before him which is already before His Honourable Justice Asif KC;
 - (iv) with respect to the Cayman Injunction, it is expressly stated by Maples in their correspondence to the Court sent on 15 July 2025 (see **MP4/Tab 19/Pages 2241 to 2244**) to coincide with the timetable of litigation commenced by the Highland Foundation in the Dallas Business Court, which I discuss further below.

iii. *Sanction of Funding Agreement*

- a. At paragraphs 58 to 79 below, I address the Current JOLs' conduct with regard to the question of how the liquidation of the Company has been funded, will be funded and by whom.
- b. That the Current JOLs would need to secure funding for the liquidation is not a controversial or new point. Since the Highland Foundations issued the just & equitable winding up Petition, the spectre of Mr Dondero as a funder to those proceedings has been present. In Dondero 1, Mr Dondero himself stated that he would personally provide the funding to the Highland Foundations to pursue the winding up of the Company. As set out in paragraph 68 below, the fact that Mr Dondero has been financing the legal actions of the Highland Foundations recently commenced in respect of the DAF Restructuring was confirmed by Ms Diaz under oath on 22 June 2025. The transcript of the Diaz Deposition was included in a Supplemental Bundle filed by DFW with the Court prior to the Sanction Hearing of 24 June and was at the same time provided to the Current JOLs.
- c. I understand from the terms of MacInnis 6 that *an ex parte* application was also made for the purpose of sanctioning the Funding Agreement. I also understand from the terms of MacInnis 6 that the Funding Agreement is structured in such a way that Mr Dondero is ultimately funding the liquidation and the FSD Proceedings (see **paragraph 11, MacInnis 6**).
- d. The *ex parte* Note which relates to *ex parte* Application 2 does not, so far as it is possible to discern, address the Funding Agreement. At the date of swearing this affidavit it does not appear that Maples have provided a Summons, Order or note relating to the sanction of the Funding Agreement.
- e. Prior to the Funding Agreement being Sanctioned it was also confirmed by Ms Diaz in US proceedings under oath that Dondero is funding the Highland Foundations in the proceedings which have been instituted in connection with the DAF assets and investments. The funding of the liquidation and FSD Proceedings by Dondero directly or indirectly, is a matter of controversy and a situation which DFW would vehemently

contest. By proceeding to obtain sanction of the Funding Agreement on an *ex parte* basis the JOLs, have wrongfully deprived DFW of the procedural right to dispute the fact or terms of the Funding Agreement, including the identity of the funding party.

- f. Given the paucity of information provided by the JOLs and their legal counsel as regards the application to sanction the Funding Agreement, I am unable to discern whether the JOLs disclosed to the Court the fact that Dondero had been (and is likely to continue to be) funding the Highland Foundations. This fact which seems material to the propriety of the Funding Agreement is not addressed in the terms of MacInnis 6.

iv. Attempt to seek Cayman Injunction ex parte

- a. The Current JOLS were initially seeking to have the hearing of the Cayman Injunction listed for a date less than 2 weeks from the date on which the Cayman Injunction and FSD Proceedings were filed and served on the parties, including DFW.
- b. It is apparent from Maples' letter to Court dated 15 July 2025 which seeks a listing of the Cayman Injunction that the Current JOLs were willing to proceed on an *ex parte* basis, to do so regardless of the defendants' ability to attend and that the urgency was in part justified to align that hearing with a hearing in the TRO Proceedings issued by the Highland Foundations.
- c. For the reasons explained in paragraphs 98 to 100, in light of both the voluntary Rule 11 Agreement which DFW and the CDM Entities had provided in the TRO Proceedings as of 2 July 2025 and the ongoing willingness of the CDM Entities to enter into a protocol with the Current JOLs, there was simply no basis for the Cayman Injunction to be issued nor to be treated as an urgent application.
- d. On 21 July 2025 the CDM Entities filed a Summons seeking directions in response to the Cayman Injunction which provided *inter alia* undertakings on behalf of DFW and the CDM Entities to the JOLs and preserved the

Rule 11 Agreement (discussed at paragraphs xx to xx herein) and provided that under correspondence of the same dated to Maples (a copy of the CDM letter dated 21 July 2025 is **exhibited at MP4/Tab 20/Pages 2245 to 2257**). This correspondence from Campbells to Maples highlighted in particular the comments made by the Dallas Business Court at the hearing of the TRO Proceedings that he was “*struggling to find evidence in the record that there is an immediate threat of irreparable harm*”.

- e. As observed in the letter from Campbells on behalf of the CDM Entities dated 21 July 2025 the only inference which could be drawn was that “*the unsustainable assertions of urgency are made in the hope of gaining a perceived strategic advantage in the contemplated litigation*”.
- f. As matters transpired, the Current JOLs and defendants to the FSD Proceedings and Cayman Injunction entered into a Consent Order approved by Parker J in the FSD Proceedings on 31 July 2025 **exhibited at MP4/Tab 21/Pages 2258 to 2273**. I exhibit at **MP4/Tab 22 to Tab 24/Pages 2274 to 2296** relevant correspondence between Campbells and Maples dated 21, 23, 24 and 27 July 2025.

b) Lack of full and frank disclosure

- 57. The JOLs have failed to provide full and frank disclosure on seeking *ex parte* relief from the Court as they have failed to bring pertinent evidence which is available to them to the attention of the supervising Judge.

i. DFW Summons

- a. As the Court will be aware, on 9 June 2025 DFW issued a Summons (**DFW Summons**) which sought directions and orders from the Court to provide that (i) the JOLs enter into a Protocol with the CDM Entities and (ii) that an inter partes proceeding be established in the liquidation for the validity of the DAF Restructuring to be determined.
- b. Neither the evidence filed in support of the Current JOLs leave to commence the FSD Proceedings nor the evidence in support of the Cayman Injunction make no mention of the DFW Summons. The substantially redacted note of the Hearing as provided by Maples to Baker & Partners on 22 July 2025 does show that scant reference was made to the filing of the DFW Summons and correctly refers to the fact that that Summons as not yet been listed.
- c. The JOLs only disclosed the existence of the DFW Summons in the FSD Proceedings in FSD Affidavit 2. That evidence was sworn on 24 July 2025 following a Summons for Direction filed by the CDM Entities on 21 July 2025 (**CDM Directions**), and only after sanction for the FSD Proceedings and Cayman Injunction to be commenced had been granted.
- d. The *ex parte* Note provided by Maples shows that Ms Moran of Maples did make mention of the DFW Summons during the ex parte hearing, despite the evidence failing to bring this to the attention of the Court. Ms Moran goes on to dismiss the DFW Summons on the basis that “*this matter is not suitable to be argued inter partes. Rather there is public interest in allowing the JOLs to ensure that a Cayman Islands vehicle has not been used as a vehicle of fraud*”. I find this ironic in light of the Current JOLs apparent failure to investigate Mr Dondero’s misuse of the DAF assets and the federal tax concerns which caused myself and Mr Murphy to implement the DAF Restructuring as has previously been explained to this Court.
- e. A further reason cited for the FSD Proceedings being issued despite the DFW Summons being extant is that “*North Texas Fund – who is not yet*

participating, and their rights would not be protected in an inter partes between defendants and the Supporting Organisations". In respect of these matters, the Note discloses that the honourable Asif J KC stated he "will deal with that when it comes up in due course".

- f. While it is properly for counsel to develop argument, the very question of the correct procedural vehicle to determine the validity of the DAF Restructuring ought to be determined is a matter which required argument on an inter partes basis before the FSD Proceedings were commenced, and this appears to have been obfuscated in the presentation of matters in *ex parte* Application 2.

ii. Prior engagement of Leading Counsel

- a. On 22 July 2025, and along with the *ex parte* Note, Maples provided to DFW a copy of the MacInnis 5 affidavit in the heavily redacted form exhibited at [MP4/Tab 17/pages 2186 to 2234]. Quite clearly certain of the redactions applied by the Current JOLs' by their legal counsel relate to references to professionals who the Current JOLs have obtained advice in seeking to commence the FSD Proceedings. While I understand that the Current JOLs seek to redact information which may be relevant to the FSD Proceedings of which DFW and myself personally are (amongst others) defendants, I do not consider that there is a justifiable basis to redact the name of legal counsel who advise the Current JOLs in connection with of the liquidation proceedings or the FSD Proceedings.
- b. On 30 July 2025 DFW was notified from Maples' correspondence to the Court exhibited at [MP4/Tab 25/page 2297] that Mr Andrew Ayers KC would be attending the hearing of the Injunction Summons on behalf of the Current JOLs. I am advised, without waiving privilege to that advice, that no notice of Mr Ayers KC's engagement was provided despite requirements to do so under this Court's practice directions.
- c. Mr Ayers KC acted for the Petitioners in these liquidation proceedings and was in attendance at the Supervision Hearing along with Johnstone Law. I also

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understand that on or around 12 May 2025 Johnstone Law filed an application for the general admission of Mr Ayers KC to the Grand Court, that application being granted on or around 27 May 2025 having been sponsored and supported by Johnstone Law. In circumstances where the engagement of Johnstone Law was resisted because there was a conflict of interest resulting the prior engagement of Johnstone Law by the Highland Foundations (and financial backing of Mr Dondero), Mr Ayres KC equally stands in a position of conflict in these matters and is not in a position to provide the JOLs with independent advice in either the FSD Proceedings or these liquidation proceedings.

- d. I invite the JOLs and their legal counsel to provide an account of the decision to deliberately conceal the engagement of Mr Ayres KC which appears to be because they knew or were concerned that DFW would object to the engagement of Mr Ayres KC, as would be its right as a stakeholder in the Company's liquidation. This development comes barely a month after Johnstone Law was stood down as counsel for the Current JOLs, the Current JOLs having spent the first almost 2 months of their appointment and in excess of US \$1.4 million in trying to justify the engagement of counsel who were clearly inappropriate in all the circumstances.
- e. On 13 August Baker & Partners wrote to Maples to raise that question of Mr Ayres engagement directly. A copy of the letter from Baker & Partners issued on 13 August 2025 is **exhibited at MP4/Tab 26/pages 2298 to 301**. Maples responded for the JOLs in defensive terms on 15 August 2025 and have failed to address the enquiries of DFW as set out in the 13 August correspondence. A copy of Maples letter dated 15 August 2025 is exhibited at **MP4/Tab 27/pages 2302 to 2302**.

iii. Weaver Opinion

- a. On 1 July 2025 the JOLs were provided with the Weaver Opinion (detailed at paragraph 16 to 18 above). Weaver opined that the proceeds paid to the Highland Foundations in their capacity as Participating Shareholders following the DAF Restructuring was fair. However, in seeking to obtain injunctive relief

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in the FSD Proceedings and in seeking leave to bring those proceedings, the Current JOLs failed to disclose the existence and terms of the Weaver Opinion.

iv. Mercer Report

- b. Notwithstanding that the Current JOLs have the Mercer Report and make reference to that report, they fail to draw the Court's attention to the recommendations of Mercer which demonstrates that the level of compensation afforded to me is in line with market standards for the roles I have assumed, as exhibited at MP4/Tab 4/pages 1068 to 1087.

v. Nature of DAF LP business

- c. The JOLs also mischaracterised DAF LP as passive, whereas I explain at paragraphs 179 to 180 how this is not the case. Looking upward, towards distribution, the Company would act as a conduit of funds that were declared by the Directors to be dividends and distributable as charitable donations. Looking downwards, DAF LP has a number of investments in real estate projects, litigation and securities which require active management.
- d. Once again, the diverse portfolio of duties that I assumed when taking on the role of 'Control Person' is recognized in the Mercer Report and reflected in my compensation. It is not simply a case of holding office and paying out distributions as the Current JOLs suggest.

vi. Failure to disclose DFW responses filed in FSD 116 of 2025 (JAJ)

- a. On a review of the JOLs' skeleton argument filed in the FSD Proceedings with respect to the Cayman Injunction (see MP4/Tab 28/Pages 2304 to 2362) (the hearing of which was adjourned by way of a Consent Order made on 31 July 2025, exhibited at MP4/Tab 21/Pages 2258 to 2273), I note that it was advanced on behalf of the JOLs at paragraph 25 (see MP4/Tab 28/Pages 2310 to 2311 that:

Although the Company does not yet have full details of the Fund's annual expenses which showed or appeared to show increases in expenditure, particularly as

follows (and without prejudice to any further facts and matters relating to directors' fees or expenses):

[...]

(2) *Expenses overall for the first half of 2024 were around US\$18.3 million – almost the same amount spent over the entire course of 2023 (i.e. US\$18.6 million).*

- b. The drafting of sub-paragraph 2 closely resembles the drafting of paragraph 31(b) of the Highland Foundations' Winding Up Petition filed on 23 April 2025 in these liquidation proceedings. I further note that the JOLs completely omitted to disclose to the Court in the FSD Proceedings what DFW's response to that allegation was.
- c. In summary, at **paragraph 179, DFW Affidavit**, I explained that US \$6 million of the US \$18.3 million which are alleged to be expenses are not in fact expenses. Rather, Mr Dondero / the Highland Foundations and now the JOLs, have failed to take into consideration that there was also US \$6.1 million in income from the same NexPoint-led transaction that more than offset the US \$6 million in expenses. Omitting the income and net gain to DAF LP from that transaction which offsets the amount now claimed by the JOLs to a considerable degree, falsely inflates the expense number.
- d. A full explanation can be found at **paragraph 179, DFW Affidavit**, but there is no indication in either FSD Affidavit 1 or FSD Affidavit 2 that the JOLs have investigated DFW's response to this claim which was also alleged in these liquidation proceedings by the Highland Foundations. The absence of any response to DFW's evidence, in addition to their failure to disclose DFW's response to an identical allegation made in these liquidation proceedings as part of the JOLs' full and frank obligations in the FSD Proceedings, suggests to me that the JOLs' have not investigated DFW's response to this allegation. In fact, as the JOLs' closely repeat what was advanced in the Highland Foundations' Winding Up

Petition, I also believe this suggests a lack of objectivity and partiality on the JOLs' part.

v. Non-disclosure of Liquidation Committee

- a. When Ms MacInnis swore her fifth affidavit on 10 July 2025 in support of *ex parte* Application 2, she stated at **paragraph 9.1, MacInnis 5** that “*A liquidation committee has not yet been established with respect to the Company*”.
- b. I am advised (without waiving privilege with respect to that advice) that MacInnis 5 runs contrary to the outcome of the Meeting of Contributors held on 9 July 2025 and that no minutes of that meeting have been circulated.
- c. Ms MacInnis later confirms in her affidavit in support of the Funding Agreement at **paragraph 6, MacInnis 6**, that a Liquidation Committee had in fact been formed the day prior on 9 July 2025.
- d. No explanation for the discrepancies between the statements made in MacInnis 5 and MacInnis 6 have been volunteered, and no correction was made to this misrepresentation in MacInnis 6.

c. Funding Arrangements

64. Since their appointment, the Current JOLs had until recently refused to confirm how the liquidation is being funded. Counsel for myself acting as Management Shareholder, and counsel for DFW had repeatedly raised the significant question of how and by whom the Current JOLs were being funded. This was more recently pressed by both Campbells in their letter of 29 June 2025 and Baker & Partners' letter of 18 July 2025 (exhibited at **MP4/Tab 29** and **Tab 30/Pages 2363 to 2376**).
65. As mentioned above, on 4 July 2025, I understand that the Current JOLs issued *ex parte* Application 2, and did so without notice to at least DFW. I further understand that the JOLs filed an *ex parte* without notice Summons seeking the Court's sanction to enter into the Funding Agreement (**Funding Sanction Summons**). This application was again made without consultation with or notice to DFW. Even if it is accepted that sanction to commence the FSD Proceedings would be justified (which I do not as the

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disclosure of that application would in no way have negated the making of the application) I cannot see the proper basis on proceeding with the Funding Sanction Summons *ex parte*, other than for the Current JOLs to obtain sanction of a funding arrangement they knew would be open to justified challenge and opposition.

66. In support of the Funding Sanctions Summons, Ms McInnis filed partially redacted MacInnis 6 and exhibit MM-6. **MM-6/pages 1 to 14** exhibit a significantly redacted funding agreement made between Crossvine and the JOLs, dated 11 July 2025 (the **Funding Agreement**). This appears to place the Current JOLs in a position of conflict of interest in respect of their obligations to Crossvine, Ellington and Dondero as the funding parties, and DFW as the majority stakeholder of the purportedly solvent liquidation (or at least a significant stakeholder if the liquidation is in fact insolvent).

i. Terms of the Funding Agreement

67. In summary, and from what can be discerned from a review of the partially redacted MacInnis 6 and exhibit MM-6, the Funding Agreement provides that:
- (a) A lump sum will be provided to the Current JOLs by Crossvine for the purposes of funding the Company's liquidation (see **paragraph 11, MacInnis 6**) and the FSD Proceedings (see **paragraph 9.1, MacInnis 6**).
 - (b) The amount of funding has been redacted and it is entirely unclear at present from MacInnis 6 and MM-6 whether the Current JOLs can afford to give a cross-undertaking in damages in the FSD Proceedings as required (see **paragraph 9.3, MacInnis 6**).
 - (c) There are incremental increases in returns for Crossvine with respect to the amounts which will be paid to it should the Current JOLs make any successful recoveries in the Civil Proceedings. For example, **paragraph 9.7(b)(iii), MacInnis 6** states that were the Current JOLs recover in excess of US \$270 million (which the JOLs claim are the Company's rights in the assets held by DAF LP), Crossvine will receive an additional 30% of the amount advanced.

68. The basis of the Funding Agreement which are discernible from the heavily redacted evidence that has been provided are markedly different from the terms Mr Dondero had initially agreed to sworn on oath as set out in Dondero 1.

69. In Mr Dondero's First Affidavit sworn on 9 April 2025 and filed on 16 April 2025 in the Liquidation Proceedings (see **pages 9 to 10, Dondero 1**), Mr Dondero swore with respect to his funding of the liquidation proceedings at paragraph 47 that:

"I have not and will not at any time receive a benefit, not do I have control of these proceedings, because of this funding arrangement... My concern is solely to ensure that the Fund, and the funds that I have donated over time that are held in the Fund, are used only to benefit the Charities and the causes they support".
[emphasis added]

70. Notwithstanding this evidence, two days later the prospective uplift, three month avoidance period and terms of non-disclosure on the part of Crossvine were built into the Funding Agreement. In my view and based on my years of experience in managing businesses affected by Mr Dondero the ostensible altruism professed to by Mr Dondero in his affidavit of 9 April should be viewed as circumspect, and even more so having regard to the persistent refusal of the Mr Dondero-funded Current JOLs who had previously refused to enter into a protocol which does not assure that litigation against Mr Dondero is effectively desisted with.

ii. Crossvine is James Dondero

71. The Current JOLs confirm at **paragraph 11, MacInnis 6** that Crossvine *"is a special purpose vehicle incorporated for the purpose of ultimately Mr Dondero (through the structure outlines above) funding the liquidation of the Company and the JOLs pursuing the Proposed Proceedings"*.

72. The Current JOLs also confirm at **paragraph 9.8, MacInnis 6** that the Funding Agreement grants certain information rights to Crossvine with respect to the progress of these proceedings, without detailing what those rights are.

73. This is highly concerning to DFW in light of the fact that Crossvine is another alter ego of Mr Dondero. Should these information rights extend to rights to view disclosure in these proceedings, DFW is firmly of the view that the disclosure information will be abused for collateral purposes by Mr Dondero in other jurisdictions in which he is litigating in. For a comprehensive summary of the litigation currently on foot, see paragraphs 159 to 188 below. Having known Mr Dondero and Mr Ellington for more than ten years, I know that, should these proceedings move adversely to Mr Dondero and Mr Ellington's personal interests, they will not hesitate to default on their obligations to meet their funding commitments, which effectively means that if the JOLs do not aggressively allege fraud and wrongdoing, they will not be paid. This grants Mr Dondero and Mr Ellington significant and improper control over the Current JOLs, who cannot accept money from Mr Dondero and Mr Ellington and be considered to remain fair and impartial.

iii. JOLs' failure to disclose knowledge of funding

74. In Ms Diaz's deposition at **MP4/Tab 14/Pages 1736 to 1738** , Ms Diaz revealed that it has always been the agreement that Mr Dondero would fund the Company's liquidation on behalf of at least the Highland Dallas Foundation, and this decision was made prior to litigation in the Cayman Islands commencing:

"Q: Did you learn, when you read Mr. Dondero's declaration in the Cayman Islands, that he's actually funding that litigation on behalf of the supporting organizations?"

A. No, that's not when I learned that.

Q. That's not when you learned it or -- withdrawn. Are you aware that he's funding that litigation?"

A. Yes.

Q. When did you learn that he was funding that litigation?"

A. Before we got into litigation.

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Q. Is he funding this litigation on behalf of the Dallas Foundation?

A. Yes, he is.

Q. And how much money did he provide for the funding of this litigation?

A. We have not agreed on an amount. As with any of our fundholders', legal expenses will get paid through by the fund. So that's a very common business practice. And it would go until the legal issues ceased.

Q. But he's made a commitment to fund -- to personally fund the expenses of the Dallas Foundation in connection with this litigation; is that right?

A. Yes."

75. It should be noted at the outset that the Funding Agreement was executed 2 days after the first meeting of the Company's contributories which was held at the Current JOLs' offices and virtually on 9 July 2025, during which a Liquidation Committee was formed. DFW is represented on the Liquidation Committee by Ms Jennifer Colegate of Baker & Partners. A letter of authorisation given by DFW is exhibited at **MP4/Tab 31/Page 2377**.

76. Neither the existence of discussions concerning the negotiation of the Funding Agreement, nor copies of the draft Funding Agreement, were disclosed at that meeting. This suggests a deliberate attempt to avoid giving the Company's contributories, and in reality the only non-Dondero influenced and controlled contributories i.e. DFW and myself as Management Shareholder an opportunity to review and scrutinize the draft Funding Agreement, its terms and to consider in all the circumstances if the funding as proposed and from whom is appropriate.

77. In fact, the Current JOLs misled the Company's contributories in their First Report as at 2 July (and provided to DFW on 3 July, see **MP4/Tab32/Pages 2378 to 2398**), when they stated at page 13:

"6.4.1 As there are insufficient assets with which to meet the fees and expenses of the liquidation, the JOLs are currently exploring third party funding options. The

JOLs will seek sanction for any funding agreement from the Court in due course.... Should any third party be interested in funding the liquidation, expressions of interest may be sent to CDAF.Core@uk.gt.com.”

78. Furthermore, the JOLs confirmed at **paragraph 13.3, MacInnis 6** that they did not approach any other litigation funders for quotes, despite signalling that it was exploring more than one funding option (i.e. more than one source of funding). That representation is false, misleading and calculated to avoid transparency.
79. This intentional concealment of vital developments and key contractual documents which should be available to the Company’s contributories for scrutiny in the liquidation severely undermines DFW’s trust and confidence in the Current JOLs. As is clear from the terms of MacInnis 6 and the Funding Agreement, the ultimate identity of the funder has not changed since the Highland Foundations petitioned for the winding up of the Company. Just as Mr Dondero sits behind the legal proceedings instigated by the Highland Foundations in respect of the Company, Mr Dondero sits behind the JOLs in respect of the liquidation and associated litigation now commenced in the Cayman Island.
80. In light of the extensive litigation to which Mr Dondero is exposed to, the Current JOLs have wrongfully thought it prudent and in the best interests of the estate to accept funding from an inescapably conflicted financier, who has a track record of defaulting on financial obligations.

iv. Conflict of Interest in Mr Dondero funding liquidation

81. It is DFW’s position in these liquidation proceedings that Mr Dondero was cycling the donations he made to the charitable enterprises through the Fund. There is evidence before this Court (**see paragraphs 110 to 120, 145 to 146, 170, 194 to 199, DFW Affidavit**) that Mr Dondero exerted a huge amount of control and influence over key personnel such as Ms Diaz, Mr Scott and staff at the Highland Dallas Foundation to direct how his donations were spent.

82. Abusing the charitable structure put the tax exempt status of the Highland Foundations at risk, which necessitated the DAF Restructure and the voluntary liquidation of the Company.
83. It is therefore notable that Mr Dondero, who previously swore in these proceedings that he would not seek any benefit from the funds recovered on the charities' behalf, now seeks through entities he controls a bounty fee for any recoveries in excess of US \$50 million made by the Current JOLs in the FSD Proceedings.
84. If the Court is willing to grant the relief sought in DFW's Removal Summons and replace the JOLs, this will assist in ensuring that the liquidation is insulated to a significant extent from Mr Dondero's influence, on the understanding that the liquidation will be funded from the assets within the DAF Structure, which will ensure the Replacement JOLs' independence.
85. As previously deposed above, the Current JOLs were aware or at least on notice as of the 24 June 2025 that Dondero was funding the Highland Foundations legal actions as per the transcript of Ms Diaz's deposition in the US Bankruptcy Court proceedings which s included in the Supplementary Bundle by Cayman attorneys to DFW.

v. Involvement of Scott Ellington

86. I understand from **paragraph 10.1, MacInnis 6** that Mr Scott Ellington is one of the managers of Crossvine, and its sole shareholder is a Texas non-profit called Crossvine Foundation, which is also co-managed by Mr Ellington.
87. Ms MacInnis also confirms at **paragraph 11, MacInnis 6** that Crossvine has been established in order for Mr Dondero to fund the FSD Proceedings and these liquidation proceedings.
88. As stated at **paragraph 69, DFW Affidavit**, Scott Ellington is the Chief Executive Officer and owner of Skyview (Mr Patrick's former employer), the former General Counsel of Highland and a long-standing business associate of Mr Dondero. Despite the appearance of Mr Ellington's ownership and control of Skyview, I deposed at **paragraph 69, DFW Affidavit** that it was in fact Mr Dondero who had actual control

- of Skyview and that it was he (rather than Mr Ellington) who determined the compensation of every Skyview employee with Skyview's Head of Human Resources.
89. Mr Ellington, together with Mr Dondero, also owns a Cayman Islands based reinsurance company called Sentinel Reinsurance, Ltd (**Sentinel**), and is personally embroiled in the Sentinel Fraud (as described below). As explained in detail at **paragraphs 151 to 156, DFW Affidavit**, UBS Securities LLC and UBS AG London Branch (**UBS Entities**) alleged that certain specific transfers of assets to Sentinel during 2017 were executed after the UBS Entities obtained an order for summary judgment against Highland and other entities owned or otherwise affiliated with Mr Dondero (**2017 Transfers**).
90. Evidence with respect to the Sentinel Fraud is already before this Court but in summary, a New York court made a preliminary finding that those transfers took place at a time when it was anticipated that a US \$1.2 billion judgment would be made in UBS' favour. The assets compromising the 2017 Transfers were transferred pursuant to an attendant Asset Purchase Agreement, as payment of the premium for an after-the-event insurance policy (**ATE Policy**) to insure Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company and Highland CDO Holding Company against liability in the Underlying Action (as defined at **paragraph 123 in the DFW Affidavit**). The ATE Policy was outside the usual course of business for Sentinel, as Sentinel had never previously issued this type of policy or one as large as the ATE Policy and would not have had the means to pay on the ATE Policy without the assets received following the 2017 Transfers. This scheme has been termed the **Sentinel Fraud**.
91. Mr Ellington is named personally as a defendant in UBS Securities LLC, UBS AG London Branch v. James Dondero, Scott Ellington, Highland COO Holding Company, Highland COO Opportunity Masters Fund, L.P., Highland Financial Partners, L.P., Highland Special Opportunities Holdings Company, CLO HoldCo, Ltd., Mainspring, Ltd., Montage Holdings, Ltd (Index No. 6507 44/2023) (**Turnover Proceedings**). In those proceedings, the Supreme Court of the State of New York, New York County made a decision and order on 26 March 2025 finding that the petition sufficiently alleged that the 2017 Transfers undertaken by Mr Dondero and Mr Ellington were

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- fraudulent conveyances to Sentinel. The New York Supreme Court also held that to the extent that Mr Dondero and Mr Ellington sought to dismiss these claims, their motions were denied, which allowed the US \$1.1 billion UBS case to move forward against Mr Dondero and Mr Ellington personally and entities (including Cayman entities) they own and/or control.
92. The Sentinel Fraud was also discussed at a hearing in the Bankruptcy Court for the Northern District of Texas in 2022, where Judge Stacey Jernigan implied (after verbalizing certain various implicated criminal statutes) that she may make a referral to the U.S. attorney given the criminal conduct by Mr Dondero, Mr Ellington, and others to fraudulently hide assets from UBS and lie about it (see **paragraph 156, DFW Affidavit**).
93. I also deposed at **paragraph 117, DFW Affidavit** that Mr Ellington has previously received moneys from DAF LP (which is intended for charitable purposes) in the form of a bonus via the Tall Pine Group, at a time when Mr Ellington's ability to receive a bonus had been blocked by the US Courts in the Highland Bankruptcy (see an invoice issued by Tall Pine Group LLC issued on 3 April 2020 at **MP1/ page 171**). This bonus payment, which derived from US \$1 million payment from DAF LP to the Tall Pine Group, had been flagged in the Highland bankruptcy proceedings as part of a larger US \$17 million fraudulent transfer (see **MP1/ pages 172 to 305**).
94. DFW finds it extraordinary that the Current JOLs were satisfied with the due diligence performed on Mr Ellington, despite that allegations of fraud have been made and found against him, and being on notice by virtue of the evidence filed in these liquidation proceedings that he has a history of being unjustly enriched from the Funds' assets.
95. Taken all together, DFW has grave concerns that Crossvine is the alter ego of Mr Dondero, and has been established as a vehicle by Mr Dondero to fund (a) efforts to claw back a percentage of his own donations from DAF LP and/or entities affiliated with it; (b) efforts to prevent the implementation of the Hunter Mountain Settlement; and (c) efforts to regain control over the Fund, all through the JOLs and by harnessing the powers conferred to them by Appointment Order; and (d) obstruct, impede or

prevent almost US \$300 million in litigation claims against him and others arising from the Kirschner Complaint.

d) Failure to meaningfully engage with a Protocol

96. Since 16 May 2025, DFW's attorneys and the attorneys of CDMCFAD, LLC (CDM) (Campbells LLP) have been attempting to agree a protocol with the JOLs as noted in a letter from Campbells to Maples, dated 29 June 2025 at **MP4/Tab 29/pages 2363 to 2371**. It was CDM who first volunteered a transactional reporting protocol to the Current JOLs in an attempt to assure the JOLs that the businesses of CDM were being operated in an open and transparent way.
97. A few days after this draft protocol was proposed, I caused HMIT to enter into the Hunter Mountain Settlement (discussed further at paragraphs 50 to 53 above) which led to a Settlement Motion (defined and discussed at paragraphs 94 and 97 below) seeking the US Bankruptcy Court's approval of the Hunter Mountain Settlement Agreement.
98. No response was received by the Current JOLs to the protocol suggestion. Instead, they wasted time in seeking to justify the appointment of Johnstone Law so that as of 24 June 2025 (the hearing of the Sanction Summons) no substantive response to the proposed protocol had been received from the JOLs.
99. As the Court observed at the Sanction Application on 24 June 2025 "*something along the lines of the protocol that is floating around seems a sensible way forward*". The Court further observed that "*if there is agreement on a protocol, then the liquidators won't need to pursue Chapter 15 because they'll be confident that the assets are safeguarded.*" A copy of the transcript may be found at **MP4/Tab 33/pages 2399 to 2487** and the specific extracts at **MP4/Tab 33/Page 2454**.
100. At around that time, a Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith, Case No. 19-34054-sgj11 (Bankr. N.D.Tex.) [Dkt. 4216] (the **Settlement Motion**) was before the Texas Bankruptcy Court. I have set out above in this affidavit (paragraphs 47 to 50 above) the clear benefits and advantages to the

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Company and its contributories and/or creditors by HMIT entering into the Hunter Mountain Settlement.

101. Incredulously, and immediately following the Sanction Hearing of 24 June 2025 rather than following the recommendation of his Honourable Justice Asif KC with respect to entering into a protocol with CDM, on that same day the Current JOLs instead issued the HMIT Adjournment Letter to the attorneys acting in Texas Bankruptcy proceedings and to the US Bankruptcy Trust of Highland Capital, Mr J Seery in connect with the Hunter Mountain Settlement. Notwithstanding that the Hunter Mountain Settlement would result in significant value returning to the DAF Structure the Current JOLs demanded that the Bankruptcy Court defer consideration of the Hunter Mountain Settlement for a period of 45 days to afford the JOLs an opportunity to continue its investigations. A copy of this correspondence is exhibited at **MP4/Tab 1/Pages 1 to 3**.
102. This request closely followed a failed attempt by Dugaboy to object to the approval of the Hunter Mountain Settlement, which was sanctioned by a Court Order dated 30 June 2025 and referred to as the **9019 Order**. Copies of this Objection and the 9019 Order are at **MP4/Tab 34 and Tab 35/Pages 2488 to 2499**. The making of the 9019 Order resulted in the assignment of approximately US \$300 million in legal claims to pursue matters covered in the Amended Kirschner Complaint to HMIT and its affiliates. For the benefit of the Court, the 23 defendants to the Amended Kirschner Complaint include Mr Dondero; his long-standing business associate, Mr Ellington, NexPoint Advisors LP; Highland Dallas Foundation; Okada Family Trust; and Dugaboy. A copy of the Dugaboy Motion to Stay the 9019 Order is exhibited at **MP4/Tab 16/Pages 2082 to 2177**. Mr Dondero and Mr Ellington attempt now to use the office of the Current JOLs and these proceedings in the Cayman Islands to prevent the Kirschner claims from moving forward against them. This is a collateral attack with an improper purpose.
103. The stay sought by Dugaboy was not granted and following a review of the First Report at page 12 (see **MP4/Tab 32/Page 2390**) on 1 July 2025, the Highland Foundations (of which the supported organisation the Dallas Foundation had previously withdrawn its objection from the Settlement Motion to approve the Hunter Mountain Settlement independently of Mr Dondero) filed the **TRO Proceedings**. The matter came on for a

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hearing on 2 July 2025 at which the Highland Foundations failed to persuade the Texas Court that there was any real risk of irreparable harm or dissipation of assets with the Judge concluding that:

“I’m struggling to find evidence in the record that there is an immediate threat of irreparable harm. It appears that the \$270 million is gone. Your concern is you don’t want to move further [sic] away. But I’m not seeing anything in the record to indicate to me that there is an immediate threat of that.” [see **MP4/TAB 36/Page 2541**].

104. The relevant assets at issue are also further secured by the Rule 11 Agreement pursuant to which the parties named in the TRO Petition, including but not limited to DFW, CDM (and its affiliated entities) and myself personally, have voluntarily agreed to (i) operate in the ordinary course of business; (ii) ensure that the proceeds of any assets remain in the relevant entity (i.e., are not transferred to any other entity within or outside the group); and (iii) not engage in any corporate restructuring.
105. With respect to the Rule 11 Agreement mentioned above, it is pertinent to note that during hearing the TRO Petition the Judge of the Dallas Business Court accurately recognised that the complaints brought by the Highland Foundations related to the DAF Restructuring and transactions that had taken place. There was no evidence before the Honourable Judge in those proceeding that there would be a further restructuring. As the impetus for the DAF Restructuring in the first place is no longer hanging over the DAF Structure, I was comfortable providing the Rule 11 Agreement which includes an undertaking that there will not be a further restructuring of the DAF LP.
106. A hearing in the TRO Proceedings had been scheduled for 4 August 2025. As matters have transpired, the Dallas Business Court has received arguments on jurisdiction in respect of the TRO Proceedings and a ruling remains extant on that issue. There is no threat of immediate harm either there or here. Notwithstanding, legal counsel to CDM and its affiliates made consistent and concerted attempts to reach agreement in respect of the proposed protocol. As recorded in their letter on behalf of CDM to Maples dated 29 June 2025 (see **MP4/Tab 29/Pages 2363 to 2371**) the Current JOLs elected to make the without notice *ex parte* Application 2 to commence the FSD Proceedings, which

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were issued on 15 July 2025. Chapter 15 Petition Proceedings were subsequently filed on 21 July 2025 in the United States Bankruptcy Court, the District of Delaware (see **MP4/Tab 37/Pages 2578 to 2659**) (**Chapter 15 Petition Proceedings**), which would have been unnecessary had the Current JOLs engaged meaningfully in discussions to settle a protocol with the CDM Entities.

107. In their Verified Petition of the Chapter 15 Petition Proceedings, the JOLs asserted that they act “*on behalf of the Highland Foundations*”. The advancement of selective stakeholder interests raises serious questions as to the JOLs’ independence, balanced against their prior reluctance to agree a protocol which offered voluntary reporting mechanisms that would have delivered many of the same safeguards the Current JOLs now seek in the FSD Proceedings, without incurring the considerable costs now being borne by the liquidation estate.
108. The terms of protocol as proposed between the JOLs and CDM did not include a stay on the pursuit of current or prospective claims against Mr Dondero and his affiliates that were assigned to HMIT by the terms of the Hunter Mountain Settlement. However, the recent legal actions in the form of the TRO Proceedings and the FSD Proceedings which have been taken by the JOLs at the instigation of the Highland Foundations (who are under the influence of Mr Dondero) do impede the conduct of proceedings against Mr Dondero and entities affiliated with him. I discuss the timing of these proceedings and the partiality of them at paragraphs xx to xx below.
109. For the avoidance of doubt, it is not the case that the parties reached an impasse following which the FSD Proceedings and the Chapter 15 Petition Proceedings became the only options available to the Current JOLs – they failed to reply to Campbells’ letter dated 29 June 2025 which contained the most recent proposals as to how best safeguard the DAF assets pending the further investigations as demanded by the Current JOLs. Notably, at this point the representations of the Current JOLs were consistent with them continuing to investigate the DAF Restructuring, which I consider to be misleading and fundamentally different to the commencement of proceedings as set out in the FSD Proceedings.

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110. The Current JOLs' apparent willingness to act in lockstep with the Highland Foundations evident in the alacrity of the FSD Proceedings being commenced is even more concerning given its obvious prejudice to DFW and the former directors of the Company by virtue of the serious nature of claims which the Current JOLs have issued having had less than 3 months in office to investigate the allegations of the Highland Foundations before those actions were issued.
111. As outlined in Campbells' letter dated 21 July 2025 (see **MP4/Tab 20/Pages 2245 to 2257**), Mr Murphy and I have made every effort to agree a protocol to preserve the relevant assets pending the outcome of the JOLs' intended investigations, and we have no intention to either dissipate assets and/or misappropriate assets regardless of the adoption of a protocol and/or the continuation of the Rule 11 Agreement.
112. The Current JOLs remained intransigent on insisting on matters which would effectively deprive the defendants in the FSD Proceedings from defending those proceedings. As matters transpired, it was only late on 30 July 2025, and less than 24 hours before the Injunction Summons was to be heard by Parker J that counsel for the JOLs acceded to the terms of a Consent Order and undertaking (**FSD Consent Order**) in substantially the same terms as the Protocol which had been proposed by the CDM Entities in the months since the JOLs were first appointed. While the breadth of undertakings provided address additional procedural matters, such as the adjournment of the Chapter 15 application, the substantial terms and oversight of the operations of the DAF assets and investments as provided for in the FSD Consent Order could have been agreed between DFW, the CDM Entities and the Current JOLs much earlier and certainly before they had elected to incur the expense of the FSD Proceedings and Cayman Injunction.

e) Leveraging of Liquidation Proceedings: Advancement of Dondero Interests

i. Failure to Sanction Highland Foundations

113. It is notable that the Current JOLs will not challenge the Highland Foundations' proprietary claim in the TRO Proceedings (which competes with the Current JOLs' interests in the Company's assets) despite the clear advantages that the Hunter

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Mountain Settlement offers to the Company and the DAF Structure more generally (as discussed at paragraphs 50 to 53 above).

114. This failure is despite the correspondence sent from Baker & Partners on 8 July 2025 and 18 July 2025 on behalf of DFW, which sought to establish whether the Current JOLs' would seek to sanction the Highland Foundations from commencing litigation in Texas, in the United States to advance claims against assets which they regard as the Company's and which the JOLs ought, as officers of the Court and trustees of the liquidation process, to be defending. Copies of that correspondence are exhibited at **MP4/Tab 30 and Tab 38/Pages 2372 to 2376 and 2660 to 2661**.
115. Instead, the Current JOLs have launched the FSD Proceedings which are being openly brought to protect the Highland Foundations' alleged claims in the Company's assets in a coordinated manner, for example the Writ at paragraph 17 states: "*On 10 July 2025, the JOLs filed this claim and contemporaneously issued the Injunction Summons. The timing of the application was in part driven by the urgent need to preserve the Fund's assets, in circumstances where the Supporting Organisations had filed a TRO Motion in the Texas Proceedings, and a hearing on that motion was anticipated to take place on or around 29 July 2025*". The Current JOLs were also openly seeking a hearing date which coincides with a hearing in the TRO Proceedings in order to support the Highland Foundations' efforts to freeze the Fund's assets. I discuss this approach in more detail at paragraphs 138 below.
116. The FSD Proceedings have been launched despite what I regard inadequate investigations by the Current JOLs and without interviewing either myself or Mr Murphy before reaching a pre-determined view that the Funds' assets in fact belong to the Highland Foundations. Without interviewing myself or Mr Murphy and having interviewed the Highland Foundations, it is unclear to me how the Current JOLs could claim to be fair and independent.
117. This is another example of the Current JOLs lacking objectivity and adopting a course of conduct underpinned by disparity in the treatment between a contributory of the same class, which has completely compromised DFW's trust and confidence in the Current JOLs' ability to administer this liquidation in a fair and impartial manner.

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ii. Solvency determination

2. On 18 July 2025, Baker & Partners wrote to the Current JOLs to raise concerns with respect to the JOLs' declaration in the First Report that the Company was solvent (see **MP4/Tab 30/Pages 2372 to 2376**). Baker & Partners noted that neither the reason or the basis for that determination had been provided, either in the JOLs' First Report or at the Meeting of Contributories held on 9 July 2025, in which Baker & Partners were in attendance.
3. Baker & Partners stated that they found the Current JOLs' determination "*highly questionable*" given the fact that the Current JOLs had stated at **paragraph 13, MacInnis 2**, that "*there no assets in the estate from which the JOLs may, with sanction, fund their investigations*" and at **page 13** that:
 - "a. the JOLs and their staff have incurred fees and expenses in the aggregate of US\$461,145.11; and
 - b. legal costs and disbursements in the amount of US\$978,916.00."
4. I understand from my prior dealings with the Company as a former director that the Highland Foundations are not creditors of the Company. This is further reflected in the Report of the Current JOLs. Accordingly, I understand from Cayman legal counsel that the Highland Foundations would have no entitlement to participate in the Liquidation Committee in the Company's insolvent liquidation.
5. For this reason, a declaration that the Company is still solvent confers a significant advantage to the Highland Foundations, whereas a declaration of insolvency would remove their ability to participate in these proceedings.
6. Maples responded substantively to Baker & Partners by a letter on 23 July 2025 (see **pages MP4/Tab 39/Pages 2662 to 2665**), which stated that the solvency determination "*reflects the position that if the Company is successful in the Proceedings, the parties with the economic interest in the liquidation will be its participating shareholders*".
7. In other words, the JOLs have predetermined their claims to the Fund's assets before completing an adequate investigation and before waiting for the determination of the

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DFW Summons, in which DFW sought to have the validity of the DAF Restructuring (and therefore the scope of the Company's assets) determined in these liquidation proceedings.

8. The Current JOLs failed to substantively engage with the DFW Summons until the His Honourable Justice Asif KC expressly directed them to do so by email direction dated 16 June 2025 (**MP4/Tab 40 30/Page 2666**) From the timing of the various sanction applications and issuance of the FSD Proceedings, it is in my view apparent that the Current JOLs had no genuine intention in engaging with DFW to seek an economical and efficient resolution to any questions over the DAF Restructuring.
9. That omission is remarkable given the vigour with which the Current JOLs have pursued adverse proceedings against DFW, myself, Mr Murphy and affiliated parties in both Cayman and the United States.

iii. JOLs' avoidance of DFW Summons

10. At the Sanction Hearing on 24 June 2025, the transcripts of which is exhibited at **MP4/Tab 33/Pages 2399 to 2487** Leading Counsel for DFW addressed the rationale for the DFW Summons that DFW intended to provide an appropriate roadmap for the resolution of the key issues relating to this liquidation, namely: (i) the validity and efficacy of the DAF Restructuring; (ii) the security and safeguarding of the relevant assets, the DAF Assets; and (iii) the identification of which of the potential parties to the summons have an entitlement to the DAF Assets and the nature of that entitlement. The Current JOLs' FSD Proceedings cut across DFW Summons, the procedural vehicle which DFW put forward as a sensible way to resolve the central issues in this liquidation. This means that related issues which underpin the Current JOLs allegations of (including, but not limited to) unlawful means conspiracy, unconscionable receipt and unjust enrichment are now being side-stepped in this liquidation and are placed for determination before a new justice, who is unfamiliar with these proceedings or the relevant facts and evidence which is already before the Court, for determination.

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11. Whilst the Current JOLs have repeatedly stated that they were at the investigation only stage, the speed with which they have commenced proceedings in the Cayman Islands and in Delaware, and attempted to interfere with the bankruptcy proceedings in Texas undermines the purpose of the DFW Summons and failing to agree to a protocol (which would have been the more cost efficient means of resolving the scope of the liquidation and any misconceived concerns around dissipation of potential assets) contradicts any assertion that the Current JOLs are acting disinterestedly or independently.

iv. JOLs' interference in the Texas Bankruptcy Proceedings

12. DFW is concerned that these liquidation proceedings are being leveraged by Mr Dondero (through the Highland Foundations) to circumvent obstacles that have arisen in overseas litigation which is not progressing in Mr Dondero's favour, or which Mr Dondero is unable to successfully oppose.
13. Specifically, in the Hunter Mountain Claim (referred to above at paragraphs 103) I caused the HMIT and its affiliated entities (**HMIT Entities**) to enter into the Hunter Mountain Settlement.
14. On 24 June 2025, which was the eve of the Settlement Motion and the day of the Sanction Hearing, the Foundation Parties and HMIT Entities entered into a Settlement Term Sheet (**Term Sheet**) which was executed by Ms Diaz as the Chief Executive Officer of the Dallas Foundation (and who has filed evidence in these liquidation proceedings).
15. At the same time, and as mentioned above, the Current JOLs also wrote to the trustees of the Highland Capital Management L.P., on 24 June 2025 requesting an adjournment of the Settlement Motion to afford the Current JOLs additional time to progress their investigations of the HMIT Entities, or alternatively, that distributions were deferred to the HMIT Entities so that the Current JOLs could continue their investigations without risk of asset dissipation in connection with the protocol discussions (see **MP4/Tab 1/Pages 1 to 3**).
16. It is important to note that approval from the US Bankruptcy Court had been sought before entering into the settlement with HMIT became effective, and could in no way

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- have constituted an attempt at asset dissipation under the supervision of a US Bankruptcy Court.
17. The DF Objection (mentioned at paragraphs 49 and 50 above) was withdrawn by virtue of the “*Stipulation Withdrawing Objection of the Dallas Foundation and Crown Global Life Insurance, Ltd to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. 363 Approving Settlement with the HMIT Entities and Authorising Actions Consistent Therewith*” which was filed in the United States Bankruptcy Court For the Northern District of Texas, Dallas Division on 25 June 2025 (the **Stipulation**), exhibited at **MP4/Tab 41/Pages 2667 to 2677**.
 18. The Stipulation was subsequently entered on 27 June 2025. As set out in correspondence from Kelly Hart Pitre to David Curry of Okin Adams Bartlett Curry LLP dated 11 July 2025 (see **MP4/Tab 42/Pages 2678 to 2681**, the **KHP Letter**), in accordance with the Term Sheet, the Foundation Parties had agreed to participate in an initial confidential settlement meeting which was scheduled for 2 July 2025.
 19. The Term Sheet also provided that Mr Shawn Raver, the Company’s former assistant general counsel and chief operating officer was required to:
 - (a) review the current “DAF” structure with the Dallas Foundation;
 - (b) provide a projected quarterly expense budget to the Foundation Parties (as defined therein);
 - (c) continue to provide expense reporting every forty-five (45) days, commencing 5 August 2025; and
 - (d) show and present a balance sheet for the DAF as of 30 September 2024, 31 December 2024, and 31 March 2025, including transfers of assets among entities within the DAF corporate structure.
 20. As stated in the KHP Letter, Mr Raver prepared the balance sheets as required and prepared a May 2025 working balance sheet, which was beyond the scope of his requirements under the Term Sheet.

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21. The Highland Dallas Foundation, together with The Highland Kansas City Foundation, Inc., and the Highland Santa Barbara Foundation, Inc. instead of conducting the 2 July 2025 meeting as planned, filed the TRO Petition the day before the planned meeting and alleged, incredibly, a lack of transparency. Despite this showing of bad faith, the meeting scheduled for the morning of 2 July 2025 went ahead as scheduled with Ms Diaz appearing by Zoom, and Mr Raver presented all of the information discussed.
22. As mentioned above, the Current JOLs make no secret of the fact that they are timing the hearing of the Injunction Summons intentionally to coincide with the hearing of the TRO Petition. In Maples' letter to the covering letter Court when filing the Civil Proceedings, Maples (at **MP4/Tab 19/Pages 2241 to 2244**), say the following:
 - (a) **Page 2:** *"...we would be most grateful if you are able to confirm if the Honourable Justice Parker has availability to hear the Application on one of the above dates (with our client's preference being 28 or 29 July 2025 in light of the timetable in the Texas Proceedings referred to below)";*
 - (b) **Page 2:** *"The JOLs have recently become aware that the Supporting Organisations (being the holders of Participating Shares in the Company) issued: (i) a Petition against the First, Third, Fourth and Fifth Defendants to the Proceedings, and the original general partner of the Fund (the "**Texas Petition**" and the "**Texas Defendants**"); and (ii) an application for a temporary restraining order ("**TRO Motion**"), before the Texas Business Court..."*
 - (c) **Page 3:** *"In filing the Texas Petition and TRO Motion, the Supporting Organisations are acting independently of the JOLs. The JOLs were informed of the Texas Petition and TRO Motion only after they were filed by the Supporting Organisations."*
 - (d) **Page 3:** *"If the jurisdiction challenge is successful, the temporary restraints provided for in the Rule 11 Agreement will be revoked, and the Company will be left with no protection against dissipation of the Fund's assets by the Defendants..."*

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(e) **Page 3:** *“Accordingly, if the Application is not determined until after the Court’s summer recess ends in mid-September 2025, the Company would be significantly prejudiced because there is a real risk that the temporary (albeit incomplete protection provided by the Rule 11 Agreement will no longer be in place by then....The JOLs’ therefore have grave concerns that without injunctions being granted by the Honourable Court pending trial, the Defendants may take steps to further dissipate or otherwise harm the value of those assets unjustifiably.”*

23. It is remarkable that: (a) the Current JOLs first sought to interfere with the implementation of the Hunter Mountain Settlement Agreement, which can only be in the best interest of the Company; (b) have “tag-teamed” with the Highland Foundations’ legal strategy to freeze the Fund’s assets; (c) are co-ordinating the FSD Proceedings with the TRO Proceedings, despite the fact that they and the Highland Foundations are claiming to have competing proprietary interests in the same assets; and (d) the Current JOLs intervene to obstruct and/or prevent US \$300 million in claims arising from the Kirschner Complaint to be alleged against their funders, Mr Dondero and Mr Ellington.
24. By adopting this co-ordinated buttressing litigation strategy, the Current JOLs have lost all objectivity with regards to their Court appointed duties, especially as a draft protocol has been in circulation since 16 May 2025 and no reasons for the failure to agree the last draft Protocol have been provided (see paragraphs 122 above).
25. The reasons for this co-ordinated approach with the Highland Foundations I understand stems from the Current JOLs’ concerns that the Company’s assets were removed to the detriment of the underlying charities (rather than to the detriment of the Company, which is where the JOLs’ concerns should objectively lie (see **paragraph 42, MacInnis 5**)).
26. Indeed, Ms MacInnis in **DFW Affidavit 1** at **paragraphs 52 to 59** (as set out below), goes into great detail with regards to the effects certain of the Company’s transactions have had on the charities, and the resulting impacts these transactions will have on the

balance sheets of the Supporting Organisations (see also **paragraphs 42 to 49, MacInnis 5**):

“Impact on Charities

*[53] The **JOLs continue to investigate the impact that the Relevant Transactions have on the Charities.** The Relevant Transactions have reduced the ability the Supporting Organisations and the Charities to meet their charitable objectives ...*

A Hole in the Charities’ Balance Sheets

[57] The JOLs are also concerned that the other Supporting Organisations and Charities will also have similar holes in their balance sheet as a result of the Relevant Transactions.

[...]

[59] The JOLs are, therefore, concerned that the Relevant Transactions (particularly the LP/LLC Exchange) will reduce the funds available to the Charities to meet their obligations to the Supporting Organisations. [emphasis added]”

27. Again, and with respect to Ms MacInnis and Grant Thornton, but I am advised (without waiving privilege in connection with that advice) that the Current JOLs’ focus should be on investigating whether the transactions had a detrimental effect on the Company; it is not for the JOLs to bring such claims on the Highland Foundations behalf.
28. The Current JOLs have demonstrated a clear partiality towards the Highland Foundations by bringing the FSD Proceedings and seeking to align the timetable in those Cayman proceedings with the timetable of the TRO Proceedings brought by the Highland Foundations.
29. In light of the strong suggestion that the JOLs are favouring and promoting the interests of one set of contributories over another, I repeat that DFW has lost all trust and confidence in the Current JOLs, and that they have lost their independence and objectivity with regards to the fair, efficient and proper administration of this liquidation.

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f) Inadequate or incomplete investigations

ii. Absence of Interviews

30. The Current JOLs have consistently refused to engage in any substantive dialogue with DFW or its representatives.
31. Contrary to **paragraph 24, MacInnis 5**, which states that the Current JOLs have “*conducted an extensive and detailed investigation into the Company’s affairs, albeit those investigations are not complete*” DFW has never been invited to participate in any meeting with the Current JOLs.
32. Neither I nor Mr Murphy have been interviewed or asked to provide any information in connection with the Current JOLs’ investigations. Whilst myself and Mr Murphy cancelled our initial meeting to speak with the JOLs, the issue of their’ retention of Johnstone Law was a live one and the prospect that Johnstone Law would have attended that meeting was very real. However, since Johnstone Law’s engagement was terminated by the Current JOLs, the Current JOLs have not asked to meet with, or interview us.
33. This stands in stark contrast to the apparent depth of interaction between the Current JOLs and the Highland Foundations, as evidenced by the detail included in the Current JOLs’ affidavit in support of the Injunction Summons and in the Statement of Claim in the Civil Proceedings which is outlined as follows.
 - (a) **Paragraph 11 of MacInnis 5**: states that the JOLs have discussions with Ms Julie Diaz, Mr Grant Scott and Mr Joe DePaolo of the Highland Foundations to understand the way in which the Company operated historically. However, how the Company operated and its connection with the DAF Structure is not something that the Highland Foundations as Participating Shareholders could have assisted with;
 - (b) **Paragraph 15.2 to 15.5 of MacInnis 5**: states that the JOLs have been provided with documents which are concerned with how an individual can establish a Supporting Organisation and the agreement governing the

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relationships between a Supporting Organisation and their respective charities. This is unrelated to the investigations they are meant to undertake with respect to the Company, but have collected, reviewed and exhibited documents which relate to the Supporting Organisations, such as:

- (c) Certificates of incorporation;
- (d) By-laws;
- (e) Procedures for Establishment and Operation of Funds and Supporting Organisations;
- (f) Internal Revenue Service correspondence confirming that the Supporting Organisations are exempt from federal income tax;
- (g) The Internal Revenue Code 1986 (as amended);
- (h) A Legal Relationship Agreement (as defined in MacInnis 5); and
- (i) An Operating Agreement.
- (j) It appears that the scope of the Current JOLs' investigations has gone well beyond the affairs of the Company itself and has extended to investigating the genesis of the Company's stakeholders which is unconnected with the liquidation. Furthermore, it also appears that the Current JOLs' have misdirected their investigations with regards to the tax exempt status of the Supporting Organisations, as it is the nature of the DAF Structure and the effects of the DAF Restructure which should determine the Supporting Organisations' treatment for tax purposes.

34. Moreover, the Current JOLs appear to have repurposed their investigatory powers under the Companies Act into a litigation-driven evidence-gathering exercise, and commenced proceedings in multiple jurisdictions within the space of a few weeks from their appointment.

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ii. No investigation into federal tax status concerns

35. The Current JOLs' investigations have not touched at all upon whether the DAF Structure was indeed exposed to US federal tax laws, despite extensive evidence given in my affidavit. They brush this aside with reference to a Haynes & Boone memo that focuses on whether the DAF constitutes a "donor advised fund" under the U.S. Internal Revenue Code. As the Current JOLs admit, it is not; the Haynes & Boone memo misstated the facts (as the JOLs implicitly acknowledged) and addressed issues of no relevance given this is not a "donor advised fund." It is also unclear whether the Current JOLs have obtained their own independent tax advice with respect to these concerns.
36. If so, the Current JOLs have not disclosed this advice, or the identity of their advisor.
37. The Current JOLs have also not responded to the extensive evidence I gave with respect to this issue at **paragraphs 188 to 199, DFW Affidavit** and respectfully, Ms McInnis does not have the expertise to address matters on the tax laws of the United States.
38. Additionally, Mancino 1 exhibited at **MP4/Tab 11/Pages 1642 to 1687** corrects material factual errors and overstatements, and legal errors or distortions of U.S. tax and nonprofit corporation law made throughout FSD Affidavit 1.
39. Such corrections include:
 - (a) All entities affiliated with Highland Foundations including not only the Company but also The Dallas Foundation are exposed to material risks and associated defence cost should the audit be commenced.
 - b) The Highland Foundations' failings Mr Mancino refers to in his evidence has in fact resulted in the inurement of its net earnings to Mr Dondero in violation of one of the most fundamental requirements of section 501(c)(3) of the Code.
 - c) The Highland Foundations are operating primarily to serve Mr Dondero's private personal interests, which is also a U.S. tax violation.

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- d) Myself and Mr Murphy held a reasonable belief that the Highland Foundations were no longer a section 501(c)(3) organisation due to the various dealings the Highland Foundations' had with Mr Dondero and his affiliated companies (**MP1 at pages 172 to 305**).
- e) The real issue is not the possible imminent revocation of the Highland Foundations' tax exempt status occurring, but rather what a rationale reasonable person would do today acting as a fiduciary in the exercise of his/her duty of care to mitigate future consequences of such a revocation.
- f) It is demanded from myself and Mr Murphy as directors of the Company that we act in accordance with our fiduciary duties of care because we had present knowledge and advice of expert counsel that the tax exemption risks to Highland Foundation were real, materially high, and not speculative.
156. In other words, to have played an "audit lottery" would have run contrary to our obligations as directors.
157. Troublingly, the Current JOLs do not have appeared to address the contents of Mr Mancino's letter 20 March 2025 (and updated on 1 May 2025) to the IRS at all (the **IRS Letter**). Rather than treat concerns raised by an expert in this field as a focal point of their investigations, the Current JOLs have instead elected to dismiss the IRS Letter as simply a calculated tactic "*to manufacture grounds on which the Relevant Transactions could be justified after the fact*" (see **paragraph 76.2, FSD Affidavit 1**).
158. It would seem that the Current JOLs have lost their objectivity with respect to this aspect of the investigation, by dismissing leading expert advice on this matter and without seemingly obtaining independent tax advice of their own, as the Current JOLs not experts in U.S. tax law themselves. The Current JOLs (see e.g. Ms MacInnis 15 July Affidavit at paragraph 71) also ignore valuable advice Mr Murphy and I received from other tax advisors to the extent it was not written and provided to them. While much of it was written, some of it was not; notably, Mr Mancino advised favourably on every step of the DAF Restructuring, yet his advice is not referred to at e.g. Ms MacInnis 15 July Affidavit at paragraph 71 because the Current JOLs have based their

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conclusions on written materials available to them and have not spoken with me or Mr Murphy to confirm that those written materials encompass all advice and context.

iii. No investigations into Dondero related litigation

159. As highlighted at **paragraphs 66, 120 to 143 of DFW Affidavit**, Mr Dondero is involved in extensive and various litigation. Indeed, Highland Capital Management, L.P submitted in *Highland Capital Management, L.P. v NexPoint Advisers, L.P. and NexPoint Asset Management, L.P.* before the Supreme Court of the United States that Mr Dondero and his entities are subject to multiple contempt findings and have filed more than fifty appeals to the district court and Fifth Circuit as 27 May 2025.
160. Furthermore, the Company (whether directly or indirectly) itself is involved with both value protective and value adding litigation as a result of Mr Dondero's prior conduct and breaches, which are summarised as follows:

CLO Holdco Note

161. CLO HoldCo, Ltd. (**CLOH**) is the obligor on a promissory note (the **CLOH Note**) currently valued at approximately US \$40 million in principal and interest, with a maturity date in December 2025. The note was previously held by Sentinel Reinsurance Ltd. (**Sentinel**), a Cayman Islands reinsurance company owned by Mrs Dondero and Mr Ellington but was assigned to UBS Securities LLC (**UBS**) as part of a settlement whereby Sentinel received a US \$10 million cash payment in exchange. CLOH has engaged legal counsel to assess its obligations and potential defences in relation to this claim. The underlying transaction forms part of the broader Sentinel Fraud allegations concerning fraudulent conveyances intended to shield assets from a US \$1.2 billion judgment against Mr Dondero and his affiliates.

Dondero Note Arbitration

162. As mentioned above, Mr Dondero's personal trust, Dugaboy, filed an arbitration action alleging HMIT owes Mr Dondero's personal trust US \$62.6 million pursuant to a promissory note. Further details of this litigation can be found at paragraph 52(a) above.

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UBS New York State Court lawsuit

163. As outlined in **paragraphs 123 to 127, DFW Affidavit**, UBS named CLOH as a co-defendant in the US \$1.1 billion New York State Court action against Mr Dondero (amongst others).
164. CLOH is the only defendant to successfully obtain dismissal.
165. UBS is appealing that dismissal and may also amend its complaint to allege that CLOH is an alter ego of Mr Dondero, which could expose all DAF assets to collection by UBS in pursuit of its US \$1.2 billion judgment.
166. It is therefore essential that the Highland Foundations are not controlled by Mr Dondero because it could lead to substantial harm to DAF's assets.
167. CLOH also believes UBS may amend its petition for leverage in the negotiations for payment on the CLOH Note.

Defense of Highland Capital bankruptcy settlement

168. HMIT and its affiliates entered into the Hunter Mountain Settlement Agreement in May 2025, details of which are described above at paragraphs 49 to 50.
169. The Hunter Mountain Settlement represents a massive victory for HMIT and DAF. I believe the Current JOLs either have lost all objectivity with respect to the benefits which will flow from this settlement. The JOLs should be in favour of such huge amounts of funds returning to the DAF Structure, rather than seeking to delay or interfere with it.
170. With respect to value-add litigation, the matters presently on foot are as follows:

Kirschner Claims

171. I understand from legal counsel engaged in this litigation that the Kirschner claims involve actions for damages in excess of US \$300 million against entities related or affiliated with Mr Dondero and Mr Ellington. All DAF Entities were dismissed as

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defendants to this action. A copy of the Kirschner Complaint - Chapt 11 Highland Cap Mgmt v Dondero is exhibited at **MP4/Tab 43/Pages 2682 to 2815**.

172. Following approval of the Hunter Mountain Settlement Agreement, HMIT (an entity within the DAF structure) acquired these claims on 7 July 2025, which include a multitude of actions asserted against Mr Dondero, Mr Ellington and their affiliates for a variety of alleged fraudulent activities and schemes that siphoned assets from HCMLP to the pockets of Mr Dondero, Mr Ellington and others.
173. As an example, the Kirschner Complaint describes Mr Dondero's fraudulent activities with respect to Sentinel and by which Mr Dondero ultimately mislead the Cayman Islands Monetary Authority.
174. Highland (in its capacity as a debtor) temporarily stayed prosecution of these claims because Highland believed it had sufficient assets in the bankruptcy estate to pay all creditors at par.
175. I believe HMIT and DAF will receive substantial value from prosecuting these claims, which will benefit charitable causes.

Atlas Demand Note Lawsuit

176. I described this matter at **paragraphs 138 to 140, DFW Affidavit**. To reiterate, this is a lawsuit by Atlas IDF, LP (**Atlas**) against NexPoint Real Estate Partners, LLC (**NREP**) for US \$13.9 million in promissory notes payable on demand.
177. NREP, a Mr Dondero-controlled entity, has refused to pay on the demand promissory notes despite a demand for payment. Atlas' counsel is actively suing to collect on the notes.
178. NREP has counterclaimed and sued myself and Mr Raver personally, who are indemnified in the matter by Atlas and certain DAF entities. It is important to note that by an order of the Business Court of Texas dated 14 August 2025 exhibited at **MP4/Tab 44/Pages 2816 to 2818**, the claims against myself and Mr Raver were dismissed in their entirety.

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179. Dugaboy is also a guarantor of this debt obligation. While Atlas is not a DAF subsidiary, DAF is affected because Rand Advisors, LLC (**Rand Advisors**) manages DAF assets, and Charitable DAF Holdings Corp. owns and controls Atlas's general partner and receives investment management fees which benefit DAF.

Liberty Lawsuit vs. HCMSI

180. I described this matter at paragraph 141, DFW Affidavit.

181. Liberty CLO HoldCo, Ltd. (**Liberty**) sued Highland Capital Management Services, Inc. (**HCMSI**) for breach of a promissory note with a principal balance of approximately US \$1.3 million.

182. HCMSI, a Mr Dondero-controlled entity, defaulted on its payment obligation under the note to Liberty. Liberty's counsel is actively suing to collect on the note.

NexPoint Polo Glen

183. This is a lawsuit by Liberty against NexPoint Polo Glen (**Polo Glen**) for breach of contract in the amount of approximately US \$700,000.

184. Polo Glen, another Mr Dondero-controlled entity, has refused to satisfy its contractual obligations to repurchase Liberty's membership interest pursuant to a put option agreement.

185. Liberty's counsel is actively pursuing to collect on the breach of contract.

186. The Current JOLs have not adduced any evidence which reveals the existence of the litigation referenced above which represents significant gains for the Company and/or the DAF Structure. As a result, I have had to provide extensive evidence in this regard to appraise the Court. This should have been disclosed by the Current JOLs if they had conducted a thorough investigation.

187. Should the Highland Foundations be successful in the TRO Petition, then the ability for this litigation (the majority of which is against Mr Dondero) will be unable to proceed, to the detriment of the Company, the DAF Structure and ultimately the contributors or

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creditors of the Company. It is unclear whether the Current JOLs had an appreciation of this when they elected to file the FSD Proceedings.

188. If they did, then they arguably acted against the best interests of the minority of the Company's contributories rather than the Company. If they did not, then this confirms that they have conducted a wholly inadequate investigation and are failing in their duties to be fair and independent.

iv. Use of DAF Structure for the benefit of Dondero

189. Extensive evidence given by both myself at **paragraphs 111 to 115 and 151 to 156, DFW Affidavit** and the Current JOLs at **paragraph 29, FSD Affidavit 1** (see pages 82 to 83 and 94 to 96 of DFW 1) clearly suggests that the Fund, and more broadly, the charitable structure, was being used to cycle Mr Dondero's donations to purchase interests in businesses related to Mr Dondero or into transactions which lend more favourable commercial terms to entities related to Mr Dondero, whilst all under the shield of US federal tax exemptions.
190. It is also clear from a review of DFW Affidavit 1 that the JOLs have not questioned or sought to look behind these interests before filing the FSD Proceedings. Their investigations appear to extend only to identifying which interests DAF LP's fund structure has in connection with Mr Dondero's related businesses. They do not appear to have taken on board DFW's concerns raised in DFW Affidavit at all.
191. Furthermore, the Current JOLs incorrectly state at **paragraph 27, FSD Affidavit 1** that DAF LP relied on mostly passive investment vehicles which betrays that the Current JOLs' investigations are still embryonic and have not been sufficiently thorough. For example, wealth creation for DAF LP derives from an array of sources, including:

- a) The Hunter Mountain Settlement Agreement secures rights in the Kirshner claims which has a value of up to US \$300 million, which DAF LP and its related entities will benefit from.
- b) Debt collection claims against Mr Dondero's companies also represents millions of dollars in returns for the Fund's related entities. ;

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192. One of the Fund's related entities, Rand Advisors which operates as an investment management business, manages investor assets worth over US \$100 million. These investors are unrelated to DAF LP or the parties in the FSD Proceedings. The management fees which are paid to Rand Advisors are redistributed to DAF LP.

D. REPLACEMENT JOLs

193. For all the reasons set out above, DFW as a creditor in what it believes is the Company's insolvent liquidation, and as the Company's largest contributory has lost all trust and confidence in the Current JOLs' conduct of this liquidation, which requires them to act fairly, independently, impartially and in the best interests of the Company, rather than a class of the Company's minority contributories.

194. It is therefore proposed that Ms Neema Griffin and Mr Jeffrey Stower of Teneo (whose experience and qualifications are set out below) are appointed as Replacement JOLs as proposed in the terms of the draft Order which is being filed with this application.

195. Ms Griffin is a Managing Director with Teneo Cayman's Advisory business. She has over 18 years of financial advisory and insolvency experience with a specialism in contentious and complex insolvencies, involving high value litigation, fraud investigations and international asset tracing, personal bankruptcies and fund insolvencies. Her wider financial advisory experience includes solvency reviews, M&A mandates and regulatory advisory. Since moving to the Cayman Islands, her industry focus has been on financial services. Ms Griffin is an insolvency appointment taker in the Cayman Islands and is a UK licensed insolvency practitioner. Ms Griffin's sworn Consent to Act is exhibited at **MP4/Tab 45/Pages 2819 to 2823**.

196. Mr Stower is a Senior Managing Director with Teneo in the Cayman Islands. He has over 25 years of experience in Restructuring & Insolvency, the last 16 of which have been spent in the Cayman Islands with a focus primarily on the financial services industry. Mr Stower has a wealth of experience in both cross-border restructurings, inspectorships and insolvencies involving hedge funds, private equity funds, insurance companies, listed holding companies and a range of other offshore structures, acting in a variety of roles including appointments as official liquidator, provisional liquidator,

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voluntary liquidator and controller. He is a qualified insolvency practitioner in the Cayman Islands and is a Fellow of INSOL International. Mr Stower's sworn Consent to Act is exhibited at **MP4/Tab 46/Pages 2824 to 2428**.

197. Ms Griffin and Mr Stower's Consents to Act confirm that they:

- a. Are free of conflicts and clear to act;
- b. Meet the requirements of independent under the Insolvency Practitioners' Regulations (**IPR**);
- c. Meet the residency requirements of the IPR; and
- d. Have the requisite experience to conduct the liquidation of the Company as evident by their resumes exhibited to their Consents to Act.

198. At paragraphs xx t xx above I address the concerns which I, as the sole director of DFW have in connection with the funding of the Current JOLs. I am aware and understand that the Company has limited assets from which the fees and expenses of the Replacement JOLs could be paid.

On their appointment, DFW would be in a position to fund the immediate costs of the Replacement JOLs but, in recognising that the Highland Foundations consider the Replacement JOLs to be under a conflict of interest if funded by DFW, I also recognise that the Replacement JOLs would be best serve by securing third-party funding for the necessary investigations. However, this is properly a matter for the Replacement JOLs to evaluate and seek sanction of in due course.

E. CONCLUSION

199. For the avoidance of doubt, DFW objects to any proposal put forward by the JOLs that the costs awarded to DFW in connection with the Sanctions Summons should be offset against any possible recoveries the Current JOLs may make in the future. DFW is entitled to its costs pursuant to the terms of the Order made on 24 June 2025 in these proceedings, the terms of the Order do not provide that DFW's costs should be

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contingent on speculative recoveries being made by the Current JOLs, or upon certain milestones in these proceedings being reached by the Current JOLs.

SWORN to at Galveston Texas)

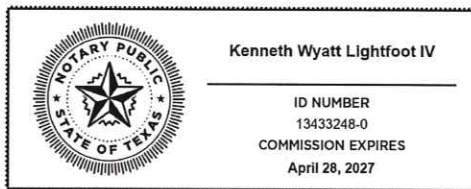
on this 19th day of August 2025)

MEP

MARK ERIC PATRICK

BEFORE ME:

NOTARY PUBLIC



Kenneth Wyatt Lightfoot IV

04/28/2027

Electronically signed and notarized online using the Proof platform.

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