

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:
Highland Capital Management, L.P.

The Dugaboy Investment Trust

vs.
Highland Claimant Trust

Debtor(s)

Appellant(s)

Appellee(s)

Case No.: 19-34054-sgj11

Chapter No.: 11

3:25-CV-02724-L

NOTICE OF TRANSMITTAL

I am transmitting:

- ☐ The Motion for leave to Appeal 28 U.S.C. § (USDC Civil Action No. DNC Case).
- ☐ The Motion for Stay Pending Appeal (USDC Action No. – DNC Case).
- ☐ The Proposed Findings of Fact and Conclusions of Law.
- ☐ The Motion to Extend Time To File Designation (USDC Civil Action No DNC Case).
- ☐ On , the Record on Appeal was transmitted. The designation of record or item(s) designated by were not filed when the record was transmitted. The item(s) were filed on awaiting instructions from the assigned district judge.
- ☒ Other Supplement Appellant Record Vol. 1
- ☐ Copies of:

TO ALL ATTORNEYS: File all subsequent papers captioned and numbered with the appropriate division of the United States District Clerk's Office. Any questions concerning this proceeding should be directed to the U.S. District Clerk's Office at (214) 753-2200.

DATED: 12/4/25

FOR THE COURT:
Stephen J Manz, Clerk of Court

by: /s/J. Blanco, Deputy Clerk



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

In Re: Highland Capital Management, L.P.

§

§ Case No **19-34054-SGJ-11**

**The Dugaboy Investment Trust
- Appellant**

§

vs.

§

**Highland Claimant Trust
-Appellee**

§

3:25-CV-02724-L

§

**[4401] Order Granting Motion for Order Fixing Allowed Amount of Class 11 Interests
(related document # 4362) Entered on 9/22/2025.**

**Volume 1
SUPPLEMENTAL APPELLANT RECORD**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:
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vs.
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Case No.: 19-34054-sgj11

Chapter No.: 11

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Appellants Supplemental Record Vol. 1

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Transcript of Proceedings September 18, 2025 doc 4403

DATED: 12/4/25

FOR THE COURT:
Stephen J Manz, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

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

In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) September 18, 2025
) 2:30 p.m. Docket
Reorganized Debtor.)
) MOTION FOR ORDER FIXING
) ALLOWED AMOUNT OF CLASS 11
) INTERESTS FILED BY HIGHLAND
) CLAIMANT TRUST (4362)
)

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

APPEARANCES:

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

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

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

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

8 THE COURT: Okay. Mr. Harper for Dugaboy.

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

11 THE COURT: Okay. Mr. Morris for Highland.

12 Do we have any other appearances?

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

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

18 OPENING STATEMENT ON BEHALF OF THE REORGANIZED DEBTORS

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

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

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

10 I've got a very short PowerPoint --

11 THE COURT: Okay.

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

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

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

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

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

17 THE COURT: You may.

18 (Pause.)

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

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

3 THE COURT: All right. Any objections to that?

4 MR. HARPER: No, Your Honor.

5 MR. MORRIS: Okay.

6 THE COURT: Those 1 through 10 will be admitted.

7 MR. MORRIS: Thank you.

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

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

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

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

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

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

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

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

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

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

16 We took the tax returns that Jim Dondero signed when he
17 controlled Highland. That was the starting point, the end of
18 2018. That's the first column. The second column, we take it
19 to the petition date, and we use Highland's financial
20 statements to do that. And then just for illustrative
21 purposes we take it out until the end of 2019, to show the
22 fluctuation in the value of the capital accounts in the --
23 just for illustrative purposes.

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

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1 interests are being valued.

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: Okay.

24 MR. MORRIS: Thank you, Your Honor.

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

1 MR. HARPER: Thank you, Your Honor.

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

3 THE COURT: Okay.

4 OPENING STATEMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

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

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

12 MR. HARPER: Certainly, Your Honor.

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

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

20 THE COURT: You objected a few weeks ago when we had
21 --

22 MR. HARPER: Yes.

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

25 MR. HARPER: I think this --

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

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

5 THE COURT: Well, I'm asking you.

6 MR. HARPER: Yes, Your Honor.

7 THE COURT: Okay.

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

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

20 THE COURT: 11.

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

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

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

9 Now, your plan --

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

11 MR. HARPER: Sure.

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

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

19 THE COURT: Well, both.

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

1 dollar value?

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

4 MR. HARPER: No, Your Honor.

5 THE COURT: -- to Class 10?

6 MR. HARPER: I do not.

7 THE COURT: Okay. Then --

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

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

14 MR. HARPER: Sure.

15 THE COURT: -- you think supports your argument.

16 MR. HARPER: Certainly, Your Honor.

17 THE COURT: Okay.

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

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

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

12 But secondly, the issue with the --

13 THE COURT: I want you to address --

14 MR. HARPER: Sure.

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

18 MR. HARPER: So --

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

24 MR. HARPER: They did not.

25 THE COURT: Although the client objected to the plan

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

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

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

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

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

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

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

22 MR. HARPER: I mean, certainly, --

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

1 Maybe it's both. Okay.

2 MR. HARPER: Your Honor, let me --

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

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

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

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

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

24 MR. HARPER: Your Honor -- pardon me.

25 THE COURT: Subordination. Subordination is Class 11

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

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

9 THE COURT: No.

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

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

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

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

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

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

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

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

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

20 MR. HARPER: Fifty million?

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

22 MR. HARPER: Sure. Where does it go?

23 THE COURT: -- then Class 11 would get it. I mean,
24 --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 not know.

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

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

7 THE COURT: Okay.

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

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

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

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

18 MR. HARPER: Sure.

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

20 MR. HARPER: Thank you, Your Honor.

21 THE COURT: Okay. Thank you.

22 All right. Mr. Morris?

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

25 The partnership agreement today is irrelevant. It's been

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

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

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

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

11 THE COURT: All right. Thank you.

12 Mr. Seery, welcome back.

13 MR. SEERY: Good afternoon, Your Honor.

14 THE COURT: Please raise your right hand.

15 JAMES P. SEERY, REORGANIZED DEBTORS' WITNESS, SWORN

16 THE COURT: All right. Please be seated.

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

18 THE COURT: You may.

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

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

23 THE COURT: You may. Thank you.

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

Seery - Direct

24

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

2 THE COURT: Okay.

3 THE WITNESS: Thank you.

4 MR. MORRIS: You're welcome.

5 DIRECT EXAMINATION

6 BY MR. MORRIS:

7 Q Are you ready to go, Mr. Seery?

8 A I am.

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

11 A Yes, I am.

12 Q Did you authorize Highland to file that motion?

13 A I did.

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

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

22 Q Okay. And are you familiar -- and as part of the process,
23 are you personally familiar with the methodology that Highland
24 used to determine the amount of each unvested contingent Class
25 11 interest?

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1 A Yes, I am.

2 Q Can you describe for the Court the methodology that
3 Highland adopted?

4 A Yes. Similar to the discussion we had at the end of June,
5 the Debtor was a limited partnership. There are no shares.
6 The equity as it's divided in a limited partnership is owned
7 by partners who have limited partnership interests. Those
8 limited partnership interests, in accordance with the
9 partnership agreement, receive allocations of profits and
10 losses that are maintained and required to be maintained in
11 what is called a capital account.

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

17 Q Can we turn in the binder to Exhibit 5? And I guess my
18 first question is, do you know what this document is?

19 A I do, yes.

20 Q And what is this document?

21 A So Exhibit 5 is a bit of a combination of things, but it
22 is the first page of the 2018 Highland Capital Management
23 Limited Partnership tax return. And this is the return for
24 the partnership that -- which became the Debtor. It was
25 signed on 9/15/19, about one month before the filing, by Mr.

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

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

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

19 Q Can you show us where --

20 A Form 1065 -- excuse me.

21 Q Yeah.

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

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

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

11 A That's correct.

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

15 A That's correct.

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

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

21 Q I appreciate that.

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

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

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1 that up to the petition date of October 16, 2019?

2 A The partnership agreement requires that, as I said,
3 partnership profits and losses and distributions are reflected
4 in each partner's capital account. Highland studiously
5 maintained that every month. Why did it do that? Well, it's
6 required to do that under the partnership agreement. It was.
7 It's also required -- and the partnership agreement contains
8 that requirement because that's required by the Internal
9 Revenue Service regulations. And those numbers and the
10 distribution and allocation of income, losses, and
11 distributions has to have what is referred to as substantial
12 economic effect in order to give the partnership the ability
13 to pass through losses and income on different bases.

14 Q And can you turn to Exhibit 7? Is that the document that
15 you relied upon to bring the year-end 2018 capital accounts
16 current as of the petition date?

17 A Well, this is a -- this is a snapshot from the monthly
18 operating report. These were filed every month during the
19 case. This one you can see is filed, it should be sometime in
20 December. I can't see the filing date. But it does reflect
21 the 11/30/19 capital accounts as well as the 10/31/19 capital
22 account and then the 10/15 filing date capital account.

23 Now, this is the gross amount. So each individual partner
24 -- because Highland keeps it for itself and then it allocates
25 to each partner that's ultimately reflected on the K-1. The

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

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

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

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

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

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1 capital accounts for each partner.

2 Q And just to make this really clear, this document that
3 we're looking at, Exhibit 7, was a monthly operating report
4 that was filed in the bankruptcy case; is that your
5 understanding?

6 A Yes.

7 Q And that was prepared while Mr. Dondero was still in
8 control of Highland; is that right?

9 A This one was, yes. But we did it every month --

10 Q Yeah. Just -- just --

11 A -- all the way.

12 MR. MORRIS: And it's the very last page, Your Honor,
13 where it has the total partner capital, \$396 million --
14 \$613,941. That's the number that you see in the middle column
15 on our demonstrative, okay?

16 THE WITNESS: That's --

17 MR. MORRIS: And that's where it comes from.

18 THE WITNESS: That's correct.

19 BY MR. MORRIS:

20 Q Okay. And then am I correct that what you did is you took
21 that number and multiplied it by the limited partnership
22 interest that each of the limited partnership partners had?
23 Former limited partners?

24 A Roughly. But if they had gotten distributions that were
25 outsized, then they could have been non pro rata. The general

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

6 Q Okay. So, to summarize, can we say that Exhibit 7 shows
7 the economic activity at Highland from year-end 2018 through
8 the date of this document, and that that's why there's a
9 difference in the capital accounts, and the bottom line is the
10 396 number that we see here?

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

13 Q Okay. Did you make any adjustment?

14 A Not up to the petition date, no.

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

17 A No.

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

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

24 Q Great.

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

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1 Q Thank you for your completeness.

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

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

8 Q And what's the basis for that position?

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

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

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

17 Q Does that make any sense to you?

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

19 Q Why not?

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

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

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

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

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

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

15 Q And --

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

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Seery - Cross

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

2 Q Okay.

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

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

5 MR. HARPER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. HARPER:

8 Q Good afternoon, Mr. Seery.

9 A Good afternoon.

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

12 A That's correct.

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

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

24 A No, I disagree.

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

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1 you have that with you in that notebook?

2 A The rejected partnership agreement? Yeah.

3 Q Sure. So let's take a look at -- as we look at the
4 partnership agreement, let's take a look at Section 3.2,
5 allocations of profits and losses. It indicates that profits
6 are to be done -- so 3.2-A says, you know, we're going to do
7 ones from prior ones and cumulative profits again for prior
8 periods, and then Section 3 says it will be done to all
9 partners in proportion to their respective percentage
10 interests, correct?

11 A 3 point -- I'm just trying to see where you are reading
12 from.

13 Q So I'm on Page 8.

14 A Yes.

15 Q 3.2.

16 A Yes.

17 Q A.

18 A Yes.

19 Q Little iii.

20 A It says, then to all partners in proportion to their
21 respective percentage interests.

22 Q All right. So, subject to A and B, which has to do with
23 payments for prior periods, then profits are to be assigned
24 based on the proportional interest, correct?

25 A Allocation of profits, yes.

1 Q Correct.

2 A That's what it --

3 Q Now, --

4 A That's what it says.

5 Q Now, your point is there's a difference between allocation
6 and payment, and you're right. So let's take a look at
7 Section 3.9. This is on Page 12. The -- there is a certain
8 -- if I look at 3.9-B, there are priority distributions that
9 are to be provided to the Class B/C interests, correct?

10 A That's correct.

11 Q And those are fairly minor in the grand scheme, is -- with
12 the dollars we're talking about, correct?

13 A I'd disagree with that, but --

14 Q Okay. So in light of that we're talking 300-and-some-odd
15 -- \$360 million for what you're valuing the total equity at
16 for Dugaboy -- I mean, for, excuse me, Hunter Mountain, what
17 we're actually looking at for priority distributions are every
18 calendar year they get \$1.6 million -- they're guaranteed to
19 get at least \$1.6 million, correct?

20 A Just the premise of your question, I'm not valuing the
21 equity at anything.

22 Q Okay.

23 A We're fixing the amount of a class interest under a plan.
24 So I'm not -- I'm not valuing anything.

25 Q Okay. I want to make sure that --

1 A I think the value of Class 11 is zero.

2 Q Sir, I want to make sure that we say this clearly. So
3 when you're saying you're -- you are not offering testimony as
4 to what you think it's actually worth, are you estimating as
5 to what it was worth at any given point in time?

6 A We're fixing the amount of a claim. Just like a claim --

7 Q Right.

8 A -- doesn't always get a hundred cents, a fixed amount of
9 the interest under this plan doesn't always get a hundred
10 cents.

11 Q Oh, I understand that. But you're fixing the amount of
12 the claim and you're choosing a figure based on the value of
13 that equity interest as of a date certain, correct?

14 A I'm picking a figure or fixing a figure based on the
15 capital accounts that were maintained by the partnership as of
16 the petition date.

17 Q Okay.

18 A What their actual value might be, I don't know.

19 Q Okay. I'm sorry. I wanted to make sure I wrote that down
20 specifically.

21 All right. Now, other than the priority distributions
22 that are provided here in Section 3.9 -- and by the way, even
23 the ones that are provided here don't give -- that just says
24 they get paid first in certain circumstances; it doesn't say
25 that they get paid more, correct?

1 A I don't know it. I'm not an expert on the entire
2 partnership agreement.

3 Q Fair enough. Have you looked at Section 5.3?

4 A I have, yes.

5 Q Now, 5.3 talks about how it would be handled under a
6 dissolution and a liquidation, correct?

7 A That's what it says, dissolution and winding up, yes.

8 Q And if I -- the portion of Section 5.3 on Page 23
9 indicates that the liquidation will take place, and then the
10 way the cash will be put out is on the second page, Page 24.
11 We have A, B, and C. A would be payment of, you know, certain
12 expenses, B would be payment of creditors, and C is to the
13 partners and assignees, to the extent of and proportion to the
14 balance in their capital account, as provided in the Treasury
15 Regulation Code, correct?

16 A The -- you gave a quick summary of it. You didn't read
17 the whole thing. But some of those words are there, yes.

18 Q And then D tell us, to the partners in proportion to their
19 respective percentage interests, correct?

20 A That's what it says, yes.

21 Q All right. So C tells us it's going to be in proportion
22 to their capital accounts and C -- and D tells us to the
23 partners in proportion to their respective percentage
24 interests, correct?

25 A That's what this section says, yes.

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

6 A You didn't read anything about valuing anything here.
7 What I -- what we did take into account when we set the plan
8 and fixed it was the priority that, in the previous provision
9 you read to me, said, notwithstanding any other provision of
10 this agreement, that that priority gave HMIT, the holder of
11 the B/C, priority to the Class A. So when we put it forth,
12 put the plan forth and constructed it, we wanted to make sure
13 that we didn't get an objection from any of the equity
14 holders, particularly HMIT, saying, well, I should be senior.
15 So the plan was structured with Class 10 being senior to Class
16 11.

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

25 A They were entitled to priority distributions; that's

1 correct.

2 Q All right. And those are limited by the specific terms as
3 to what they're entitled to, correct?

4 A I assume they are. I've not -- I'm not an expert on how
5 the partnership agreement lays out the priority of B/C to A,
6 but it clearly laid out a priority.

7 Q Do you know, in the history of the Debtor, was there ever
8 a time that the priority distribution provisions were used
9 such that the Class B/C were paid to the exclusion of the As?

10 A That the B/C were paid? I don't know the answer.

11 Q Okay. Now, as you noted, you then went to the plan and
12 noted that there were certain parts to which the -- certain
13 claims that were subordinated, right? I mean, the Class -- as
14 we've said, used the exact words, the Class As are
15 subordinated to the equity trust interests distributed to the
16 allowed holders of the Class B/C, correct?

17 A Yeah. Which section are you reading from? But that's the
18 -- that's the gist of the plan, yes.

19 Q I was actually reading from -- I'm on the Claimant Trust
20 agreement, --

21 A That's what I thought.

22 Q -- Page 26.

23 A Yeah, that's -- that's different from the plan.

24 Q You agree that the plan incorporates the Claimant Trust
25 agreement?

Seery - Cross

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1 MR. MORRIS: Could we --

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

4 BY MR. HARPER:

5 Q Okay.

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

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

9 A Uh-huh.

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

11 A Uh-huh.

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

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

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

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

20 Q I'm sorry.

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

22 Q Let me hand you a copy.

23 A Thank you.

24 Q I did not realize you did not have a copy. My fault.

25 Sir, I'm on Page 26. Now, in the middle of that paragraph,

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

8 A I think you were close, yes.

9 Q Has that been done?

10 A No.

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

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

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

25 A I'm -- what term?

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1 Q Equity holders, sir.

2 A Yes, that's in this -- in this agreement in this
3 paragraph.

4 Q Okay. Now, what I was reading earlier was the last
5 sentence under Section C, which says, The equity trust
6 interests distributed to allowed holders of Class A limited
7 partnership interests shall be subordinated to the equity
8 trust interests distributed to allowed holders of Class B/C
9 limited partnership interests.

10 Did I read that correctly?

11 A That's correct.

12 Q Now, let's take a look, if we can, real quick now to
13 Section 9.2. This will be on Page 33.

14 MR. MORRIS: Do you have a copy for me?

15 MR. HARPER: Oh, I'm sorry. I thought the Claimant
16 Trust was an exhibit. My fault.

17 MR. MORRIS: Excerpts, yeah.

18 MR. HARPER: Oh, I'm sorry.

19 MR. MORRIS: That's the agreement, yeah.

20 MR. HARPER: My fault.

21 THE COURT: I have a notebook of the Reorganized
22 Debtors' exhibits. But the Claimant Trust Agreement, as well
23 as the plan, I just have excerpts that they used as exhibits.
24 And some of what you're reading is not in their excerpts.

25 So if I pulled the Dugaboy witness and exhibit list at

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

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

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

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

10 THE COURT: Well, as you can see on their exhibit
11 list in bold at Number 2 and 3, they have excerpts of the
12 plan, excerpts of the Claimant Trust Agreement. So I realized
13 --

14 MR. HARPER: I --

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

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

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

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

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

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1 docket. I'll find it.

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

4 THE COURT: Okay.

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

6 THE COURT: Okay.

7 (Pause.)

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

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

12 THE COURT: Okay.

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

14 THE COURT: All right. Thank you.

15 BY MR. HARPER:

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

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

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

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

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

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

10 A That's correct.

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

13 A There are some matters on appeal, yes.

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

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

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

22 A There is a cert petition.

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

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

1 okay.

2 Q I apologize. I see I'm not the only one that wants to do
3 the *Law Review* route. So let me hit on the issue there.

4 There are additional claims, depending on how those appeals,
5 that could very well change the amount of money that would
6 come into the estate, true?

7 A False.

8 Q False?

9 A False.

10 Q Hmm. And your reason for that is what?

11 A There are no additional assets that the estate can recover
12 that would go into the estate. Those are -- the order you
13 referred to is actions against the estate or its fiduciaries
14 that would deplete the indemnity trust.

15 Q That's fair. Let me try it differently. There are
16 additional claims that could be pursued by, for example,
17 Dugaboy?

18 A Not for the estate.

19 Q No, not for the estate, but for Dugaboy themselves.
20 Correct?

21 A I don't believe there are, but what would that have to do
22 with distributions from the estate?

23 Q Fair. It has to do with the valuation, but I understand
24 your question there. When you sat there and you said, all
25 right, I'm going to decide how much the claim is to be allowed

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

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

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

9 A Metaphysically certain.

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

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

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

14 A Correct.

15 Q One is Hunter Mountain?

16 A Yes.

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

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

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

21 A It was not.

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

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

25 Q Right. And their valuation is --

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1 A I don't -- I don't think they're referred to at all.

2 Q All right. They had a note, correct?

3 A They had a note that we said was worthless. We brought an
4 action against them for bad faith. They insisted that -- we
5 insisted they get zero and they pay us millions of dollars.
6 We ended up settling it. They insisted on a Class 10 claim
7 with limited rights.

8 Q And that Class 10 claim, you know, the agreement was that
9 they were going to get five percent of any amount of money
10 that Hunter Mountain got?

11 A That's incorrect.

12 Q Sir, are you familiar with the intercreditor and
13 participation agreement signed between HCLOM and HMIT?

14 A I have seen that, yes.

15 Q Okay. And you agree that in the intercreditor and
16 participation agreement, HMIT agreed that they would pay five
17 percent of the money that they received to HCLOM. Correct?

18 A That's between HCLOM and HMIT. We make our distribution
19 to HCLOM. They have a fixed claim for \$10-and-change million
20 by order of this Court.

21 Q Correct. So it started with a -- they wanted a
22 percentage, and then they also got a set amount of money based
23 on a settlement agreement with you under the -- that was
24 fixed, correct?

25 A Apologies for how this sounds, but you have no -- that's

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1 not even close to what happened or what these agreements say.

2 Q Sir, I truly apologize. Why don't -- would you please fix
3 that for me?

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

5 THE COURT: Fix what?

6 MR. HARPER: Oh, I'm sorry.

7 THE COURT: What does that mean?

8 BY MR. HARPER:

9 Q You said that was inaccurate, so I'm asking you, would you
10 please tell me the accurate -- the valuation for it.

11 A HCLOM had a claim for --

12 Q Uh-huh.

13 A -- \$10 million.

14 Q Okay.

15 A It was objected to, because we stated that it was
16 frivolous and it came out of the stripping of assets from Josh
17 Terry's Acis -- controlled Acis -- before he controlled it.

18 We also filed a bad faith motion, which we would have
19 prevailed on, we're quite confident, for damages against
20 HCLOM. At the hearing, HCLOM's counsel, which is also
21 Dugaboy's counsel, and also at that time HMIT's counsel, made
22 a proposal that we settle the claim. We took advice -- I took
23 advice of counsel and agreed to the settlement. And that was
24 a settlement of the claim. We wanted to zero it out and we
25 wanted to put them in Class 11 and they wanted to be in Class

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

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

6 Q Okay.

7 A And that was entered by the Court.

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

13 A It --

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

15 THE WITNESS: It -- it --

16 THE COURT: Sustained.

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

18 THE COURT: You don't have to answer.

19 THE WITNESS: Okay. Sorry.

20 BY MR. HARPER:

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

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

25 Q I'm sorry.

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1 A Their claim --

2 Q The amount of the claim that you --

3 A Their claim is --

4 Q -- allowed --

5 A I would value their claim at zero.

6 Q Okay. The amount of the claim that was allowed was a
7 negotiated settlement. Fair?

8 A Their classification was -- was negotiated. The amount,
9 because it was subordinated and because it was sitting in a
10 class that was unlikely to get much of a distribution, we
11 didn't really negotiate the amount.

12 Q Okay.

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

14 THE COURT: Redirect?

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

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

18 THE WITNESS: Thank you, Your Honor.

19 (The witness steps down.)

20 THE COURT: Any other evidence from the Reorganized
21 Debtor?

22 MR. MORRIS: No, Your Honor.

23 THE COURT: All right. Any evidence from Dugaboy?

24 MR. HARPER: No, Your Honor.

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

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1 CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

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

6 As I understood the objection that was filed, Dugaboy was
7 saying that, once Class 9 and senior obligations were paid in
8 full, that somehow Class 10 and 11 should share any further
9 recoveries on a prorated basis because they were the former
10 limited partners. That's what we came here to debate. And on
11 a bait-and-switch, as far as I'm concerned, we're now here on
12 some absurd hypothetical about what happens to a dollar after
13 \$330-some-odd million gets distributed in the future.

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

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

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

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

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

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

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

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

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

15 THE COURT: Thank you.

16 Mr. Harper?

17 MR. HARPER: Thank you, Your Honor.

18 CLOSING ARGUMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

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

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

24 MR. HARPER: Your Honor, --

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

1 okay?

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Can I stop you?

6 MR. HARPER: Certainly.

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

10 MR. HARPER: Yes.

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

13 MR. HARPER: Yes.

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

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

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

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

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

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

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

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

16 You look like you're in severe pain.

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

19 THE COURT: Okay.

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

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

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

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

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

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

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

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

15 MR. HARPER: But --

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

18 MR. HARPER: Correct.

19 THE COURT: That's what I was told.

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

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

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

1 suggesting there is a stack of bitcoin.

2 THE COURT: Okay.

3 MR. HARPER: You know, that may --

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

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

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

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

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

19 MR. HARPER: I understand, Your Honor.

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

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

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1 about that have already been decided.

2 THE COURT: Repeat that?

3 MR. HARPER: Your Honor, the answer is we know that
4 Section 9.2 must mean something, right? So 9.2 tell us that,
5 if there's money left over, it goes back and it's going to get
6 divided between the equity holders. Right? So the answer is
7 --

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

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

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

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

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

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

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

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

13 MR. HARPER: And the way that --

14 THE COURT: I think they're pretty clear.

15 MR. HARPER: Okay. With the exception that they say
16 that they incorporate this. And by the way, the exact same
17 language you're talking about is in here as well. They both
18 say this. It's subordinated. But the question is, are they
19 100 percent subordinated? Doesn't that mean, by the way, if
20 there is extra money, does it 100 percent go to -- if what the
21 Court is saying is accurate -- and again, I'm not trying to --
22 I mean, obviously, you wrote it, so you get to say this is how
23 I interpret my --

24 THE COURT: I didn't write the plan.

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

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

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

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

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

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

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

20 MR. HARPER: Uh-huh.

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

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

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

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

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

12 MR. HARPER: And --

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

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

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

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

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

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

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

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

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

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

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

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

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

9 THE COURT: I'm just asking questions.

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

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

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1 THE COURT: Okay. Thank you.

2 MR. HARPER: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 I have nothing further, Your Honor.

15 THE COURT: Thank you.

16 MR. HARPER: Your Honor?

17 MR. MORRIS: Thank you.

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

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

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

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

11 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Anything else?

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

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

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

19 THE COURT: Plenty to do before I leave.

20 MR. MORRIS: Yeah.

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

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

24 THE COURT: Okay.

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

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

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

7 MR. HARPER: Understood, Your Honor.

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

12 MR. HARPER: Understood, Your Honor.

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

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

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

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

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1 it's three, six, nine, more?

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

4 THE COURT: Really?

5 MR. HARPER: I apologize.

6 THE COURT: Really?

7 MR. HARPER: Yeah.

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

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

13 THE COURT: Okay.

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

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

21 THE COURT: No. I'm just --

22 MR. HARPER: Understood, Your Honor.

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

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1 MR. HARPER: Understood, Your Honor.

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

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

6 THE COURT: All right.

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

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

15 MR. HARPER: I understand, Your Honor.

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

18 MR. HARPER: Of course.

19 THE COURT: -- again and again and again.

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

22 THE COURT: Okay. We're adjourned.

23 MR. HARPER: Thank you, Your Honor.

24 MR. MORRIS: Thank you, Your Honor.

25 THE CLERK: All rise.

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

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling

09/22/2025

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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