

Case No. 3:25-cv-02724-L

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

**IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,
*Debtor***

THE DUGABOY INVESTMENT TRUST

Appellant

v.

**HIGHLAND CAPITAL MANAGEMENT, L.P. and
HIGHLAND CLAIMANT TRUST,**

Appellees

On Appeal from the United States Bankruptcy Court for the Northern District of
Texas, Dallas Division, Case No. 19-34054-sgj11
The Honorable Chief Judge Stacey G. C. Jernigan, Presiding

APPELLANT THE DUGABOY INVESTMENT TRUST'S OPENING BRIEF

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Civil Procedure 7.1, Federal Rule of Bankruptcy Procedure 8012(c)(2), Local Bankruptcy Rule 8012.1, and Local Civil Rules 3.1(c), 3.2(e), 7.4, 81.1(a)(4)(D), and 81.2, Appellant The Dugaboy Investment Trust provides the following information:

1. The Dugaboy Investment Trust (“Dugaboy”) is the only Appellant in this Appeal.
2. Mr. James Dondero is the 100% primary irrevocable beneficiary of Dugaboy and accordingly has a financial interest in the outcome of this Appeal.
3. Dugaboy is represented in this Appeal by Geoffrey S. Harper of King & Spalding LLP and John Michael Gaddis of Winston & Strawn LLP.
4. Highland Claimant Trust is the only Appellee in this Appeal and is represented by Pachulski Stang Ziehl & Jones LLP and Hayward PLLC.
5. Appellant Dugaboy reserves the right to amend or supplement this Certificate of Interested Persons and Corporate Disclosures if necessary or appropriate.

Dated: March 2, 2026

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Given the complexity of the legal issues and the lengthy factual record and procedural history, Appellant respectfully requests oral argument to aid the Court's consideration of this Appeal.

STATEMENT OF JURISDICTION

The United States Bankruptcy Court for the Northern District of Texas exercised jurisdiction under 28 U.S.C. § 157(b)(1). On September 22, 2025, the Bankruptcy Court entered an Order (R. 001505) approving The Highland Claimant Trust's ("Highland")¹'s *Motion for Order Fixing Allowed Amount of Class 11 Interests*.

On October 6, 2025, Dugaboy timely filed its Notice of Appeal from that order. R. 000001.

The Bankruptcy Court's determination of the allowance and amount of each Class 11 interest constitutes a final disposition of a "discrete dispute" within the larger bankruptcy case and is therefore a final appealable order. *In re Bartee*, 212 F.3d 277, 282 (5th Cir. 2000); *see also In re Moody*, 849 F.2d 902, 904 (5th Cir. 1988) (an order is final and appealable if it resolves a "discrete judicial unit" within the bankruptcy case). This Court has jurisdiction under 28 U.S.C. § 158(a)(1) over this Appeal from a final decision of the Bankruptcy Court.

¹ Unless otherwise specified, for simplicity the Debtor Highland Capital Management, L.P. and the Appellee Highland Claimant Trust will be referred to as the "Highland Entities" or "Highland."

INTRODUCTION

The key issue in this appeal is whether the Bankruptcy Court erred in refusing to apply a well-established method for valuing a debtor class's recovery that was consistent the confirmed reorganization plan, the claimant trust agreement, and longstanding principles of bankruptcy law, in favor of an unreliable, never-before-applied method that made Appellants' claims functionally worthless. Despite even Appellee's CEO conceding that his proposed methodology was not a recognized method of valuing the Class 11 equity interests involved here, the predecessor judge adopted the latter methodology, improperly capping any recovery by Appellants. Appellant and others strenuously objected, to which the predecessor judge claimed her hands were tied by some attenuated application of preclusion because it had applied that methodology in a prior order fixing the Class 10 interests.² Appellant repeated its objections, as the Bankruptcy Court was wrong to accept proposed valuation of the Class 10 claims just as it was wrong to do the same to Appellant's own interest in the Class 11 claims. This decision is incorrect, legally and factually flawed, and cannot stand.

² The bankruptcy court's decision on Hunter Mountain Investment Trust's ("HMIT") Class 10 claim is not appealed in this proceeding because that order is already the subject of a separate appeal before Judge Kinkeade challenging the bankruptcy court's approval of the settlement between Highland and HMIT. *See* N.D. Tex. Case No. 3:25-cv-01876-K. Nevertheless, the Class 10 proceeding and ruling remain highly relevant factual background to the issues appealed here.

Following a sizable but payable arbitration award against Highland Capital Management, L.P. (“Highland”), the partnership chose to enter a limited bankruptcy on October 16, 2019, to liquidate assets to satisfy the judgment. With nearly a billion dollars in assets under management at the time, Highland could easily pay the judgment following limited bankruptcy protection necessary to pull the funds together. What followed has been over half a decade of an effective liquidation of the solvent and profitable Highland, as bankruptcy professionals and attorneys have sought to rend all value from the carcass of the partnership based on outdated and flawed undervaluations of Highland’s assets. All the while, the comprehensive picking over of Highland was overseen and endorsed by a since-recused bankruptcy judge.

Prior to declaring bankruptcy, Jim Dondero and Mark Okada—in an effort to establish a charitable legacy—arranged the ownership of Highland so that the Hunter Mountain Investment Trust (“HMIT”) owned 99.5% of the partnership, while entities directly associated with them, including Appellants Dugaboy and others, owned a combined 0.5%. In the bankruptcy, the LP’s partnership shares converted into what were called unvested contingent interests in the Claimant Trust (essentially an entitlement to the money left over after paying creditors and bankruptcy professionals), resulting in HMIT holding Class 10 claims, and Dugaboy holding Class 11 claims. Following a settlement between HMIT and Highland (to which Dugaboy objected), the bankruptcy court chose to cap the allowable recovery of Class 10

claims by Highland's new CEO James P. Seery's ("Seery") own valuation method that eliminated claimants' *pro rata* share of any residual assets after superior claims had been satisfied. This elevated one indistinguishably situated equity owner in Highland above the others. Dugaboy objected to this cap, arguing instead in favor of proportionate claims to residual assets based on ownership, but said objections went unheeded by the bankruptcy court.

Dugaboy repeated its objections when Highland moved to cap Dugaboy's own recovery from the Class 11 claims using the same flawed methodology and was met with skepticism by the bankruptcy court once again. Claiming its hands were tied *res judicata* or by some other preclusive doctrine because of the methodology applied to the Class 10, the Bankruptcy Court denied Dugaboy's objections outright. The Class 11 interests were fixed on September 22, 2025, capping Dugaboy's Class 11 claims at a specific dollar amount under Seery's suspect methodology. Dugaboy swiftly appealed on October 6, 2025, seeking to overturn the Class 11 determination which has knock-on effects on the entirety of the bankruptcy, especially in light of the predecessor judge's recusal from overseeing the bankruptcy as corrective action mandated by the Judicial Council for the Fifth Circuit.

ISSUES PRESENTED³

³ Dugaboy's Statement of Issues (Bankr. Dkt. 4443) contained two separate issues (Issues 1 and 2) which are here combined into Issue 1. Dugaboy is no longer pursuing Issue 6 listed in the

1. Did the bankruptcy court err in awarding HMIT's Class 10 interest 100% of any excess funds left after all senior creditor classes were paid in full, instead of distributing such funds according to the *pro rata* shares of the equity holders which allocated 99.5% to HMIT and 0.5% to Dugaboy?

2. Did the bankruptcy court err by treating two indistinguishable groups of Highland equity owners differently, by failing to value Dugaboy's interest as the *pro rata* percentage reflecting its equity ownership share of what remained after paying all senior creditors?

3. Did the bankruptcy court err in allowing Highland Trust to use a valuation method for determining the allowed amount of Dugaboy's claim based on limited partners' pre-petition capital accounts, which were derived from untested and unvetted figures created for tax purposes that bore little if any relation to true market value, when nothing in the confirmed Reorganization Plan allowed for such a method?

4. Did the bankruptcy court err in concluding that "res judicata" or another preclusion doctrine required it to use the same methodology to value Dugaboy's Class 11 interests as it had previously used to value HMIT's Class 10 interests?

Statement of Issues. Current issues 5 and 6 represent elaborations on the issue originally designated as Issue 7 in the Statement of Issues.

5. Did the bankruptcy judge err in failing to recuse herself before ruling on the Class 11 motion?

6. Did the bankruptcy court's Order Fixing Allowed Amount of Class 11 Interests (Bankr. Dkt. 4401)⁴ constitute a "final" judgment or order, thereby giving the District Court jurisdiction in a different proceeding for appellate review of the bankruptcy court's Order denying Dugaboy's Motion to Recuse (Bankr. Dkt. 4372, 4379)?

I. STATEMENT OF THE CASE

In this Appeal, Dugaboy challenges the bankruptcy court's September 22, 2025, *Order Fixing Allowed Amount of Class 11 Interests*. See R. 001505 (Bankr. Dkt. 4401).

A. Highland's Pre-Petition Ownership Structure.

Before its bankruptcy filing on October 16, 2019, Highland structured its limited partnership interests into three classes named "A," "B," and "C." R. 000610. HMIT acquired all the Class B and C interests, which amounted to 99.5% of Highland's partnership interests. R. 000794. Dugaboy (and several other entities)⁵ retained the Class A interests which amounted to the remaining 0.5% of Highland's

⁴ Unless otherwise specified, all citations to "Bankr. Dkt." refer to the underlying bankruptcy proceeding in *In re Highland Capital Management, L.P.*, N.D. Tex. Case No. 19-34054-sgj.

⁵ For simplicity, this Appeal uses "Dugaboy" as a shorthand for all former Class A and current Class 11 interest-holders. The claimants in Class 11 include Dugaboy, Strand Advisors, Mark Okada individually, and two Okada Family Trust entities.

equity. R. 000794. Highland was required to maintain capital accounts for its limited partners for tax purposes. R. 001329.

B. Highland’s Bankruptcy and the Class 10 Proceeding.

Highland filed its Chapter 11 bankruptcy petition on October 16, 2019. On February 22, 2021, the bankruptcy court confirmed Highland’s Fifth Amended Plan of Reorganization (“Plan”) with an effective date of August 11, 2021. R. 000785. Contemporaneously with the Plan, the Claimant Trust was created pursuant to the Claimant Trust Agreement (“CTA”). Among other things, the Plan and CTA provided for the conversion of the pre-petition limited partnership interests into unvested contingent interests in the Claimant Trust, according to the same *pro rata* shares that HMIT and Dugaboy held before the bankruptcy petition—99.5% for HMIT and 0.5% for Dugaboy. For ease of reference going forward, HMIT’s Class B and Class C interests became Class 10 interests, and Dugaboy’s and other equity holders’ Class A interests became Class 11 interests. R. 001397–001398.

Both the Plan and the CTA make express provision for the disposition of any funds or assets that may be left over after all classes of creditors have been paid in full under the Plan. Upon the wind-down and dissolution of the Reorganized Debtor and the Claimant Trust, “any remaining Claimant Trust Assets *that exceed the amounts required to be paid under the Plan*” will be transferred to the holders of the claimant trust interests, *i.e.*, the Class 10 and Class 11 claimants. R. 000710–

000711 (emphasis added); *see also* R. 000703–000704 (Plan IV(A)), and R. 000778 (CTA ¶ 9.2). This is consistent with the Bankruptcy Code, which provides that any distribution of estate property must go, in the last instance, to the debtor. *See* 11 U.S.C. § 726(a)(6). Thus, the Class 10 and Class 11 equity interests sit at the bottom of the bankruptcy order of priority. *See* R. 000686, ¶ 44; R. 000771 (CTA, Art. V. 5.1(c)). They will vest only after certification that all senior classes of creditors have been paid in full or have otherwise consented. R. 000627; R. 000771 (CTA, Art. V. 5.1(c)). Nothing in the Plan or the CTA rewrote the ownership structure of Highland, nor could it have.

C. Dugaboy’s Objections to the Proposed Settlement and to the Disposition of Class 10 Interests.

On May 19, 2025, HMIT and Highland moved for approval of a proposed Rule 9019 settlement between HMIT and Highland. R. 000791–000808. On June 9, 2025, Dugaboy filed objections (1) to the proposed settlement, challenging its fairness and reasonableness, and (2) to HMIT’s and Highland’s request to fix the allowed amount of HMIT’s Class 10 interests, challenging the valuation methodology. *See* R. 000841–000843. On June 25, 2025, the Bankruptcy Court held an evidentiary

hearing to consider the proposed settlement, the allowed amount of HMIT's Class 10 interests, and Dugaboy's objections to both. *See generally* R. 001040–001299.⁶

At the hearing, the Trustee of Highland Claimant Trust, James Seery, testified that he developed a methodology for valuing the equity in fixed amounts interests based on the values of pre-petition limited partner capital accounts. R. 001129–001130, 6/25 Hrg. Tr. 93:19–94:9. Dugaboy objected. All of this was unnecessary, as anything left over after paying senior creditors would go to the owners of Highland in the percentages they owned the entity, just as it would without a bankruptcy. As Dugaboy explained, the Class 10 and Class 11 equity interests should be valued as percentages based on *pro rata* ownership shares rather than fixed dollar amounts. *See generally* R. 001115–001118. The pre-petition limited partner capital accounts are maintained for tax purposes and fluctuate in ways wholly unrelated to actual market value. R. 001130, 6/25 Hrg. Tr. 94:6–7, 131:7–25.

In an order dated June 30, 2025, the bankruptcy court overruled each of Dugaboy's objections, approved the settlement, and fixed the allowed amount of HMIT's Class 10 interest at the same amount of \$336,940,230.58 proposed by Seery. R. 001294, 6/25 Hrg. Tr. 258:9–11; R. 001303–1306. On July 14, 2025, Dugaboy filed

⁶ Dugaboy was not a party to the settlement between Highland and HMIT, but the Bankruptcy Court recognized that Dugaboy had standing to object because the settlement would affect Dugaboy's own economic interests. R. 001074, 6/25 Hrg. Tr. 38:20–22 (“I think they’re affected by the settlement, so that makes them a party in interest.”).

a timely notice of appeal of that order. *See* Dkt. 1-1, N.D. Tex. Case No. 3:25-cv-01876-K (N.D. Tex.). That appeal is fully briefed and pending before Judge Kinkeade.

C. The Class 11 Determination.

On August 8, 2025, Highland moved the court to fix the allowed amounts of Dugaboy's and other Class 11 interests using the same methodology it had used to determine the Class 10 amount. R. 001307–001314. Dugaboy again objected, arguing *inter alia* that both the Plan and CTA contemplate that when all senior classes are paid, residual assets will flow to all equity holders based on their proportionate ownership percentages, not based on fixed dollar amounts from limited partner capital accounts, as Highland sought. R. 001328. By fixing Class 10 and Class 11's allowed amounts and cutting off the possibility of sharing in any surplus funds, the Bankruptcy Court ensured that Dugaboy would never receive any distribution because the estate's assets would never come close to satisfying Class 10's allowed amount, let alone reach Class 11. R. 001334–001338.

There is little question that was the point of Seery's structure, and a benefit of it from the Bankruptcy Court's perspective. Dondero, through his associated Dugaboy entity, was proving annoying to Seery, objecting to his violent treatment of equity. And he was prosecuting the case against the Bankruptcy Judge's presiding over this case, while having written books denigrating a hedge fund and manager

hard to distinguish from legacy Highland and Mr. Dondero. By picking some massive number for one of the equity owners and insisting that it be paid first and co-opting the rogue administrator of the Hunter Mountain Investment Trust (“HMIT”), the hope was that they could silence Mr. Dondero on continued administration of the bankruptcy estate, on grounds that it would be almost impossible for him to recover anything with \$336 million in equity claims in front of him.⁷ By contrast, if the equity ownership of Highland were not forcibly reorganized, Mr. Dondero’s Dugaboy entity would get a percentage of the first dollar remaining after senior creditors are paid, and such residual dollars were likely.

On September 18, 2025, the bankruptcy court held another evidentiary hearing. At that hearing, Seery again testified in support of his method that used prepetition limited partner capital accounts to calculate the allowed amounts. Dugaboy argued once again that this method was improper and unreliable because (among

⁷ On February 9, 2026, James Dondero and his entities moved under Federal Rule of Civil Procedure 60(b) for reconsideration, relief, and vacatur of the bankruptcy court’s approval of a Federal Rule of Bankruptcy Procedure Rule 9019 Settlement with Mark Patrick and Hunter Mountain Investment Trust, which Judge Jernigan entered on June 25, 2025. *See* Memo. of Law In Support of The Dugaboy Investment Trust’s Mot. for Relief from Order and Mot. to Vacate, *In re Highland Capital Mgmt., L.P.*, Case No. 19-34054 (SGJ), Dkt. 4513 (“Rule 60(b) Motion”). That motion also details the misconduct of Mark Patrick. He was the fiduciary in charge of safeguarding Dondero’s charitable legacy, which designated much of his ownership stake in Highland for the benefit of specified charities. Patrick ran off with that money, paying himself tens of millions of dollars in “bonuses” and moving the assets to a sham charity run out of his house. The Rule 60(b) motion explains how Patrick conscripted the bankruptcy court to unwittingly support his fraud in a settlement with the Highland bankruptcy estate. He gave away much of the rights of equity in order, bizarrely, to obtain the estate’s (albeit meritless) litigation claims against Dondero and others. All of this was designed to deter Dondero from asking the hard questions regarding Patrick’s misconduct

other flaws), the capital account balance was merely “a tax number” that bore no relation to the actual market value of Dugaboy’s partnership interest and the Limited Partnership Agreement’s own distribution provisions. Supp. R. 000021, 9/18 Hrg. Tr. 20:12–21:8. Dugaboy also established (and Seery conceded) that the use of capital account balances was not a recognized methodology for valuing equity interests, while Dugaboy’s proposed *pro rata* methodology was “standard.” Supp. R. 001168–001169, 9/18 Hrg. Tr. 132:20–133:8. Dugaboy further objected that fixing its Class 11 interest would improperly put a hard ceiling on Dugaboy’s potential recovery, depriving it of its legal and contractual right to share in any surplus or residual funds according to its *pro rata* equitable interest. Supp. R. 000013–000014, 9/18 Hrg. Tr. 13:8–14:21.

The bankruptcy court repeatedly asserted that “res judicata” (or some other preclusion doctrine) barred it from considering a different methodology for Class 11 than it had used for Class 10. Supp. R. 000015–000016, 9/18 Hrg. Tr. 15:15–16:13.”). Although the court allowed the evidentiary hearing to proceed, it made clear that it intended to adhere to its previous ruling regardless of Dugaboy’s evidence or argument. Supp. R. 000016, 9/18 Hrg. Tr. 16:4–9.

At the end of the hearing, the bankruptcy court fixed the allowed amount of Dugaboy's Class 11 interest at \$740,081.61.⁸ The court memorialized that allocation in an *Order Fixing Allowed Amount of Class 11 Interests* entered on September 22, 2025. R. 001505 (Bankr. Dkt. 4401). On October 6, 2025, Dugaboy timely filed its Notice of Appeal from that Order (R. 000001, Bankr. Dkt. 4423) and now briefs this Appeal.

D. Dugaboy Moves to Recuse the Bankruptcy Judge.

Dugaboy sought the Bankruptcy Judge's recusal in 2022 on grounds of two novels written by Judge Jernigan. In the books, Judge Jernigan painted an extremely negative picture of the hedge fund industry in general, with repeated references to the greed and creepy nature of the business. Mr. Dondero in particular seemed to be cast as a villainous character in the second novel appeared to be patterned after him.

Judge Jernigan denied that recusal motion on March 6, 2023. Dkt. 3676. Ultimately, Dugaboy filed a petition for mandamus review, which was denied and appealed to the Fifth Circuit. The Fifth Circuit found that "a strong argument could be made that [Judge Jernigan] had a duty to recuse" based on "the similarities between the characters in [the] novel and litigants before her[.]" *Dondero v. Jernigan*, No.

⁸ The court fixed the allowed amounts of the other Class 11 interest holders as follows: Strand Advisors at \$994,707.76; Mark K. Okada at \$192,754.38; the Mark and Pamela Okada Family Trust Exempt Trust Number 1 at \$38,868.17; and the Mark and Pamela Okada Family Trust Exempt Trust Number 2 at \$16,657.79. Supp. R. 000075, Hrg. Tr. 75:1–5.

24-10287, 2025 WL 1122466 at *7 (5th Cir. Apr. 16, 2025) (*per curiam*). However, the Fifth Circuit held that strong argument did not rise to the level of a “clear and indisputable” abuse of discretion required for intervention on mandamus. *Id.* at *3.

Dugaboy renewed its recusal motion, asking the Bankruptcy Court to take seriously the Fifth Circuit’s observation of “a strong argument” that she “had a duty to recuse.” Bankr. Dkt. 4372. Judge Jernigan denied that motion on September 2, 2025. Bankr. Dkt. 4379. On September 22, Judge Jernigan issued an “Order Fixing Allowed Amount of Class 11 Interests,” the underlying order appealed herein.

On December 29, 2025, while the cert petition was pending, however, the Judicial Council for the Fifth Circuit issued dispositions of ethics complaints filed by Mr. Dondero and others against Chief Judge Jernigan for novels and her extrajudicial statements regarding matters pending before her. *See e.g.*, Bankr. Dkt. 4513-35. Therein, the Judicial Council for Fifth Circuit dismissed the complaints based on “corrective action, ” including her prospective recusal from the case. *Id.* at 6.

On February 9, 2026, Dugaboy filed a Rule 60(b) Motion challenging Judge Jernigan’s order approving the Rule 9019 Settlement with the Hunter Mountain Investment Trust, seeking the voiding of that order on grounds that the Bankruptcy Judge should not have been one deciding it. Bankr. Dkt. 4513.

II. STANDARD OF REVIEW

When sitting in an appellate capacity, this Court reviews the bankruptcy court's findings of fact for clear error and its conclusions of law de novo. *In re Age Refining, Inc.*, 801 F.3d 530, 538 (5th Cir. 2015).

A court abuses its discretion when it erroneously concludes that the law does not allow it to do something or erroneously believes that the law constrains its discretion more narrowly than it actually allows. *Matter of Mendoza*, 111 F.3d 1264, 1266 (5th Cir. 1997). In such cases, remand is proper so that the lower court can redo its analysis under the correct legal standard. *See id.* at 1270.

A bankruptcy court's choice of valuation methodology is reviewed de novo. *See In re Stembridge*, 394 F.3d 383, 385 (5th Cir. 2004); *Matter of Dunham*, 110 F.3d 286, 289 n.11 (5th Cir. 1997). And even when an expert advocates for a particular methodology, the bankruptcy court is "not bound to follow [that] expert's choice," "*particularly* where that choice is not supported by the evidence." *In re Diamond Beach VP, LP*, 551 B.R. 590, 609 (S.D. Tex. 2016) (emphasis added). Here, the methodology was not supported by expert testimony.

III. SUMMARY OF THE ARGUMENT

This Court should reverse and remand the bankruptcy court's approval of Highland Trust's Motion to Fix the Allowed Amount of Class 11 Interests for numerous reasons.

First, the Bankruptcy Court erred by violently reorganizing the percentage equity interests of Highland's owners and denying Dugaboy and other their rightful percentage stake in the first dollar remaining after senior creditors have been paid in full. To do so, the court also misapplied the absolute-priority rule and the subordination procedures of the Reorganization Plan, improperly giving HMIT more than its full entitlement and leaving nothing for Dugaboy, despite clear law and contract terms that direct residual funds to the junior equity holders.

Second, the bankruptcy court also erred in concluding that "res judicata" or some other preclusion doctrine required it to disregard Dugaboy's objections and use the same flawed method to determine Dugaboy's Class 11 amount that it had used to value HMIT's Class 10 interests. The method the court adopted is fatally flawed because it sets fixed dollar amounts based on pre-petition limited partner capital accounts, which are maintained for tax purposes and fluctuate in ways wholly unrelated to actual market value. More significantly, it is a novel and unknown method that apparently has never been used to value equity interest. That makes it fundamentally unreliable. By contrast, Dugaboy's proposed *pro rata* approach is a "standard" and widely accepted methodology. It is also consistent with the Plan, contract provisions, and fundamental principles of bankruptcy law.

The bankruptcy court's conclusion was a clear error of law subject to de novo review. The Bankruptcy Court also failed to recognize that for Class 11, it was free

to reconsider its approach to Class 10 or at least apply a different method in ruling on Class 11. Neither res judicata nor any other preclusion doctrine has any application here.

Finally, Dugaboy asks this Court to determine that the Class 11 Order was a final appealable order that can merge with and support an appeal of an interlocutory order in which the former presiding judge denied a motion to recuse herself. While the recusal decision is being appealed in a separate proceeding, this Court is in the best position to determine the nature and effect of the Class 11 Order.

IV. ARGUMENT AND AUTHORITIES

A. The Bankruptcy Court Erred by Disregarding Dugaboy's Equitable and Contractual Right to Share in Excess Funds

The Bankruptcy Court erred when it fixed Dugaboy's allowed amount based on the capital account methodology proposed by Highland Trust without providing for it to retain its ownership percentage of any surplus funds that may remain after all senior classes have been paid in full. The purpose of the Highland Chief Restructuring Officer seeking this valuation methodology was to silence Dugaboy and to marginalize its objections to the administration of the bankruptcy estate. Mr. Seery and the Bankruptcy Court attempted to do so by unnecessarily and without justification allowing HMIT's Class 10 interest at \$336,940,230.58 (R. 001306) and forbidding Dugaboy from taking its ownership percentage from each surplus dollar as it arrives, instead putting it behind HMIT (R. 000032). R. 001282.

The dispositive question is whether Dugaboy and the other Class 11 Holders⁹ are entitled to participate in any distribution of excess funds on a *pro rata* basis consistent with their 0.5% aggregate equity ownership¹⁰ or whether Highland Trust's fixed-dollar methodology operates as an impermissible ceiling that extinguishes Class 11's equity rights entirely. Even after the inflated claims and mismanagement of the estate, as much as \$45 to \$50 million could remain available for distribution to Class 10 and Class 11. R. 001117, 6/25 Hrg. Tr. 81:10–21. HMIT, as 99.5% of the partnership equity, and Dugaboy and others with their 0.5 percent share, should take each marginal dollar of this surplus in those percentages as each arrives. R. 001116, 6/25 Hrg. Tr. 80:14–19. But so does Dugaboy, and the Court's refusal to resolve this issue left Class 11's rights to any share of excess funds unresolved.

1. *The Plan and CTA Preserve Class 11's Right to Share in Excess Funds Once Subordination Priority Is Satisfied*

The Plan and CTA establish a two-step framework, distinguishing between (1) the subordination of Class 11 to Class 10 (R. 000684 (Plan, Art. I A. 44)), and (2) the

⁹ Class 11 Contingent Claimant Trust Interests are held by The Dugaboy Investment Trust, Strand Advisors, Inc., Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust # 1, and The Mark and Pamela Okada Family Trust – Exempt Trust #2 and are collectively referred to as the “**Class 11 Holders.**”

¹⁰ The 0.5% figure represents the total equity owned by all the members of Class 11. For Dugaboy itself, its equity share is 0.1866%. R. 001327.

vesting of Contingent Claimant Trust Interests that entitle Equity Holders to distributions. R. 000684–85.

The Plan and CTA subordinate the equity owners of Highland to the senior creditors. R. 000686, ¶ 44; R. 000771 (CTA, Art. V. 5.1(c)). The Plan defines:

non-transferrable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; **provided, however,** Holders of Class A Limited Partnership Interests, Class B Limited Partnership interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the **Contingent Claimant Trust Interests** distributed to such Holders **vest in accordance with the terms of this Plan and the Claimant Trust Agreement.**

R. 000684–85 (Plan, Art. I.A.30) (emphasis added). Contingent Claimant Trust Interests “vest” when:

the Claimant Trustee files with the Bankruptcy Court a certification that all GUC [General Unsecured Creditor] Beneficiaries [Classes 1–9] have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the plan and all Disputed Claims have been resolved.

R. 000771 (CTA, Art. V. 5.1(c)). Holders of Allowed Class 10 / Class B and C Limited Partnership Interests and Holders of Allowed Class 11 / Class A Limited Partnership Interests are the “Equity Holders.” *Id.* The Claimant Trust Agreement states that “Contingent Trust Interests shall not vest, *and the Equity Holders shall not have any rights under this Agreement,* unless and until” the General Unsecured

Creditor Payment Certification is filed.¹¹ *Id.* (emphasis added). The necessary corollary is that *when* Contingent Claimant Trust Interests *do* vest, the Equity Holders—including Class 11 Holders—*gain* rights under the Plan and CTA—Claimant Trust Interests.

Indeed, the governing documents in this bankruptcy—the Plan and the CTA—were designed to contemplate distribution to Equity Holders after senior classes are paid. Pre-petition equity interests informed the structure of the Plan and the Claimant Trust Agreement. R. 000610, ¶ 36; R. 000686, ¶ 44. The Plan was written to respect the *pro rata* shares in the pre-petition limited partnership agreement by creating Class 10 (for Class B/C holders, *i.e.*, HMIT at 99.5%) and Class 11 (for Class A holders, *i.e.*, Dugaboy and others at 0.5%). *See* R. 000032, ¶ 36.¹² This structure necessarily contemplates a point in the distribution process at which the subordination priority has been satisfied and the remaining question is how to divide excess funds among the Equity Holders. If the drafters had intended for HMIT to capture all residual value regardless of amount, there would have been no reason at all to preserve the 99.5%/0.5% split in the Plan and CTA.

¹¹ No such certification had been filed by the time the Bankruptcy Court ruled on the Class 11 motion. *See* R. 000042, 9/18 Hrg. Tr. 42:11–14.

¹² Under the Plan's priority structure, Class 11 interests are subordinate to Class 10, meaning Class 11 recovers nothing until Class 10 is paid in full. R. 000684 (Plan, Art. I A. 44); *see* 11 U.S.C. § 1129(b)(2)(C)(ii) (absolute priority rule requires senior creditors to be paid in full before junior creditors receive anything).

2. *The Absolute Priority Rule Does Not Support the Bankruptcy Court's Ruling*

The bankruptcy court's ruling is also reversible error because it misconstrues the Absolute Priority Rule, which protects senior creditors but does not entitle them to windfalls at the expense of the junior classes. The Rule requires senior creditors to be paid in full before junior creditors or equity holders receive anything. *See* 11 U.S.C. § 1129(b)(2)(C)(ii); *In re Sequest Diving, L.P.*, 579 F.3d 411, 420 n.5 (5th Cir. 2009). But once every senior class of creditors has been paid in full, the absolute priority rule has served its purpose and no longer bars distributions to junior classes. *In re Introgen Therapeutics*, 429 B.R. 570, 585 (Bankr. W.D. Tex. 2010) (acknowledging that the absolute priority rule “would not be an issue” after higher-priority classes are paid in full). The absolute priority rules was never meant to, and does not, reorganize the equity ownership of the debtor. It is meant to protect *creditors* and distinctions among *creditors*. Once creditors are paid, the absolute priority rule has no application.

Even if the rule did apply to the relationship among debtor equity owners, a necessary corollary of the absolute priority rule is that “senior classes cannot receive *more than* one hundred percent (100%) recovery for their claims.” *In re Idearc, Inc.*, 423 B.R. 138, 170 (Bankr. N.D. Tex. 2009) (emphasis added). Here, the Bankruptcy Court's ruling violates this corollary. By fixing HMIT's recovery at nearly \$337 million and Class 11's recovery at approximately \$1.98 million, without accounting

for excess funds, the Court has structured a distribution scheme under which HMIT will capture 100% of any surplus, effectively pocketing more than its contractually allowed share of what Highland has after its creditors are paid.

The bankruptcy court's ruling, which effectively awards all excess funds to HMIT regardless of the amount recovered, impermissibly extinguishes Dugaboy's Class 11 equity share and its corresponding right to participate *pro rata* in any residual distribution.

B. The Bankruptcy Court Erred in Adopting Highland's Fixed-Dollar Methodology

The bankruptcy court's sole justification for adopting Highland's fixed-dollar methodology was that it constituted "my only evidence of what is reasonable, Dugaboy having chosen not to put on evidence." R. 001582, Hrg. Tr. 74:16–17. This is legally erroneous for two independent reasons. First, the court improperly shifted the burden to Dugaboy, dodging its own obligation to explain and justify its method. Second, the court failed to address the threshold legal question of whether Highland's capital account methodology—which finds no support in the Bankruptcy Code, Plan, or CTA and is not an established or recognized valuation method—was sufficiently reliable to support any conclusions.

1. *The Bankruptcy Court Failed to Explain Its Reasoning as Required by Fifth Circuit Law*

The Fifth Circuit requires bankruptcy courts to “elaborate on the reasoning behind [their] valuation method[s].” *Matter of Cmty. Home Fin. Servs. Corp.*, 32 F.4th 472, 482–83 (5th Cir. 2022). When a court fails to do so, remand is the proper remedy—even where the appellant “did not provide an alternative valuation.” *Id.* Here, Dugaboy adequately explained its alternative *pro rata* approach. After all, it is the way the excess assets of Highland would have been distributed in the absence of a bankruptcy. Dugaboy even extracted a concession from Highland’s witness that it was a “standard” valuation method. R. 001169, 6/25 Hrg. Tr. 132:20–133:8. In any event, the burden remains on the court to explain itself. *Id.* 32 F.4th at 482–83.

The Bankruptcy Court’s failure to explain its reasoning is particularly egregious here because the Plan itself does not mandate or even suggest any particular valuation methodology. As Highland Trust’s own witness acknowledged, the Plan “doesn’t tell you how to do the amount” of setting any claim. R. 001166, 6/25 Hrg. Tr. 130:14–19. And, as a matter of fundamental property rights, nothing in the Bankruptcy Code allows an Article I bankruptcy judge to reorganize the equity ownership property interests of a company’s owners. That would be a constitutional problem and should not be conjured from historical bankruptcy documents that do not force its being raised.

This silence made it all the more critical for the bankruptcy court to articulate why Highland’s chosen methodology—fixing claims based on petition-date capital

account balances—is legally and practically sound. Yet the court’s June 30, 2025, Order fixing HMIT’s allowed amount and approving the Rule 9019 settlement offers no such explanation. *See generally* R. 001303–06 (Bankr. Dkt. 4297). Nor does the court’s September 22, 2025, Order fixing the Class 11 allowed amounts. R. 00001505 (Bankr. Dkt. 4401). Remand is therefore necessary for the bankruptcy court to make a *reasoned* determination of the value of Class 10 and Class 11 interests. *See Cmty. Home*, 32 F. 4th at 482–83.

Nor did the Bankruptcy Court explain why it needed to do any of this claim setting now, before it has been certified that senior creditors have been paid. That is because the purpose of this exercise was unattractive: To give Highland’s court-appointed bankruptcy professional managers another tool to argue that Mr. Dondero should not be heard on Highland’s administration. That was no doubt especially attractive to a bankruptcy judge whose extrajudicial commentary and continued presiding over this case was being challenged by Mr. Dondero in some of the highest courts in the land.

2. *The Fixed-Dollar Methodology Is Legally Flawed Because Capital Accounts Do Not Reflect Market Value*

The bankruptcy court compounded its procedural error by adopting a methodology that is substantively defective. Highland’s fixed-dollar approach relies on capital account balances as of the October 16, 2019, petition date. R. 000008. But capital accounts are calculated primarily for tax purposes, and their book values have

little or nothing to do with the actual market value of an equity interest. R. 001336; R. 001529, 9/18 Hrg. Tr. 21:4–18. Indeed, Highland’s own witness, the non-credentialed “expert” Seery, conceded that he was “not valuing anything” and did not know what the interests’ “actual value might be.” R. 001582, 9/18 Hrg. Tr. 36:22–37:18.

This disconnect between book value and market value is not merely academic because it virtually guarantees inaccurate claim valuations. The Supreme Court has made clear that using an incomplete or inaccurate valuation methodology constitutes reversible error. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 453–54 (1968) (reversing plan confirmation where the court below relied on an incorrect valuation methodology). Such inaccuracy violates the Absolute Priority Rule, which is offended by both underpayment *and* overpayment of senior creditors. *In re Idearc, Inc.*, 423 B.R. at 170. By adopting a methodology divorced from actual value, the bankruptcy court sanctioned distributions that may improperly enrich or shortchange creditors at various priority levels, which is the precise evil the absolute priority rule is designed to prevent.

C. *The Bankruptcy Court Improperly Allowed Highland to Fix Dugaboy’s Claim Using Untested, Tax-Based Capital Account Numbers Not Authorized by the Plan or CTA* .

The bankruptcy court committed fundamental error by approving Highland’s untested, unprecedented, and unreliable capital account methodology. A methodology’s reliability is not established merely because it draws on internal records and

the underlying math adds up. Reliability requires that a method be tested, proven, and recognized within the relevant field. *In re H&M Oil & Gas, LLC*, 511 B.R. 408, 413 (Bankr. N.D. Tex. 2014) (declining to allow trustee to offer testimony because he failed to offer proof that “the methodology that he relied on in coming to his opinion [was] reliable and credible”). Highland’s capital account approach does not satisfy these requirements, and the bankruptcy court’s adoption of this unrecognized methodology (which amounts to a legal conclusion) should be reviewed without deference. *See Stembridge*, 394 F.3d at 385; *Dunham*, 110 F.3d at 289 n.11.

1. *Highland’s Own Witness Admitted the Capital Account Method Is Not a Recognized Methodology*

Highland’s witness Seery, the architect of the capital account method, made critical admissions that undermine its reliability. When asked to identify any authority supporting the use of capital accounts to value claims, Seery admitted he could not “cite . . . [anything] specific.” R. 001169, Hrg. Tr. 133:4. This admission alone should have given the bankruptcy court pause: the proponent of the methodology could not point to a single instance of its prior use or acceptance.

Seery further conceded that using equity ownership percentages to determine payments to equity holders on a *pro rata* basis, the approach Dugaboy proposed, is a “standard” methodology. R. 001169, 6/25 Hrg. Tr. 132:20–133:8. When asked whether he had “ever used equity ownership percentages to determine the payment to the equity versus their capital account balances,” Seery responded: “I think that’s

standard.” *Id.* In other words, Highland’s own witness acknowledged that the standard, accepted approach is the one Dugaboy advocated and not the novel capital account method Highland proposed and the bankruptcy court adopted.

2. *The Capital Account Records Are Tax Instruments, Not Valuation Tools*

Capital accounts are maintained for tax purposes—not as proxies for market value. The Internal Revenue Code requires partnerships to maintain capital accounts to track each partner’s allocable share of profits and losses for pass-through treatment. R. 001534, 9/18 Hrg. Tr. 26:12–28:13. A Schedule K-1 reflects these figures “per partner for tax purposes because a limited partnership is a pass-through entity,” and the allocations must have “substantial economic effect” to preserve that treatment. *Id.*

Nothing about this tax-accounting function suggests that capital account balances approximate market value. To the contrary, book values for tax compliance purposes may bear little relation to what an equity interest might command in a market sale. As counsel for Dugaboy argued at the hearing, without rebuttal from Highland, “We all know that has nothing to do with the actual value. It’s a tax number.” R. 001528, 9/18 Hrg. Tr. 21: 4–18.

Highland’s acknowledgment that capital accounts “fluctuate[.]” over time based on allocations of profits and losses underscores their unsuitability as a valuation proxy. R. 001310; R. 000007. A figure that rises and falls with annual tax

allocations rather than with changes in the underlying market value of the enterprise cannot reliably measure what an equity interest is worth.

3. *That the Math May Work Does Not Make the Method Reliable*

The existence of underlying documentation and the internal consistency of arithmetic do not make a methodology reliable. Highland may contend that its methodology is reliable because it is based on “real records”: tax returns signed by Mr. Dondero, K-1 statements, and Highland’s internal accounting ledgers. Supp. R. 000007, Hrg. Tr. 7:16–25. Highland’s counsel argued that these figures were “not written on the back of a napkin” but rather “on the front of a tax return.” R. 001515, Hrg. Tr. 7: 9–10. But reliability requires more than authentic source documents and correct calculations; it requires that the method itself be established, tested, and proven to yield accurate results. *See TMT Trailer*, 390 U.S. at 453–54; *In re Cmty. Home Fin. Servs. Corp.*, 32 F.4th 472, 482–83 (5th Cir. 2022) (rejecting valuation methodology despite reliance on available financial data). A novel methodology does not become reliable simply because it draws on real numbers; it becomes reliable when it has been validated through use and acceptance in the relevant field. *In re H&M Oil & Gas, LLC*, 511 B.R. 408, 417–20 (Bankr. N.D. Tex. 2014).

Seery could not identify a single instance, in this case or any other, in which capital accounts have been used to value equity interests for purposes of claim allowance in bankruptcy. R. 001169, Hrg. Tr. 133:4–8. He could cite no treatise, case

law, or industry practice supporting the approach. *Id.* His methodology has never been tested, never been proven, and never been accepted. It is, in short, unreliable junk methodology that the bankruptcy court should have rejected.

4. *The Bankruptcy Court Erred by Adopting an Unrecognized Methodology over Dugaboy’s “Standard” Approach*

The bankruptcy court was presented with two competing approaches: (1) Highland’s novel capital account method, which its own proponent admitted was unsupported by any authority and made no attempt to determine actual value; and (2) Dugaboy’s *pro rata* method based on equity ownership percentages, which Seery admitted was “standard.” R. 001168–69, 6/25 Hrg. Tr. 132:20–133:8.

When a party proposes a methodology that no one else has ever used, and offers that method in lieu of what the proponent’s own witness concedes is the “standard” approach, a court should not adopt the untested method. The bankruptcy court’s adoption of Highland’s untested, unprecedented, and unreliable methodology was legal error. Because the choice of methodology is a legal question, this Court should review the bankruptcy court’s decision *de novo* and without deference, reversing and remanding so that the bankruptcy court can re-do its analysis using Dugaboy’s well-recognized and reliable *pro rata* approach.

D. The Bankruptcy Court Erroneously Applied Res Judicata to Dictate the Same Valuation Method for Dugaboy’s Class 11 Interests as for HMIT’s Class 10 Interests

1. *The Doctrine of Res Judicata Had No Application to the Bankruptcy Court's Determination*

The bankruptcy court committed a clear error of law when concluded that the doctrine of res judicata required it to apply the same valuation methodology to Dugaboy's Class 11 interests that it had previously approved for HMIT's Class 10 interests. At the September 18, 2025, hearing on Highland's *Motion for Order Fixing the Allowed Amount of Class 11 Interests*, the court declared that because it had already approved the valuation methodology for Class 10, and because Highland proposed to apply the same method to Class 11, the issue of methodology was already decided. Supp. R. 000016, 9/18 Hrg. Tr. 16:4–9. The court insisted that “res judicata” foreclosed any reconsideration. Supp. R. 000015–16, Hrg. Tr. 15:15–16:13. This reasoning reflects a fundamental misunderstanding of res judicata under Fifth Circuit precedent.

Res judicata is not a flexible doctrine to be invoked whenever a court senses thematic or factual similarity between disputes; rather, it is a precise legal standard with strict, mandatory requirements. It “bars the litigation of claims that either have been litigated or should have been raised in an earlier suit.” *In re Southmark Corp.*, 163 F.3d 925, 934 (5th Cir. 1999).

For res judicata to apply, the parties must be identical or in privity; the judgment in the prior action must have been rendered by a court of competent jurisdiction; the judgment in the prior action must have been concluded by a final judgment

on the merits; and both actions must involve the same claim or cause of action. *Petro-Hunt, LLC v. United States*, 365 F.3d 385, 395 (5th Cir. 2004). All four elements “must be met for a claim to be barred by the doctrine of res judicata.” *In re Mirant Corp.*, No. 03–46590–DML–11, 2005 WL 2589162, at *2 (Bankr. N.D. Tex. July 21, 2005).

Moreover, res judicata has no application in this procedural posture. Res judicata applies only to already-adjudicated causes of action between separate matters, not to similar issues arising within the same case. *Petro-Hunt*, 365 F.3d at 397. Moreover, at least one element is not satisfied. There was no identity of parties because the Class 10 proceeding concerned HMIT’s interest, while the Class 11 concerned Dugaboy’s interest, and no privity exists between HMIT and Dugaboy.

Thus, as a matter of law, res judicata did not require the court to rule against Dugaboy or to adhere to the methodology previously approved for Class 10 interests, because the doctrine simply did not apply to the procedural posture or circumstances of the Class 11 hearing. It was clear and reversible error for the bankruptcy court to rely on res judicata to determine its ruling on Dugaboy’s Class 11 interests.

2. No Other Preclusion Doctrine Applied

The bankruptcy court acknowledged that it may have had some other preclusion doctrine in mind while calling it “res judicata.” Supp. R. 000016, 9/18 Hrg. Tr. 16:16–25; Supp. R. 000018, 9/18 Hrg. Tr. 18:12–15. But no other preclusion

doctrine would have required the court to apply the same methodology it previously adopted for Class 10, and it was clear and reversible error for the court to conclude that it was constrained this way. *See Matter of Mendoza*, 111 F.3d 1264, 1266 (5th Cir. 1997) (a court’s “fail[ure] to understand the full bounds of its discretion” is itself an abuse of discretion. Remand is necessary so that the bankruptcy court can redo its analysis under the correct legal standard. *See id.* at 1270.

Collateral estoppel, like *res judicata*, is inapplicable here and did not compel the bankruptcy court’s decision. For collateral estoppel to preclude re-argument of an issue in a later action, (1) the facts sought to be litigated in the second action needed to have been fully and fairly litigated in the prior action; (2) those same facts must have been essential to the judgment in the first action; and (3) the parties must have been adversaries in the first action. *See Hammervold v. Blank*, 3 F.4th 803, 810 (5th Cir. 2021). Collateral estoppel applies to issues in related but separate cases. *See, e.g., United States v. Hankton*, 51 F.4th 578, 606 (5th Cir. 2022) (collateral estoppel “preclude[s] relitigation of the same issue already litigated against the same party *in another case* involving virtually identical facts”) (emphasis added). It is designed to prevent parties from relitigating identical across separate lawsuits, not to bind litigants to decisions rendered within a single, ongoing proceeding.

Nor does the law-of-the-case doctrine support the bankruptcy court’s mistaken conclusion that Dugaboy’s arguments were precluded. The law of the case

prevents a trial court from reconsidering issues already decided by an appellate court within the same proceeding, but does not prevent the trial court from reconsidering its own prior rulings. *Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010) (“[T]he law-of-the-case doctrine does not operate to prevent a district court [or bankruptcy court] from reconsidering prior rulings.”).¹³ District courts within this Circuit have expressly authorized reconsideration of a court’s own rulings even where no special circumstances apply. *See, e.g., McPeters v. LexisNexis*, 11 F. Supp. 3d 789, 795 (S.D. Tex. 2014). Accordingly, to the extent the bankruptcy court determined it was precluded from reconsidering its methodology based on the law-of-the-case doctrine, that was error and should not have prevented fair consideration of Dugaboy’s arguments. *See Mendoza*, 111 F.3d at 1266.

In sum, no preclusive doctrine applied here. To the extent the bankruptcy court’s decision rested on its mistaken conclusion that it was bound by its prior determination, that was a clear legal error. It was reversible error for the court to adopt Highland’s valuation methodology for Class 11 based on a mistaken conclusion that it was bound by its prior ruling on Class 10, and remand is required for the court to redo its analysis under the correct legal standard. *See Mendoza*, 111 F.3d at 1270.

E. The Bankruptcy Judge Should Have Recused Herself Before Issuing the Class 11 Order

The order fixing the Class 11 interests should also be vacated because the bankruptcy judge should have recused herself from the case before issuing this order. Dugaboy has repeatedly sought the recusal of Chief Judge Stacey Jernigan after learning that she had been writing novels while presiding over the Highland bankruptcy that depict the hedge-fund industry in a sinister light and feature a fictional villain who bears striking similarities to James Dondero, the principal of Dugaboy. Chief Judge Jernigan finally relented and recused herself from the Highland bankruptcy in December 2025, but her December 2025 recusal decision is prospective only and leaves in place all of her previously issued orders. Dugaboy is seeking vacatur of all of Chief Judge Jernigan's previous rulings in the Highland bankruptcy, including the order that is has appealed to this Court, as each of those decisions is tainted by Chief Judge Jernigan's misconduct.

Earlier this year, Dugaboy sought leave to appeal the Chief Judge Jernigan's latest order denying recusal. *See The Dugaboy Investment Trust v. Highland Capital Management L.P.*, No. 3:25-cv-02579-B (N.D. Tex.). But Judge Boyle denied the motion for leave to appeal after concluding that Chief Judge Jernigan's order denying recusal is not a final order. *See* Exhibit ___. And although Dugaboy had argued that its appeal of the recusal denial was "intertwined" with its appeal from the Class 11 order, the Judge Boyle rejected this argument because the Class 11 order was entered after the recusal denial, and the recusal denial "could not have merged into

the 9019 Order because a later order cannot ‘lead up to’ an earlier order.” *Id.* (quoting Fed. R. Bankr. P. 8003(a)(4) advisory committee’s note to the 2023 amendment). Judge Boyle noted, however, that “the Recusal Denial could theoretically have merged into the Class 11 Order, which was entered later,” although she made clear that she “express[ed] no opinion as to whether the other orders identified in Dugaboy’s briefing are final orders or whether the Recusal Denial merges with them.” *Id.* Dugaboy is therefore presenting its recusal arguments as part of this appeal, as the Class 11 order post-dates Chief Judge Jernigan’s latest order denying recusal and is tainted because Chief Judge Jernigan erred by denying Dugaboy’s motion to recuse. Dugaboy is also litigating these recusal issues in a Rule 60(b) motion that is now pending before the newly assigned bankruptcy judge, so the Court may wish to stay its hand on the recusal issues and allow the Rule 60(b) process to play out. *Cf. Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988) (allowing litigants to use Rule 60(b) to obtain vacatur of judgments and orders issued by a judge who improperly failed to recuse himself). But it was still error for Chief Judge Jernigan to decide the Class 11 issues when she improperly denied Dugaboy’s motion to recuse, and we are duty-bound to raise this point of error in appealing the Class 11 order.

The Bankruptcy Court erred by declining to recuse from the case before issuing the order valuating the Class 11 claim. Congress mandated that the judge “shall

disqualify” herself “in any proceeding in which [her] impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). By the time of the Class 11 order, the circumstances compromising the appearance of her impartiality were already present: The writing of novels about a hedge fund and its manager to similar to Dondero. That has resulted in the Fifth Circuit Judicial Council taking corrective action to recuse the predecessor judge from the case going forward.

Here, the Fifth Circuit Judicial Council, acting through the Fifth Circuit Chief Judge, effected a recusal of the predecessor judge as “corrective action” for books she authored and published critical of the hedge-fund industry and negatively depicting characters with striking similarity to Dondero while presiding over the Highland bankruptcy. Specifically, the corrective action was taken in disposition of three ethics complaints by the Judicial Council of the Fifth Circuit regarding the judge’s impartiality.¹⁴ In the dispositions, Chief Judge Elrod determined that recusal was one of several significant measures constituting “appropriate corrective action that acknowledges and remedies the problems” raised by the complainants. The corrective action of recusal was meant to redress “conduct occurring outside the

¹⁴ *In re Complaint of Judicial Misconduct Under the Judicial Improvements Act of 2002*, No. 05-26-90042 (Dec. 29, 2025), at 7, available at <https://tinyurl.com/yynh3u67>; *In re Complaint of Judicial Misconduct Under the Judicial Improvements Act of 2002*, No. 05-26-90044 (Dec. 29, 2025), at 3, available at <https://tinyurl.com/3vym9yu4>; *In re Complaint of Judicial Misconduct Under the Judicial Improvements Act of 2002*, No. 05-26-90045 (Dec. 29, 2025), at 3, available at <https://tinyurl.com/2vka5dn6>.

performance of official duties if the conduct is reasonably likely to have prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.” Ex. 32, Order 05-26-90042 at 5 (quoting Judicial Conduct and Discipline Rule 4(a)(7)).

The Fifth Circuit Chief Judge noted that the judicial misconduct resolution should not “be interpreted as an opinion or reflection on the merits of the judge’s prior decision not to recuse . . . or on the validity of any decision” she had issued. Ex. 32, Order 05-26-90042 at 6 n.3, Ex. 33, Order 05-26-90044 at 3 n.1, & Ex. 34, Order 05-26-90045 at 3 n.1. That is because there are judicial proceedings to address consequences for rulings in a case. R. Judicial-Conduct and Judicial-Disability Procs., r. 3 Fifth Cir. cmt. 3.2.

The Bankruptcy Judge wrote and published *He Watches All My Paths*¹⁵ and *Hedging Death*,¹⁶ while presiding over this bankruptcy and the previous involuntary bankruptcy commenced against Acis Capital Management, L.P. and Acis Capital Management GP, L.L.C.—entities owned by or closely associated with Dondero.

¹⁵ Stacey G. Jernigan, *He Watches All My Paths*, SJ Novels (self-published) (Jan. 16, 2019), available on Amazon at <http://bit.ly/4nhfTRd>.

¹⁶ Stacey G. Jernigan, *Hedging Death*, White Bird Publications (Mar. 22, 2022), available on Amazon at <http://bit.ly/3KfFCL6>.

The novels follow a Texas bankruptcy judge—portrayed to be heroic and modeled after Judge Jernigan herself—who faces hedge funds and a nefarious hedge-fund manager, Cade Graham, in her court. Graham bears striking similarities to Dondero. For instance, Graham shares much of the same biographical information as Dondero, such as stature, age, and general professional experience. *Hedging Death* excerpt, at 112a.¹⁷ Graham’s hedge fund is named Ranger Capital, just as Dondero’s had been before rebranding as Highland Capital Management. *Id.*, 133a (*Hedging Death* excerpt); Memorandum of Law in Support of Highland Capital Management Fund Advisors, L.P.’s Motion to Recuse at 16–17, *Highland Capital Mgmt. L.P. v. Kirschner*, Adv. Proc. No. 21-03076, Dkt. 310 (Bankr. N.D. Tex. Feb. 27, 2023) (“Motion to Recuse”). References to the historical name of Dondero’s hedge fund were made in both the Acis and Highland bankruptcies, which Judge Jernigan presided over while writing the books in question.¹⁸ Ranger Capital also had a unique mix of investments that mirrored Highland—with “hedge funds . . . private equity funds, CDOs, CLOs, REITs, life settlement, all manner of complicated financial

¹⁷ Pertinent excerpts of both novels are included in Movants’ Petition Appendix to their Petition for Certiorari at the Supreme Court filed on September 22, 2025. That appendix may be found here: https://www.supremecourt.gov/DocketPDF/25/25-355/375540/20250922163852536_Dondero%20Cert%20Petition%20FINAL%20WITH%20APPENDIX%20PDF.pdf and as Exhibits 35 and 51 to the pending Rule 60b motion.

¹⁸ *In re Acis Capital Mgmt., L.P.*, Case No. 18-03078-sgj, Dkt. 85-2 at 190; *In re Highland Capital Mgmt., L.P.*, Case No. 19-34054-sgj, Dkts. 74-2 at 5; 247 at 59-60; 400 at 6; 675 at 23; 883 at 57; 1719 at 7; 1761 at 33; 1810-1 at 8; 1811 at 6; 1875-5 at 6; 1895-1 at 46; 1895-6 at 60–61; 1943 at 159.

products.” Ex. 35, *Hedging Death* excerpt, at 112a; Ex. 36, Mot. to Recuse at 16–17 (Dkt. 310). (“As Judge Jernigan is well aware, [Highland] and its affiliates managed hedge funds, private equity funds, CDOs, CLOs, REITs, life settlement portfolios and private investment accounts for institutions around the world—exactly the same unusual mix of investments at issue in Judge Jernigan’s second ‘fictional’ novel.”). This combination is not just rare; it is one of a kind.

The novels also make derogatory comments about hedge funds and their managers, describing them as “suck[ing] up money . . . like an i-Robot vacuum” with “outrageous amount[s] of hubris.” *He Watches All My Paths* excerpt, at 104a. The books further deride certain international tax structures as “byzantine,” a word Judge Jernigan has frequently used to describe Dondero’s companies. , *Hedging Death* excerpt at 144a; *Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466, at *7 (5th Cir. Apr. 16, 2025), *cert. denied*, No. 25-355, 2026 WL 79972 (U.S. Jan. 12, 2026). Moreover, *Hedging Death* describes the life-settlement industry as “creepy,” and as mentioned, Highland and Dondero invested in the life-settlement industry. Ex. 35, *Hedging Death* excerpt at 117a.

Dondero and others sought recusal on the basis of these novels before Class
11 Claim order. Movant’s Supplemental Memorandum of Law in Support of Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455, No. 19-34054, Dkt. 3673 (Bankr. N.D. Tex. Mar. 3, 2023). On March 6, 2023, the predecessor

judge denied the motion, with the same explanations provided to the Fifth Circuit Chief Judge in response to the judicial misconduct complaints. *Compare* Memorandum Opinion and Order Denying “Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455,” Dkt. 3676 at 32–36 (Bankr. N.D. Tex. Mar. 6, 2023), *with* Order 05-26-90042 at 5, Order 05-26-90044 at 3, & Order 05-26-90045 at 2–3. The Bankruptcy Court’s analysis of the issue spanned a little more than three pages. Dkt. 3676 at 32-36. Specifically, the Bankruptcy Judge implied that she did not mean the books’ hedge fund or manager to portray Highland or Mr. Dondero, because they were “entirely fiction.” The judge identified some differences between Highland and Dondero and the books’ characters. The books’ hedge fund manager, Mr. Graham, “fakes his own death” and “has a Brazilian girlfriend.” *Id.* at 34. The judge cited her disclaimer of the characters being based on real life in the “author’s note” to the book. *Id.* at 33-34. She then acknowledges that authors often pull from their life experiences and encounters with others to craft characters, but summarily denies that happened with respect to Highland and Mr. Dondero. *Id.* at 34-35.

Dondero and the other parties seeking recusal then appealed. The District Court held a direct appeal of the recusal denial to be jurisdictionally improper and that the issue could be reviewed only through a petition for writ of mandamus. Order, *Dondero et al. v. Stacey G. Jernigan*, No. 3:21-CV-0879-K, at 1, 12–13, Dkt. 39 (N.D. Tex. Feb. 9, 2022). Dondero and the other parties then filed a mandamus

petition with the District Court. *See* Exhibit 39, Order re: Writ of Mandamus at 3, No. 3:23-cv-00726-S, Dkt. 25 (N.D. Tex. Mar. 8, 2024). The issue as raised on mandamus reached the United States Court of Appeals for the Fifth Circuit. After a petition for rehearing, the Fifth Circuit amended its opinion with renewed focus on the novels, and the Court observed that “[d]ue to the similarities between the characters in Chief Judge Jernigan’s novel and the litigants currently before her in court, a strong argument could be made that she had a duty to recuse.” *Dondero*, 2025 WL 1122466, at *7. However, the Fifth Circuit withheld relief on mandamus, reasoning that the Court could act at the interlocutory, mandamus stage only upon a “clear and indisputable abuse of discretion.” *Id.* The Fifth Circuit repeatedly explained how high a bar the “clear and indisputable” standard on mandamus is and distinguished it from the lower standard of review to be applied on appeal from a final order affected by the recusal issue. *See id.* at *4 (describing the standard as a “high burden,” and explaining that “in general, if a matter is within the district court’s discretion, the litigant’s right to a particular result cannot be ‘clear and indisputable,’ and that such relief is granted on disqualification ‘only in exceptional circumstances’”) (citations and quotation marks omitted).

Dugaboy and others took two steps in the wake of the Fifth Circuit’s ruling. First, it asked the Bankruptcy Judge to recuse again, relying principally on the Fifth Circuit’s observation that there was a “strong argument that she had a duty to recuse”

due to “similarities” between the books’ hedge fund and manager and Highland and Dondero. Dugaboy noted that, at some point, there would be final judgment, and the recusal decision would be reviewed for an abuse of discretion alone, rather than a “clear and indisputable” abuse of discretion required for mandamus intervention. Judge Jernigan denied that motion in terse and familiar terms: “Two words: *res judicata*.” Dkt. 4379 at 4. In doing so, the Bankruptcy Court gave the back of its hand to the Fifth Circuit’s observation of the “strong argument” that she had “a duty to recuse.” *Dondero*, 2025 WL 1122466, at *7.

Second, Dugaboy sought Supreme Court review of the Fifth Circuit’s mandamus-stage decision. *Dondero v. Jernigan*, No. 25-355 (Sup. Ct.). Unaware of the Fifth Circuit Judicial Council’s parallel corrective action recusing the predecessor judge from this matter going forward, the Supreme Court denied certiorari on January 12, 2026. Dondero timely filed a petition for rehearing based on the intervening Fifth Circuit corrective action, which is pending. *See* Petition for Rehearing, *Dondero v. Jernigan* (attached as Exhibit).

In this instance, the recusal issue is not presented on mandamus. The abuse of discretion in denying recusal need not be clear and indisputable.¹⁹ And the

¹⁹ Dugaboy continues to contest that the standard of appellate review of orders denying recusal is abuse of discretion. Congress made recusal under certain circumstances—including where a judge’s impartiality may be reasonably questioned—mandatory, not optional or discretionary. 28 U.S.C. § 455(a) (mandating that a judge “*shall* disqualify himself in any proceeding in which his impartiality might reasonably be questioned”) (emphasis added); *Lexecon Inc. v. Milberg Weiss*

decision was error, including an abuse of discretion. First, the Bankruptcy Judge made a fundamental legal error by holding that her subjective intentions not to model the books' hedge fund and its manager after Highland and Dondero somehow controlled. Congress did not ask whether a judge was actually biased or whether she intended to make extrajudicial comments about a litigant before her while continuing to preside over the case. Instead, Congress mandated disqualification of a judge "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). That means what a reasonable observer would think about the circumstances of her extrajudicial writings regarding hedge funds and characters close to parties before, not what the judge privately intended. *See, e.g., Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980). As the Fifth Circuit clearly has explained, Section 455(a):

sets up an objective standard, rather than the subjective standard set forth in the prior statute through use of the phrase "in his opinion." . . . Because 28 U.S.C. § 455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street. Use of the word "might" in the statute was intended to indicate that disqualification should follow if the

Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998) (explaining that "the mandatory 'shall[]'" in a statute "normally creates an obligation impervious to judicial discretion"). Moreover, no one is a particularly good judge of her own misconduct, making *de novo* review particularly appropriate when the grounds of recusal overlap with violations of the rules of judicial conduct. *See* Ex. 32, Order 05-26-90042 at 4–5, Ex.33, Order 05-26-90044 at 3, & Ex. 34, Order 05-26-90045 at 2. For these and other reasons, the Seventh Circuit reviews a judge's decision not to recuse *de novo*. *United States v. Balistrieri*, 779 F.2d 1191, 1202–03 (7th Cir. 1985).

reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality.”

Id. It was legal error for the Bankruptcy Judge so heavily, indeed almost exclusively, to rely on her subjective internal intentions as to her characters, instead of any serious analysis of how a reasonable onlooker would view her extrajudicial writings amidst presiding over the case.

And indeed, the Bankruptcy Judge conceded that her own view of her subjective intentions might not be reliable. In the opinion denying recusal—which she later regarded as “res judicata”—she recounted how authors from Agatha Christie to Ernest Hemingway subconsciously incorporate their life experiences into her books. DKt 3676 at 35-36. Against that premise, her summary conclusion that wasn’t happening here required more analysis than a sentence. *Id.* at 36.

And it also is implausible under the circumstances. Her main protagonist was . . . a bankruptcy judge. Married to a policeman. With the same dogs. It was Judge Jernigan. When writing about being a judge, a reasonable onlooker would expect the judge to be very careful of writing about other characters having really anything to with parties before her. That did not happen here. Continuing to preside over the case while undertaking these writings were an abuse of discretion.

Second, the Bankruptcy Court erred by determining that some differences between art and life were enough to permit her extrajudicial writings. The Court’s analysis was effectively to concede that there were similarities, but several identified

differences made the writings permissible. Dkt. 3676 at 33-34. As an initial matter, it is not clear that the bankruptcy judge herself would still so assert, as she has committed to the Fifth Circuit Judicial Council “that any future extrajudicial writings will not include scenarios or subject matter that a reasonable person could assume are based on matters pending before her, or include characters that a reasonable person could assume are based on parties or witnesses in matters before her.” Order 05-26-90042 at 5. In any event, modifying the details of a real person’s life or case for literature is not even enough to avoid a defamation claim. *See, e.g., Muzikowski v. Paramount Pictures Corp.*, 322 F.3d 918, 821 (7th Cir. 2003) (reversing dismissal of defamation claim despite film character resembling plaintiff committing several crimes and gambling, unlike plaintiff). Nor is some disclaimer in the book or movie that the story is not based on real events, but the Bankruptcy Court spent a page relying on her self-assertion in her author’s note. Dkt. 3676 at 34-35.

But none of this is even close to enough to avoid disqualification while engaging in these extrajudicial writings, which turns on the circumstances where “impartiality *might be reasonably* questioned.” 28 U.S.C. § 455(a). There, the default is in favor of recusal. *Potashnick*, 609 F.2d at 1112 (“the new statute requires a judge to exercise his discretion in favor of disqualification if he has any question about the propriety of his sitting in a particular case”). Defamation claims, by contrast, require

demanding elements of an intentional tort, where there a First Amendment reasons not to find liability.

Third, this Court should not defer at all to the Bankruptcy Judge's decision and should review it *de novo*. Whether or not Article III judges' decisions not to recuse should be reviewed for an abuse of discretion (we believe they should be reviewed *de novo*), Bankruptcy Judges are Article I judges whose power derives from close supervision by this Court. Bankruptcy Judges without life tenure and Senate confirmation presiding over multi-billion dollar issues already is at the constitutional edge. If that Article I judge's impartiality is at all compromised, that situation is pushed over the constitutional cliff.

This case warranted the extraordinary event of corrective action by the Fifth Circuit Judicial Council addressing the Bankruptcy Judge's extrajudicial writings while presiding over this case, resulting in her prospective recusal. Less than five other judicial complaints of the more than 500 in the last ten years have been resolved by corrective action rather than dismissal. This issue is serious. Judge Jer-nigan erred by failing to recuse herself before deciding the Class 11 claim setting. The order is void for that reason.

F. The Bankruptcy Court's Ruling on the Class 11 Motion is a Final Appealable Order.

In separate proceedings, Dugaboy is appealing from the then-presiding bankruptcy judge's denial of a motion asking her to recuse herself, and also from the

district court's denial of Dugaboy's motion for leave to appeal that recusal decision. District Court Case No. 3:25-cv-02579-B; Fifth Circuit Case No. 26-10012. The Class 11 Order matters to those arguments because Dugaboy contends that it is a final and appealable order into which the interlocutory recusal order can merge and become appealable. *See* Fed. R. Bankr. P. 8003(a)(4) ("The notice of appeal encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree."). The jurisdictional status and finality of the Class 11 Order is best determined by this Court which is already tasked with reviewing that order. Moreover, the district court that denied Dugaboy's motion for leave to appeal expressly disclaimed any opinion as to whether the Class 11 Order is final and appealable or whether it merges with the recusal order that is the subject of that appeal. *See* Case No. 3:25-cv-02579-B, Dkt. 25 at 7–8.

Because a bankruptcy case "embraces an aggregation of individual controversies, orders in bankruptcy cases qualify as 'final' when they definitively dispose of discrete disputes within the overarching bankruptcy case." *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37 (2020). What constitutes a "final" judgment or order in the bankruptcy context is more broad and flexible than in other types of proceedings. *See In re ASARCO, LLC*, 650 F.3d 593, 599–600 (5th Cir. 2011). "Our approach to determining whether an order is . . . appealable in a bankruptcy case is flexible," and views "finality in bankruptcy proceedings . . . in a practical, less

technical light.” *In re Kizzee–Jordan*, 626 F.3d 239, 242 (5th Cir. 2010). In the Fifth Circuit “[a]n appealed bankruptcy order will be considered final if it constitutes either a final determination of the rights of the parties to secure the relief they seek, or a final disposition of a discrete dispute within the larger bankruptcy case.” *Id.* at 242.

The bankruptcy court’s Order Fixing the Allowed Amount of Class 11 Interests (R. 001505, Bankr. Dkt. 4401) is a final appealable order because it resolved a discrete dispute over the Equity Holders’ rights, “fixed” a purported dollar value for Dugaboy’s Class 11 claims, and sought to close off any avenue for possible further recoveries. R. 001508, Bankr. Dkt. 4401 at ¶ 12. In other words, this was effectively a final judgment on the “discrete judicial unit” of Dugaboy’s equity claims. *In re Coastal Plains Inc.*, 338 B.R. 703, 713 (N.D. Tex. 2006). The Fifth Circuit has held that “as long as an order allowing a claim or priority [in a bankruptcy proceeding] effectively settles the amount due the creditor, the order is ‘final.’” *In re Moody*, 849 F.2d 902, 903 (5th Cir. 1988). The bankruptcy court’s Class 11 Order did precisely that, finding that “Class 11 [Dugaboy] is subordinated to Class 10 [HMIT] such that holders of Allowed Class 11 Interests cannot receive any distributions from the Claimant Trust until the holders of allowed Class 10 Interests are paid in full.” R. 001505, Bankr. Dkt. 4401 ¶ 8.

Once the bankruptcy court entered its final decision on the Class 11 motion, prior non-final orders (like the order on recusal) “merge” into that final order and

may be reviewed on appeal from it. Case No. 3:25-02579-B, Dkt. 25 at 5, citing Federal Rule of Bankruptcy Procedure 8003(a)(4) and the advisory committee's notes to its 2023 amendment ("The general merger rule can be stated simply: an appeal from a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree.").

For the reasons above, Dugaboy respectfully asks this Court to find that the Class 11 Order is a final appealable order into which prior non-final orders can merge and obtain appellate review.

CONCLUSION

The bankruptcy court's Order fixing the allowed amount of the Class 11 interests should be reversed and remanded for reconsideration by the new presiding judge under the correct legal standards.

Dated: March 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 2, 2026, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ John Michael Gaddis

John Michael Gaddis

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limitations of Federal Rule of Bankruptcy Procedure 8015(h) as it contains 12,169 words, excluding the portions of the document exempted by 8015(g).

I further certify that this document complies with the typeface requirements of Rule 8015(a)(5) and the type-style requirements of Rule 8015(a)(7)(B) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman (12-point in footnotes).

Dated: March 2, 2026

Respectfully submitted,

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Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

	§	
In re:	§	
	§	
HIGHLAND CAPITAL	§	
MANAGEMENT LP,	§	
	§	
Debtor,	§	
	§	
_____	§	
	§	
THE DUGABOY INVESTMENT	§	
TRUST,	§	
	§	
Plaintiff/Appellant,	§	
	§	
v.	§	CIVIL ACTION NO. 3:25-CV-2579-B
	§	
HIGHLAND CAPITAL	§	
MANAGEMENT, L.P.; HIGHLAND	§	
CLAIMANT TRUST; HIGHLAND	§	
LITIGATION SUB-TRUST; HUNTER	§	
MOUNTAIN INVESTMENT TRUST,	§	
	§	
Defendants/Appellees.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff/Appellant The Dugaboy Investment Trust (“Dugaboy”)’s Motion for Leave to Appeal (Doc. 17). For the following reasons, the Court **DENIES** the Motion and **DISMISSES** the appeal for lack of jurisdiction.

I.

BACKGROUND

In this appeal, Dugaboy challenges the Bankruptcy Court’s “Order Denying Fifth Motion to

Recuse Judge” (the “Recusal Denial”). See Doc. 1-1, Notice Appeal, 2. Dugaboy sought Chief U.S. Bankruptcy Judge Stacey G.C. Jernigan’s recusal from the case based on the asserted “prejudicial circumstances created by [her] publication of two fiction novels with numerous similarities to her real cases and litigants, in particular a villain bearing close similarity to” Dugaboy’s principal James Dondero. Doc. 17, Mot. Leave, 2. This recusal request was the latest in a series filed by Dugaboy and its affiliates beginning in March 2021. See Doc. 1-1, Ex. A, Recusal Denial, 1–3.

Of note, when Chief Judge Jernigan denied the movants’ first motion to recuse, they appealed the denial to the United States District Court, which found that the appeal was interlocutory and dismissed the action for lack of jurisdiction. See *In re Highland Cap. Mgmt., L.P.*, No. 3:21-CV-0879-K, 2022 WL 394760, at *2–3 (N.D. Tex. Feb. 9, 2022) (Kinkeade, J.). Judge Kinkeade’s ruling rested principally on the “well-established precedent in the Fifth Circuit . . . that no jurisdiction lies over an appeal of a motion to recuse until final judgment has been entered.” *Id.* at *5.

The third motion to recuse resulted in a 36-page opinion by Chief Judge Jernigan, see Doc. 1-1, Ex. A, Recusal Denial, 2–3, which Dugaboy and its affiliates challenged by filing a petition for writ of mandamus that reached the Fifth Circuit. See generally *Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466 (5th Cir. Apr. 16, 2025) (per curiam), *petition for cert. filed*, No. 25-355 (U.S. Sept. 22, 2025). Examining the record before it, the Fifth Circuit found it “debatable” whether Chief Judge Jernigan’s novels would cause a reasonable observer to question her impartiality in the proceedings. *Id.* at *7. On one hand, “[d]ue to the similarities between the characters in Chief Judge Jernigan’s novel and the litigants currently before her court, a strong argument could be made that she had a

duty to recuse.” *Id.* But, on the other hand, while the similarities “may raise cause for concern,” they were “not close enough” to “clearly and indisputably” require recusal, as necessary for mandamus relief. *See id.*

After summarizing the movants’ four previous unsuccessful attempts¹ to seek her recusal, Chief Judge Jernigan denied the fifth motion on two grounds. *See* Doc. 1-1, Ex. A, Recusal Denial, 4. First, invoking the principle of *res judicata*, Chief Judge Jernigan held that “[n]othing new ha[d] been raised by the latest motion” and observed a pattern of repeatedly seeking recusal in response to or in anticipation of adverse judgements. *See id.* Second, Chief Judge Jernigan ruled that the fifth motion “failed to present any objective manifestations of bias or prejudice” that would make a reasonable observer doubt her impartiality. *See id.* The Recusal Denial was issued on September 2, 2025. *Id.* at 1.

Dugaboy filed its Notice of Appeal of the Recusal Denial on September 16, 2025. Doc. 1-1, Notice Appeal, 4. The Notice of Appeal identifies no other judgment, order, or decree as the subject of the appeal. *See id.* at 2.

On September 18, 2025, two days after Dugaboy filed its Notice of Appeal, the Bankruptcy Court held a hearing on a “Motion to Fix the Allowed Amount of Dugaboy’s Class 11 Interests.” *See* Doc. 17, Mot. Leave, 3–4. Dugaboy asserts that Chief Judge Jernigan exhibited further bias against Dugaboy and its affiliates at that hearing. *See id.* at 4–6.

On September 22, 2025, the Bankruptcy Court issued an “Order Fixing Allowed Amount

¹ The second motion to recuse was denied for procedural defects, and the fourth motion to recuse was filed in an adversary proceeding and became moot upon abatement of the adversary proceeding. *See* Doc. 1-1, Ex. A, Recusal Denial, 2–3. Arguments made in the fourth motion to recuse were addressed in the Bankruptcy Court’s ruling on the third motion. *See id.* at 3.

of Class 11 Interests” (the “Class 11 Order”). See *In re Highland Capital, L.P.*, No. 19-34054-sgj-11 (Bankr. N.D. Tex. Sept. 22, 2025), ECF No. 4401. Dugaboy has separately appealed the Class 11 Order, which is currently pending before Judge Lindsay. See generally Notice of Appeal, *The Dugaboy Investment Trust, et al. v. Highland Claimant Trust*, No. 3:25-cv-02724-L (N.D. Tex. Oct. 7, 2025), ECF No. 1-1.

Looking backwards, Dugaboy has two other active appeals of Bankruptcy Court orders entered prior to the Recusal Denial. See Doc. 17, Mot. Leave, 8 n.10. As relevant here, one appeal is from an order approving a settlement under Rule 9019 (the “9019 Order”), which was entered on June 30, 2025, and is currently on appeal before Judge Kinkeade. See generally Notice of Appeal, *The Dugaboy Investment Trust, et al. v. Highland Capital Management, L.P., et al.*, No. 3:25-cv-01876-K (N.D. Tex. July 17, 2025), ECF No. 1-1.

Dugaboy has also filed a petition for a writ of certiorari to the Supreme Court challenging the Fifth Circuit’s standard of review for recusal decisions. See Petition for a Writ of Certiorari, No. 25-355 (U.S. Sept. 22, 2025).

Noting that an appeal of an order denying a motion to recuse is interlocutory, this Court ordered Dugaboy to file a Motion for Leave. See Doc. 2, Electronic Order. In its Motion, Dugaboy argued that leave was not required because the Recusal Denial was “intertwined” with other orders Dugaboy considers to be final, such that the Recusal Denial was also final. See Doc. 17, Mot. Leave, 10–12. Alternatively, Dugaboy sought leave to appeal the Recusal Denial as interlocutory. See *id.* at 14–18. Defendants/Appellees Highland Capital Management, L.P. and the Highland Claimant Trust filed a responsive brief arguing that the Court lacks jurisdiction over the appeal. See generally

Doc. 23, Resp. The Court considers its jurisdiction to hear this appeal below.

II.

LEGAL STANDARD

District courts have jurisdiction to hear appeals from a bankruptcy court’s “final judgments, orders, and decrees.” 28 U.S.C. § 158(a)(1). “Orders in bankruptcy cases qualify as ‘final’ when they definitively dispose of discrete disputes within the overarching bankruptcy case.” *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37 (2020) (citation omitted). “It is well-established law in the Fifth Circuit that a court’s order denying a recusal motion is not a final order” *Highland*, 2022 WL 394760, at *2. “[T]his very clear, decades-old law” applies to “appeals taken from a bankruptcy court’s order denying a motion to recuse.” *Id.* (collecting cases).

Once the bankruptcy court renders a final decision, prior nonfinal orders “merge” into the final order and may be reviewed on appeal from the final order. *See* FED. R. BANKR. P. (“FRBP”) 8003(a)(4); FRBP 8003(a)(4) advisory committee’s note to 2023 amendment (“The general merger rule can be stated simply: an appeal from a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree.”); *cf. Satanic Temple, Inc. v. Tex. Health & Hum. Serv. Comm’n*, 79 F.4th 512, 514–15 (5th Cir. 2023) (explaining merger principle with respect to appeals of district court judgments). On appeal from the final decision, an appellant “must raise all claims of error in a single appeal.” *Ritzen*, 589 U.S. at 38 (citation omitted).

Where a notice of appeal identifies a nonfinal order but does not identify the final order into which it merged, the appeal should not be dismissed for failure to properly identify the appealable order “if the notice of appeal was filed *after* entry” of the appealable order. FRBP

8003(a)(7) (emphasis added). In such a situation, “a court should act as if the notice had properly identified the judgment or appealable order or decree.” FRBP 8003(a)(7) advisory committee’s note to 2023 amendment. The focus is therefore on the actual decision “from which the appeal is taken,” rather than a fixation on form in the notice of appeal. *See id.*

For a nonfinal order appealed on its own, a district court has jurisdiction to hear the appeal if it grants leave. *See* § 158(a)(3). “The decision to grant or deny leave to appeal a bankruptcy court’s interlocutory order is committed to the district court’s discretion.” *In re O’Connor*, 258 F.3d 392, 399–400 (5th Cir. 2001) (citation omitted). To make that decision, district courts in the Fifth Circuit typically apply the standard in 28 U.S.C. § 1292(b), which governs interlocutory appeals generally. *See Highland*, 2022 WL 394760, at *3 (citation omitted). Granting leave to appeal under that standard requires satisfaction of three elements: “(1) a controlling issue of law must be involved; (2) the question must be one where there is substantial ground for difference of opinion; and (3) an immediate appeal must materially advance the ultimate termination of the litigation.” *Id.* (citations omitted).

III.

ANALYSIS

The Court lacks jurisdiction over this appeal because (1) the appeal was not taken from a final order and (2) leave for an interlocutory appeal is not warranted.

A. *Dugaboy’s Appeal Is Not Taken from a Final Order.*

Acknowledging that the Recusal Denial is not on its own a final order, Dugaboy contends that two other Bankruptcy Court orders it has separately appealed are final, that the Recusal Denial

is “directly intertwined to both those appeals,” and that this appeal therefore “can be pursued as a final appeal simultaneously with” the other appeals. *See* Doc. 17, Mot. Leave, 12. Dugaboy cites no caselaw to support its “intertwinement” theory, which appears to be a misstatement of the general merger rule that allows an appeal from a final order to include all previous nonfinal orders that led up to the final order. *See* FRBP 8003(a)(4).

Dugaboy did not identify any order besides the Recusal Denial in its Notice of Appeal. Doc. 1-1, Notice Appeal, 2. Nevertheless, this appeal should not be dismissed if, in substance, it was taken from a final order not identified in the Notice of Appeal. *See* FRBP 8003(a)(7). But because this appeal is not taken from any order besides the Recusal Denial, it is not taken from a final order appealable as of right.

Of the two orders that Dugaboy contends are final, only the Class 11 Order was entered after the Recusal Denial. The other—the 9019 Order—was entered before the Recusal Denial. The Recusal Denial could not have merged into the 9019 Order because a later order cannot “lead up to” an earlier order. *See* FRBP 8003(a)(4) advisory committee’s note to 2023 amendment. In contrast, the Recusal Denial could theoretically have merged into the Class 11 Order, which was entered later.

Notwithstanding that theoretical possibility, this appeal was not taken from the Class 11 Order for two reasons. First, the Notice of Appeal was filed *before* entry of the Class 11 Order. Dismissal for failure to properly identify the appealable order is only inappropriate in circumstances where the notice of appeal was filed *after* entry of the appealable order. *See* FRBP 8003(a)(7). Second, Dugaboy has challenged the Class 11 Order in a separate appeal, making clear that the Class 11 Order is not the order “from which [this] appeal is taken.” FRBP 8003(a)(7) advisory committee’s

note to 2023 amendment. This appeal is therefore not taken from any purportedly final order.

The Court expresses no opinion as to whether the other orders identified in Dugaboy's briefing are final orders or whether the Recusal Denial merges with them. The Court only holds that the Recusal Denial is not itself final, and the substance of this appeal is not directed to any final order. Jurisdiction over this appeal therefore requires leave of court. *See* § 158(a)(3).

B. Leave for an Interlocutory Appeal Is Not Warranted.

This interlocutory appeal does not involve (1) a controlling issue of law with (2) a substantial ground for difference of opinion, where (3) an immediate appeal would materially advance the ultimate termination of the litigation. *See Highland*, 2022 WL 394760, at *3 (citations omitted). Thus, the Court denies leave to appeal.

First, the appeal does not involve a controlling issue of law. A controlling issue of law “has the potential for substantially accelerating the disposition of the litigation” and “does not concern matters that are entrusted to the discretion of the bankruptcy court.” *Id.* at *4 (citation modified). Under 28 U.S.C. § 455(a), federal judges have a duty to recuse themselves where their impartiality might reasonably be questioned. *See* FRBP 5004(a) (“A bankruptcy judge’s disqualification is governed by 28 U.S.C. § 455.”). In the Fifth Circuit, the decision on a recusal motion is committed to the judge’s sound discretion. *See Chitimacha Tribe v. Harry L. Laws Co.*, 690 F.2d 1157, 1166 (5th Cir. 1982) (citations omitted). When there is clear and undisputed bias, mandamus is “the appropriate means for relief.” *See Dondero*, 2025 WL 1122466, at *3. But the decision on a closer call—as the Fifth Circuit said exists here, *id.* at *7—is within the judge’s discretion. Therefore, because this Recusal Denial was “entrusted to the discretion of the bankruptcy court,” it is not a controlling

issue of law. See *Highland*, 2022 WL 394760, at *4.

Second, there is no substantial ground for difference of opinion on the question involved. A substantial ground for difference of opinion exists if “novel and difficult questions of first impression are presented.” See *Ryan v. Flowerserve Corp.*, 444 F. Supp. 2d 718, 723–24 (N.D. Tex. 2006) (Boyle, J.) (citation omitted). Dugaboy construes the question involved in this appeal as whether Chief Judge Jernigan should have recused herself based on her books, which the Fifth Circuit noted was a novel fact pattern. See Doc. 17, Mot. Leave, 15–16 (citing *Dondero*, 2025 WL 1122466, at *7). But the preliminary question here is whether to remove the decision to recuse from Chief Judge Jernigan’s discretion. That question on the standard of review, as Dugaboy notes, is the subject of a circuit split, which Dugaboy seeks to resolve by appealing to the Supreme Court. See *id.* at 16 n.13. Yet, as the law currently stands in the Fifth Circuit, reviewing courts defer to a judge’s decision not to recuse unless she is patently biased. See *Chitimacha*, 690 F.2d at 1166; *Dondero*, 2025 WL 1122466, at *3. Unless that standard of review changes, there is no substantial ground to differ with Chief Judge Jernigan’s discretionary decision not to recuse.

Finally, this appeal would not materially advance the litigation’s termination. Dugaboy argues that denying its Motion for Leave would mean the Recusal Denial “will not face meaningful review . . . until the final resolution of the bankruptcy for all parties.” Doc. 17, Mot. Leave, 17. That argument is mistaken because Dugaboy need not wait until final resolution of the entire bankruptcy case. It need only wait until it can point to an order that is “final” within the bankruptcy context and to which Chief Judge Jernigan’s decision not to recuse can be assigned as error. Dugaboy essentially makes such arguments in this appeal. Expressing no opinion on those arguments’ merits, the Court rejects the notion that Dugaboy’s attempt to separately appeal the Recusal Denial is

superior to challenging it as part of an appeal from a final order.

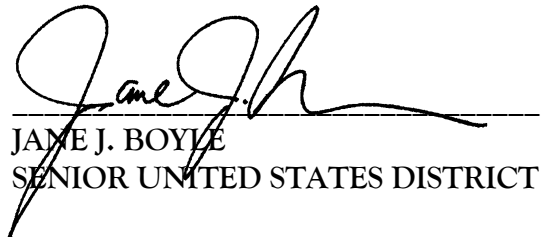
IV.

CONCLUSION

For the foregoing reasons, Dugaboy's Motion for Leave to Appeal (Doc. 17) is **DENIED**, and this appeal is **DISMISSED** for lack of jurisdiction. Dugaboy's Motion to Stay Proceedings (Doc. 22) is **DENIED AS MOOT**.

SO ORDERED.

SIGNED: December 3, 2025.



JANE J. BOYLE
SENIOR UNITED STATES DISTRICT JUDGE

Case No. 3:25-cv-02724-L

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

**IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,
*Debtor***

THE DUGABOY INVESTMENT TRUST

Appellant

v.

**HIGHLAND CAPITAL MANAGEMENT, L.P. and
HIGHLAND CLAIMANT TRUST,**

Appellees

On Appeal from the United States Bankruptcy Court for the Northern District of
Texas, Dallas Division, Case No. 19-34054-sgj11
The Honorable Chief Judge Stacey G. C. Jernigan, Presiding

APPENDIX TO APPELLANT'S OPENING BRIEF

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	Record Reference	Exhibit Description	Doc Date(s)	Page Range
1.	Notice of Appeal of Order fixing Allowed Amount of Class 11 Interests	Dkt. 4423	10/6/2025	R. 000001–000003
2.	Order Fixing Allowed Amount of Class 11 Interests	Dkt. 4401	9/22/2025	R. 000005–000008
3.	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as modified)	Dkt. 1943	2/22/2021	R. 000674–000738
4.	Claimant Trust Agreement	Dkt. 3521-5	1/23/2026	R. 000745–000783
5.	Transcript of Proceedings Before the Honorable Stacey G.C. Jernigan United States Bankruptcy Judge regarding Motion to Extend Duration of Trusts (4213) and Motion to Approve Settlement (4216) (6/25/2025 Hearing Transcript)	Dkt. 4296	6/30/2025	R. 001037; 001115–001170; 001281–001299
6.	Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement Between the Highland Entities and the HMIT Entities and Authorizing Actions Consistent Therewith	Dkt. 4297	6/30/2025	R. 001303–001306
7.	Motion for Order Fixing Allowed Amount of Class 11 Interests	Dkt. 4362	8/8/2025	R. 001307–001314
8.	Dugaboy Investment Trust's Response Opposing Highland Claimant Trust's Motion for Order Fixing Allowed Amount of Class 11 Interests	Dkt. 4384	9/8/2025	R. 001324–001338
9.	Reply in Support of Motion for Order Fixing Allowed Amount of Class 11 Interests	Dkt. 4393	9/15/2025	R. 001339–001348
10.	Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.	Dkt. 4255-114	2/20/2025	R. 001357–001386

11.	Intercreditor and Participation Agreement Between HCLOM and HMIT	Dkt. 4394-9	1/10/2025	R. 001488–001491
12.	Transcript of Proceedings Before the Honorable Stacey G.C. Jernigan United States Bankruptcy Judge regarding Motion for Order Fixing Allowed Amount of Class 11 Interests Filed by Highland Claimant Trust (4362) (9/18/2025 Hearing Transcript)	Dkt. 4403	9/22/2025	R.001509–001588

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj
	§	
Reorganized Debtor.	§	
	§	

**NOTICE OF APPEAL OF ORDER FIXING ALLOWED AMOUNT OF CLASS 11
INTERESTS**

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):

The Dugaboy Investment Trust

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding:

- ☐ Plaintiff
- ☐ Defendant
- ☐ Other (describe)

For appeals in a bankruptcy case and not in an adversary proceeding:

- ☐ Debtor
- ☒ **Creditor**
- ☐ Trustee
- ☐ Other (describe)

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:

ORDER FIXING ALLOWED AMOUNT OF CLASS 11 INTERESTS [DE # 4401]

A true and correct copy of the Order is attached hereto as Exhibit A.

2. State the date on which the judgment, order, or decree was entered: **entered September 22, 2025 [Dkt. No. 4401]**

3. Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys:

1. *Party/Appellee:* Highland Claimant Trust

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Dated: October 6, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 6, 2025, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Geoffrey S. Harper
Geoffrey S. Harper



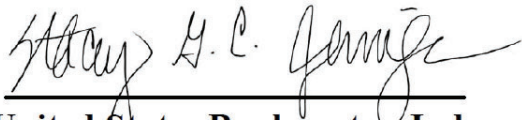
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed September 22, 2025


United States Bankruptcy Judge

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

-----	§	
In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-sgj-11
	§	
Reorganized Debtor.	§	
-----	§	

ORDER FIXING ALLOWED AMOUNT OF CLASS 11 INTERESTS

Having considered (a) the *Motion for an Order Fixing Allowed Amount of Class 11 Interests* [Docket No. 4362] (the “Motion”)² filed by the Highland Claimant Trust (the “Claimant Trust”) in the above-captioned chapter 11 case (the “Bankruptcy Case”); (b) *Dugaboy Investment Trust’s Response Opposing Highland Claimant Trust’s Motion for Order Fixing Allowed Amount of Class 11 Interests* [Docket No. 4384] filed by The Dugaboy Investment Trust (“Dugaboy”); (c) the Claimant Trust’s *Reply in Support of Motion for an Order Fixing Allowed*

¹ The last four digits of the Reorganized Debtor’s taxpayer identification number are 8357. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

² Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.

Amount of Class 11 Interests [Docket No. 4393]; (d) the evidence admitted into the record during the hearing on the Motion held on September 18, 2025 (the “Hearing”), including the Court’s assessment of the witness’s credibility; (e) all arguments presented at the Hearing; and (f) all prior proceedings in the Bankruptcy Case; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 as well as the retention of jurisdiction provisions of the Plan; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the legal and factual bases set forth in the Motion establish sufficient cause for the relief granted herein; and adequate notice of the Motion having been given; and after due deliberation and good cause appearing therefor,

THE COURT HEREBY FINDS THAT:³

1. The Court’s findings of fact and conclusions of law set forth on the record at the conclusion of the Hearing are incorporated by reference except as supplemented in this Order.
2. On the Effective Date and in accordance with the Plan, the Claimant Trust was created pursuant to the terms of the Claimant Trust Agreement (the “CTA”).
3. Pursuant to Section 5.1(c) of the CTA and in accordance with the Plan (Art. III.H.10 and 11): (a) the pre-petition Class B/C Limited Partnership Interests and the Class A Limited Partnership Interests in Highland Capital Management, L.P. (“Highland”) were extinguished; (b) the Holders of allowed Class B/C Limited Partnership Interests would receive unvested Class 10 Contingent Claimant Trust Interests if and when their Equity Interests were allowed in amounts as determined under the Plan; and (c) Holders of allowed Class A Limited Partnership Interests would receive unvested Class 11 Contingent Claimant Trust Interests if and when their Equity Interests were allowed in amounts as determined under the Plan.

³ Any finding of fact that should be more appropriately characterized as a conclusion of law should be deemed as such and *vice versa*.

4. The holders of unvested Class 11 Contingent Claimant Trust Interests (*i.e.*, Highland's former Class A limited partners) and the percentage of the limited partnership interests previously held by them are as follows: Strand Advisors (0.2508%), Dugaboy (0.1866%), Mark K. Okada (0.0487%), The Mark and Pamela Okada Family Trust—Exempt Trust #1 (0.0098%), and The Mark and Pamela Okada Family Trust—Exempt Trust #2 (0.0042%). Together, Highland's former Class A limited partners held 0.500% of Highland's prepetition limited partnership interests which were extinguished by the Plan.

5. Hunter Mountain Investment Trust ("HMIT") was Highland's sole Class B/C limited partner as of the Petition Date (holding 99.5% of Highland's limited partnership interests) and therefore received an unvested Class 10 Contingent Claimant Trust Interest under the Plan.

6. Following an evidentiary hearing held on June 25, 2025, HMIT's Class 10 Interest was allowed in the amount of \$336,940,230.58 pursuant to this Court's order entered at Docket No. 4297 (*see* Order ¶12).

7. Paragraph 36 of the Confirmation Order provides that the "Plan properly separately classifies the Equity Interests in Class 10 . . . from the Equity Interests in Class 11 . . . because they represent different types of equity security interests in the Debtor and different payment priorities."

8. Pursuant to the Plan and the CTA, Class 11 is subordinated to Class 10 such that holders of Allowed Class 11 Interests cannot receive any distributions from the Claimant Trust until the holders of allowed Class 10 Interests are paid in full.

9. The Claimant Trust is required to resolve all disputed Claims and Interests before it can commence its dissolution, a process that must begin no later than August 11, 2026, pursuant to the CTA and this Court's prior orders.

10. The Court finds that the calculation the Claimant Trust used to fix the amount of each Class 11 Interest as of the Petition Date (*i.e.*, Highland started with each former partner's respective capital account balance as of December 31, 2018 (as reported in its 2018 federal income tax return and associated Schedules K-1 delivered to each former partner), and then used Highland's actual activity in 2019 (as reported in Highland's financial statements) to bring those capital account amounts forward to the Petition Date)) was fair and reasonable.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

11. The Motion is **GRANTED**.

12. As stated on the record during the Hearing, applying the fair and reasonable calculation, the Class 11 Interests are Allowed in the following fixed amounts: Strand Advisors (\$994,707.76), Dugaboy (\$740,081.61), Mark K. Okada (\$192,754.38), The Mark and Pamela Okada Family Trust—Exempt Trust #1 (\$38,868.17), and The Mark and Pamela Okada Family Trust—Exempt Trust #2 (\$16,657.79).

13. Dugaboy's objections to the Motion are **OVERRULED**.

14. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

END OF ORDER

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

)
) Chapter 11
)
) Case No. 19-34054-sgj11
)
)
)
)

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

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Counsel for the Debtor and Debtor-in-Possession

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.

RULES OF INTERPRETATION, COMPUTATION OF TIME,

GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to **28 U.S.C. § 1930**.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

ARTICLE II.

ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV. **MEANS FOR IMPLEMENTATION OF THIS PLAN**

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust²

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

² In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED AND DISPUTED CLAIMS**

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

**ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN**

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.

EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.

MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 

James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring
Officer

Prepared by:

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Telephone: (972) 755-7100

Facsimile: (972) 755-7110

Email: MHayward@HaywardFirm.com

ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of August 11, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and Wilmington Trust, National Association, a national banking association (“WTNA”), as Delaware trustee (in such capacity hereunder, and not in its individual capacity, the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),¹ which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries² in accordance with the Plan; (v) the Claimant Trustee can resolve

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, [Docket No. 1875], Exh. B.

² For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

ARTICLE I. **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) “Claimant Trust Agreement” means this Agreement.

(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) “Employees” means the employees of the Debtor set forth in the Plan Supplement.

(u) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.

(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) “Plan” has the meaning set forth in the Recitals hereof.

(nn) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to,

attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) “PSZJ” means Pachulski Stang Ziehl & Jones LLP.

(pp) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(qq) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(rr) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) “Securities Act” means the Securities Act of 1933, as amended.

(tt) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) “TIA” means the Trust Indenture Act of 1939, as amended.

(ww) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) “Trust Register” has the meaning given to it in Section 5.4(b) hereof.

(yy) “Trustees” means collectively the Claimant Trustee and Delaware Trustee, however, it is expressly understood and agreed that the Delaware Trustee shall have none of the duties or liabilities of the Claimant Trustee.

(zz) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all

cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.

ESTABLISHMENT OF THE CLAIMANT TRUST

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment,

make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE TRUSTEES

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(d), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay,

such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from

the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the “Authorized Acts”).

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee’s authority with respect to certain other assets, including certain portfolio company assets (the “Other Assets”).

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$3,000,000 (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder’s Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the

vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the “Interim Trustee”) until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person’s appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee’s capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as “Estate Representative”. The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Claimant

Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the “Base Salary”). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee’s engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee.

(a) The Delaware Trustee shall have the limited power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement, in either case as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee and upon which the Delaware Trustee shall be entitled to conclusively and exclusively rely; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Claimant Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Claimant Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware Trustee under the Delaware Statutory Trust Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to those expressly set forth in this Section 3.16 and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Claimant Trust, the other parties hereto or any beneficiary of the Claimant Trust, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

(b) The Delaware Trustee shall serve until such time as the Claimant Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Claimant Trustee in accordance with the terms hereof. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Claimant Trustee; provided, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Claimant Trustee in accordance with the terms hereof. If the Claimant Trustee does not act within such thirty (30) day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(c) Upon the resignation or removal of the Delaware Trustee, the Claimant Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the

outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Claimant Trustee and any undisputed fees, expenses and indemnity due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement.

(d) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement. The Claimant Trust shall promptly advance and reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(e) WTNA shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) Any corporation or association into which WTNA may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Delaware Trustee is a party, will be and become the successor Delaware Trustee under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE IV. **THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-

E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.8 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate

in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set otherwise forth herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any

Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article IX hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.8 below, or removal pursuant to Section 4.9 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day that is 90 days following the delivery of such notice, (ii) the appointment of a successor in accordance with Section 4.10 below, and (iii) such other date as may be agreed to by the Claimant Trustee and the non-resigning Members of the Oversight Board.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment

under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.12.

ARTICLE V. **TRUST INTERESTS**

5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The

Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or

reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the “Registrar”), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary’s Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

ARTICLE VII. **TAX MATTERS**

7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the

Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

ARTICLE VIII.

STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), WTNA in its individual capacity and as Delaware Trustee, the Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be

indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, willful misconduct, or gross negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, WTNA in its individual capacity and as Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein. The terms of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of any Indemnified Party.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or

otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

ARTICLE IX. **TERMINATION**

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall prepare, execute and file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). If the Delaware Trustee's signature is required for purposes of filing such certificate of cancellation, the Claimant Trustee shall provide the Delaware

Trustee with written direction to execute such certificate of cancellation, and the Delaware Trustee shall be entitled to conclusively and exclusively rely upon such written direction without further inquiry. Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

ARTICLE X. **AMENDMENTS AND WAIVER**

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement. No amendment or waiver of this Agreement that adversely affects the Delaware Trustee shall be effective unless the Delaware Trustee has consented thereto in writing in its sole and absolute discretion.

ARTICLE XI. **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in

respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee
c/o Highland Capital Management, L.P.
100 Crescent Court, Suite 1850
Dallas, Texas 75201

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

(b) If to the Delaware Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Corporate Trust Administration/David Young
Email: nmarlett@wilmingtontrust.com
Phone: (302) 636-6728
Fax: (302) 636-4145

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

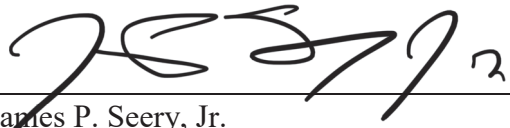
11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however,* that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

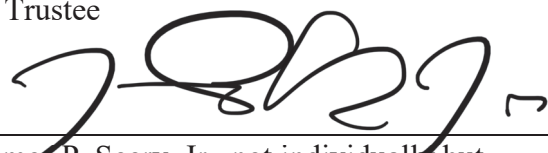
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IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By: 
James P. Seery, Jr.
Chief Executive Officer and
Chief Restructuring Officer

Claimant Trustee

By: 
James P. Seery, Jr., not individually but
solely in his capacity as the Claimant Trustee

Wilmington Trust, National Association,
as Delaware Trustee

By: NC Marlett III
Name: Neumann Marlett
Title: Bank Officer

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

In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) June 25, 2025
) 9:30 a.m. Docket
Reorganized Debtor.)
) - MOTION TO EXTEND DURATION OF
) TRUSTS (4213)
) - MOTION TO APPROVE SETTLEMENT
) (4216)
)

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

APPEARANCES:

For the Highland Capital John A. Morris
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For the Highland Capital Jeffrey N. Pomerantz
Management Claimant Trust: PACHULSKI STANG ZIEHL & JONES, LLP
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For Marc S. Kirschner, Robert Scott Loigman
Litigation Trustee: QUINN EMANUEL URQUHART & SULLIVAN,
LLP
295 5th Avenue
New York, NY 10016
(212) 849-7000

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

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

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

13 MR. YORK: Sure.

14 THE COURT: -- a contingent unliquidated claim.

15 MR. YORK: I understand.

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

17 MR. YORK: Thank you.

18 THE COURT: And Mr. Lang?

19 OPENING STATEMENT ON BEHALF OF THE DUGABOY INVESTMENT TRUST

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

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

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

8 Does that make sense?

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

12 MR. LANG: On the petition date.

13 THE COURT: -- on the petition date?

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

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

20 MR. LANG: Yes.

21 THE COURT: Okay.

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

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

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

6 THE COURT: It was in several pleadings.

7 MR. LANG: Okay. Yeah.

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

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

14 THE COURT: Uh-huh.

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

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

21 MR. LANG: Yes.

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

1 note that is addressed in the settlement.

2 MR. LANG: Yes.

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

4 --

5 MR. LANG: That was --

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

7 MR. LANG: Seventeen-ish.

8 THE COURT: -- \$17 million or whatever. So, right

9 now, Highland is a payee on that note, as well as Get Good
10 Trust, and Hunter Mountain under the proposed settlement gets
11 to substitute in as a co-payee.

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

16 MR. LANG: Yes.

17 THE COURT: Okay.

18 MR. LANG: I believe so.

19 THE COURT: Okay. Thank you.

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

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

Seery - Direct

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1 THE COURT: Okay.

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

3 THE COURT: It's 11:30.

4 MR. MORRIS: Yeah.

5 THE COURT: So, all right.

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

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

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

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

21 MR. SEERY: Thank you, Your Honor.

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

23 DIRECT EXAMINATION

24 BY MR. MORRIS:

25 Q Good morning, Mr. Seery.

001119

Seery - Direct

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1 A Good morning.

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

3 A I have four binders in front of me.

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

5 A I think -- yes, sir.

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

8 Should we wait for Mr. Edmond?

9 THE WITNESS: That would be good.

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

12 (Pause.)

13 THE COURT: All right.

14 THE WITNESS: Apologies, Your Honor.

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

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

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

21 THE COURT: You may.

22 MR. MORRIS: All right.

23 BY MR. MORRIS:

24 Q Are you comfortable, Mr. Seery?

25 A Yes.

001120

Seery - Direct

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

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

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

7 A He did have a Class 9 claim.

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

10 A It was approximately \$3.7 million.

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

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

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

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

19 MR. MORRIS: It's 58.

20 A VOICE: Thank you.

21 MR. MORRIS: You're welcome.

22 BY MR. MORRIS:

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

24 A Yes.

25 Q What is that?

001121

Seery - Direct

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

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

12 A That's approximately correct, yes.

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

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

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

25 A Yes. The distributions were pro rata.

001122

Seery - Direct

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

5 A No, he did not.

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

10 A No, he did not.

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

14 A Yes, I did.

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

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

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

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Seery - Direct

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1 pursuant to the plan to put HCLOM in there.

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

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

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

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

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

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Seery - Direct

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

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

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

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

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

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

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

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Seery - Direct

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

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

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

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

21 A Yes.

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

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

Seery - Direct

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1 --

2 Q Yeah.

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

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

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

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

16 A No, not at all.

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

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

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

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

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Seery - Direct

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1 litigations. Otherwise, why are we bothering?

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

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

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

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

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

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Seery - Direct

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

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

10 A The topic of the allowed --

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

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

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

23 A Yes.

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

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Seery - Direct

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1 out?

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

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

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

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

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

24 THE COURT: 113 to what?

25 MR. MORRIS: 18.

Seery - Direct

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1 THE COURT: Okay.

2 THE WITNESS: Um, --

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

6 THE COURT: Right.

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

9 THE WITNESS: Yes.

10 BY MR. MORRIS:

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

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

16 Q Yeah. That's 115?

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

22 Q And is that Exhibit 116?

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

001131

1 Q Okay.

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

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

14 A No. This was math.

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

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

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

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

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

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

5 A I -- I don't recall.

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

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

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

17 A Yes.

18 Q What did you do to satisfy yourself?

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

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

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

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1 Q If you just look at the exhibit list.

2 A Oh.

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

5 A Yes.

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

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

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

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

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

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1 the Cayman Islands?

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

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

17 A Yes.

18 Q And what view did you reach?

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

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1 in this chain.

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

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

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

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

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

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

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

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

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

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

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

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

10 A Yes.

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

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

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

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

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

13 A Yes.

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

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

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

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1 A That's correct.

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

6 A Yes. I'm familiar with those.

7 Q Do you believe the settlement violates the plan?

8 A Not at all.

9 Q And why is that?

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

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

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

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1 A I've got it.

2 Q Are you familiar with that document?

3 A I am, yes.

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

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

8 Q Okay.

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

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

17 A That's correct, yes.

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

20 A No. That had never been his complaint.

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

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

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

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

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

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

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

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

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

14 THE COURT: Yes.

15 MR. MORRIS: Okay.

16 BY MR. MORRIS:

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

23 A That's correct.

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

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1 A That's also correct, yes.

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

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

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

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

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

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

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

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

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

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

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

18 Q Yeah. We can stop there.

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

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

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1 THE WITNESS: Thirty minutes.

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

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

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

8 MR. YORK: Fifteen minutes, maybe.

9 MR. LANG: Twenty minutes or so.

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

12 MR. PHILLIPS: Sure.

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

15 MR. PHILLIPS: Perfect.

16 THE COURT: All right?

17 MR. PHILLIPS: Thank you, Your Honor.

18 THE WITNESS: Thank you.

19 THE CLERK: All rise.

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

21 THE CLERK: All rise.

22 THE COURT: Please be seated.

23 (Pause.)

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

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1 (Pause.)

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

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

7 THE COURT: Okay.

8 CROSS-EXAMINATION

9 BY MR. PHILLIPS:

10 Q Could you look at Exhibit 118, please?

11 A You said 118?

12 Q Yes, sir.

13 A Certainly.

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

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

20 THE COURT: Would you like this?

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

23 THE COURT: Okay.

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

Seery - Cross

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1 BY MR. PHILLIPS:

2 Q Correct.

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

7 Q Thank you.

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

9 All right. Counsel?

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

12 CROSS-EXAMINATION

13 BY MR. YORK:

14 Q Good afternoon, Mr. Seery.

15 A Good afternoon.

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

19 A Yes, I have it.

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

24 A It appears to be, yes.

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

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1 starts on Page #11?

2 A Yes.

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

6 A That's correct.

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

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

11 Q Why not?

12 A Because it says, Daugherty contends --

13 Q Ah. Daugherty contends.

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

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

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

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

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

5 Did I read that correctly?

6 A You did read that correctly, yes.

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

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

15 Q All right.

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

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

19 THE COURT: Okay. Good.

20 MR. YORK: All right.

21 BY MR. YORK:

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

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

1 Q Right.

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

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

7 A He asserted it as that, yes.

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

13 A It should be, yes.

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

16 A You did read that correctly, yes.

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

19 A Correct.

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

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

Seery - Cross

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

3 Q How do you know that?

4 A I was advised that by another partner.

5 Q Who?

6 A Kurt Plumer.

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

8 A No, I have not.

9 Q Have you asked for it?

10 A Yes.

11 Q You did, personally?

12 A My lawyers did.

13 Q Your lawyers did?

14 A Yes.

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

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

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

20 A Asked Mr. Daugherty.

21 Q Asked Mr. --

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

23 Q Oh, asked me for that information?

24 A Yes.

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

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Seery - Cross

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

2 A I don't know.

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

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

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

12 A I --

13 Q True?

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

16 Q Okay. What -- where --

17 THE COURT: F-A --

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

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

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

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

23 BY MR. YORK:

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

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Seery - Cross

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

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

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

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

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

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

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

20 Q All right.

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

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

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

4 Did I read that correctly?

5 A You read that correctly.

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

10 A Yes.

11 Q How much?

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

20 Q Which would be how much?

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

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

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Seery - Cross

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

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

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

12 A It simply --

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

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

15 MR. MORRIS: Yeah.

16 THE COURT: Okay. Overruled.

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

19 BY MR. YORK:

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

23 A That's correct.

24 Q Why not?

25 A Because I didn't want to.

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Seery - Cross

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1 Q Why?

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

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

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

16 Q Oh, really?

17 A Yeah.

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

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

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

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Seery - Cross

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

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

5 So, --

6 MR. YORK: Understood.

7 THE COURT: -- reign it in.

8 MR. YORK: All right.

9 BY MR. YORK:

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

14 A Not necessarily, no.

15 Q Why not?

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

18 Q Yes.

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

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

25 A Yes. The Indemnity Trust would make those distributions

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

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

8 A Yes.

9 Q On an interim basis?

10 A Yes.

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

14 A That's correct.

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

20 A Now I am.

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

1 applicable interest, --

2 Did I read all that correctly?

3 A Yes.

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

6 A Yes.

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

9 A That's correct.

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

13 A Yes.

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

17 A Generally, yes.

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

1 under the plan.

2 Did I read all of that correctly?

3 A I believe you did, yes.

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

7 A That's correct, yes.

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

17 Did I read that correctly?

18 A You did, except you used the article "The" before
19 "contingent trust interest" at the start of the sentence.

20 Q Fair enough. And the GUC beneficiaries there would be the
21 general unsecured creditor beneficiaries, correct?

22 A That's correct.

23 Q And this certification has not been issued yet by the
24 Claimant Trustee in this bankruptcy, correct?

25 A That's correct.

Seery - Cross

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1 Q In part because of Mr. Daugherty's remaining unresolved
2 Class 8 claim, correct?

3 A In part, yes.

4 Q And also in part because of the remaining Class 9 claimant
5 holders who still have money owed to them on their Class 9
6 claims?

7 A In part, yes.

8 Q Okay. Does the term of the proposed settlement agreement
9 provide those Class 9 consent holders with releases from the
10 HMIT entities?

11 A No.

12 Q It does not?

13 A No.

14 Q At all?

15 A No.

16 Q Even if they were in their capacity serving as board
17 members for Highland Capital?

18 A Certain of the Class 9 holders are also on the Oversight
19 Board. In their capacity as Oversight Board members, yes,
20 they get -- they get broad releases. UBS, for example, is
21 not. There are no releases in there for the two UBS entities.

22 Q Would you now -- you can set that binder aside. And if
23 you'd turn with me to Exhibit 60 in the -- Highland's exhibit
24 list.

25 A Six zero?

Seery - Cross

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1 Q Yes, sir.

2 A Yes.

3 Q This is a copy of the tolling agreement extending
4 objection deadline between -- that's on -- dated July 27th of
5 2022 between Mr. Daugherty and Highland Capital Management, LP
6 and Highland Claimant Trust. Correct?

7 A Yes. That's what it appears to be, yes.

8 Q All right. If you would, go with me to Page 2 at the
9 bottom. There is a Footnote #3. Do you see that?

10 A Yes.

11 Q And that footnote relates to, up above, a defined term
12 called a "Reserved Claim," the Reserved Claim being what was
13 discussed earlier in Mr. Daugherty's settlement agreement with
14 Highland, right?

15 A That's correct, yes.

16 Q And it states in here that that Reserved Claim means "the
17 contingent and unliquidated claim as referenced in Proof of
18 Claim #205."

19 Did I read that portion of the footnote correctly?

20 A Yes.

21 Q All right. And it goes further to say that the amount
22 listed there of 2.65 million three hundred -- two point six --
23 let me start over. \$2,650,353 is the amount estimated as of
24 October 23, 2020. Correct?

25 A That's correct.

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Seery - Cross

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1 Q All right. It doesn't say it's -- anywhere in there that
2 it's a fully -- it fully reserves that unliquidated contingent
3 claim. Correct?

4 A In what you just read, no.

5 Q All right. And if you go to Page 1 -- or, I'm sorry, to
6 Page 3, Paragraph 1, the covenant to reserve where Highland
7 agrees to reserve \$2,650,353 on account of the reserved claim,
8 does it say anywhere in there that that is -- fully reserves
9 that contingent unliquidated claim anywhere?

10 A It says exactly what it says. And you read it.

11 Q That's not my question. Does it say --

12 A I don't -- well, it says, Further agree to reserve \$2.650
13 [million] on account of the reserved claim in disputed claim
14 reserve.

15 Q All right. Does it say anywhere in there that that is the
16 fully-reserved amount of that claim?

17 A Not in that sentence, no.

18 Q Thank you. All right.

19 MR. YORK: Your Honor, give me one second. Let me
20 confer.

21 THE COURT: Okay.

22 (Pause.)

23 BY MR. YORK:

24 Q Mr. Seery, UBS is one of the consent holders, Class 9
25 consent holders related to the HMIT settlement. Correct?

Seery - Cross

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1 A There are two UBS entities, UBS AG 66 and UBS Securities,
2 LLC.

3 Q All right. Did either of those entities sit on the
4 Unsecured Creditors' Committee in this bankruptcy?

5 A A UBS entity did. I'm not sure which of those did, or
6 whether it was both with one counsel. I don't -- there's a
7 UBS entity on that Creditors' Committee.

8 Q Is the -- are the members of the Unsecured Creditors'
9 Committee within the definition of the Highland released
10 parties under the proposed HMIT settlement? Do you know?

11 A I don't know. The members of the Creditors' Committee, I
12 believe, have exculpation anyway, so I don't -- I don't -- I
13 don't know if it captures the old members of the Creditors'
14 Committee. I don't -- for example -- I don't think so. I
15 don't -- I don't know.

16 MR. YORK: Pass the witness.

17 THE COURT: All right. Mr. Lang?

18 THE WITNESS: Do you have a separate binder?

19 MR. LANG: No.

20 THE WITNESS: Okay. Will you be using Mr.
21 Daugherty's binder?

22 MR. LANG: No.

23 CROSS-EXAMINATION

24 BY MR. LANG:

25 Q All right, Mr. Seery. Just to be clear, the Class B and C

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1 -- or the Class A interests and the -- of Highland under the
2 plan, they have 99.5 percent of the -- Highland Capital
3 Management. Correct?

4 A Could --

5 Q Sorry. The Class B and C --

6 A Limited partnership interest.

7 Q -- shareholder -- limited partnership interests were 99
8 point -- or, were .5 percent of Highland Capital Management?

9 A I -- I'm not trying to be difficult.

10 Q No, it's fine. It's a terrible -- terrible --

11 A I don't -- I just don't -- I don't understand your
12 question. I apologize.

13 Q Okay. So, at the time of the petition, --

14 A Yes.

15 Q -- Hunter Mountain Investment Trust owned 99.5 percent of
16 Highland Capital Management?

17 A It owned 99-1/2 percent of the limited partnership
18 interest in Highland Capital Management.

19 Q And the remainder -- and HMIT has the Class 10 claims.
20 Correct?

21 A You said something, the remainder? The --

22 Q Oh, sorry. The remaining interests are owned by the Class
23 11 claims under the plan.

24 A The remaining partnership interests are among those
25 entities I testified earlier to, which are Dugaboy, Strand, --

1 Q And Okada?

2 A -- Mark Okada individually, and two Mark Okada and Pamela
3 Okada trusts.

4 Q Okay. And the total assets in the estate right currently
5 you testified are between \$65 to \$70 million?

6 A I -- off the top of my head, I don't recall, but it --
7 rough range, it could be in that general vicinity. That does
8 not include the payments that have to be made to the 9s and
9 expenses. So I believe there's documents in here that we
10 could go through, if you like.

11 Q And I believe you testified that the remaining unpaid 9s
12 are owed approximately \$20 million?

13 A Approximately \$20 million, yes.

14 Q Okay. And the plan does not say that the equity claims
15 for Class 10 and 11 are to be determined by the capital
16 account values of the limited partnership interests in the
17 Debtor LP?

18 A That's correct. It says to set an amount. It doesn't
19 tell you how to do the amount.

20 Q Okay. And under the settlement agreement, Class 10
21 interests will be allowed in the amount of \$336,940,230.58?

22 A Approximately \$336 million, yes.

23 Q \$336 million. Fair. And this is the capital account
24 balance as of -- HMIT's capital account balance as of the
25 petition date, less, I believe, the HMIT note?

1 A That's correct. So that amount is the net amount.

2 Q The net? And do you know how the capital account balances
3 were calculated --

4 A Yes.

5 Q -- on the petition date?

6 A Yes.

7 Q And how were they calculated?

8 A So, you take the 2018 year-end capital account amount, and
9 then there's activity in the company that gets passed through
10 through the partnership. The partnership agreement -- in this
11 instance, the prepetition Debtor partnership agreement passed
12 through profits and losses on a pro rata basis. There was
13 activity in the first half of the year that affected that
14 capital account. You can see that reflected in the year-end
15 auditeds as well as the K-1 statement that -- for 2018 that
16 was given to HMIT. That would be their 2018 year-end. That
17 then, from an accounting perspective, was used and brought
18 down to the petition date. And between the petition date and
19 year-end 2019, there was additional capital activity, the
20 biggest one of which was the reserve -- full reserve for the
21 \$50-plus million for the HMIT note. And so then you'll see
22 the 2009 auditeds that are signed off by Mr. Waterhouse. And
23 in those interim months, then you also see the gross amount of
24 the partner capital each month in the monthly operating
25 reports.

1 Q And correct me if I'm wrong, but I believe you testified
2 that the capital account balances continued to go down after
3 2019. So you have the petition date, you have the next year,
4 and did they continue to --

5 A I don't think I testified to that. What I testified to is
6 that there was economic activity in 2019 that affected the
7 year-end '18 to the petition date. And then from the petition
8 date there was year-end activity -- there was activity from
9 the petition date to year-end '19 that would affect the
10 capital account as reflected in the 2018 audited -- they
11 weren't audited -- 2018 tax returns signed off by Waterhouse.
12 The biggest part of that activity was the application or the
13 reserve for the Hunter Mountain Note.

14 Q And was there any activity after the 2019 tax return?

15 A There was postpetition activity in the partnership,
16 certainly.

17 Q And did it reduce the capital accounts during those years?

18 A I assume it would have reduced all of the capital accounts
19 pro rata.

20 Q Okay. And why'd you use the petition date as the date to
21 determine the value of the capital accounts?

22 A Because this is bankruptcy and that's the date on which
23 you fix all your claims and interests.

24 Q If you used -- have you ever used equity ownership
25 percentages to determine the payment to the equity versus

1 their capital account balances?

2 A In this case, or elsewhere?

3 Q Elsewhere.

4 A I think that's standard. I can't cite you a specific
5 thing, but typically when a partnership liquidates or a
6 partnership is sold, amounts get distributed pursuant to the
7 capital accounts and -- and -- in up to amounts in the capital
8 accounts.

9 Q You would agree, if you use the percentage of ownership,
10 being 99.5 percent for Class 10 and the .5 percent for Class
11 11, would potentially leave money for the Class 11 creditors
12 to recover?

13 A I don't think so. No, I don't agree with that.

14 Q Why do you say that?

15 A Because Class 11 is subordinated to Class 10.

16 Q Okay. So explain how, if \$60 million exists and you pay
17 \$20 million to the Class 9, --

18 A Roughly. Yeah.

19 Q Rough. Just rough math.

20 A Okay.

21 Q That leaves \$40 million.

22 A Okay.

23 Q Correct? And if the ownership interests or the allowed
24 claim for HMIT was 99.5 percent, wouldn't that leave .5
25 percent of \$40 million for the remaining creditors?

1 A That doesn't make any sense, because 99-1/2 percent of a
2 senior thing means you get everything. So that Class 10 has
3 to be paid in full before the 11.

4 In addition, there's already an agreed-upon amount on
5 HCLOM for \$10 million. So how do I give HCLOM \$10 million and
6 99-1/2 percent to somebody else? There has to be numbers.

7 Q But to be clear, the plan does not say that the equity
8 claims are determined on capital accounts. Correct?

9 A That's correct.

10 Q All right.

11 MR. LANG: No further questions.

12 THE COURT: All right. Any redirect?

13 MR. MORRIS: Just one moment, Your Honor.

14 (Pause.)

15 MR. MORRIS: We have no questions, Your Honor.

16 THE COURT: All right. Any redirect from --

17 MR. PHILLIPS: No, Your Honor. Thank you.

18 THE COURT: -- the one question?

19 Okay. Thank you, Mr. Seery. You are excused from the
20 witness box.

21 THE WITNESS: Thank you, Your Honor.

22 (The witness steps down.)

23 THE COURT: Okay. I'm going to again take proposals.
24 I can live with a 30-minute lunch break. I and my staff can.
25 But it's easier for us than all of you. So do you all want to

1 finally and fully resolved.

2 THE COURT: Okay. Meanwhile, I've approved the
3 extension of the Trusts for one year, with Dugaboy saying, we
4 don't think this should happen again and again and again. We
5 reserve our rights. That's not a good solution.

6 MR. YORK: Your Honor, I understand the Court's
7 frustration, but this is the terms of the plan and the
8 confirmation order that were entered. Highland needs to
9 follow it.

10 THE COURT: Okay. What about the estoppel argument
11 that I heard Mr. Morris make?

12 MR. YORK: Well, sure. So, the first time they raise
13 it is here today. And the one thing that -- the difference is
14 that allowing this settlement to go forward is an effective
15 liquidation of the estate versus where things are now, in
16 which any payments that were made is not an effective
17 liquidation. It doesn't expose anyone that would have
18 priority to Class 10 with respect to anything that happens in
19 the future from, you know, not having sufficient funds to deal
20 with it. That's all.

21 THE COURT: Okay.

22 MR. YORK: Thank you, Your Honor.

23 THE COURT: Thank you. All right. Mr. Lang?

24 CLOSING ARGUMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

25 MR. LANG: I'll be brief. Your Honor, there are

1 three issues that we've raised. One is the capital account
2 balance being used for the claim for the Class 10 holders.
3 The plan does not specify that the capital account balance is
4 to be used. Allowing the \$336 million claim to Class 10
5 ensures that Class 11 will not ever receive a dime. That's
6 guaranteed.

7 Alternatively, upon the satisfaction of the Class 9, the
8 \$20 million approximately owed to Class 9, the holders of HMIT
9 should receive 99.5 percent of the total residual. We think
10 that would be a more fair outcome to the Class 11 claimants.

11 THE COURT: Wait, say again?

12 MR. LANG: That, so, of total assets, \$70 million
13 approximately, \$20 million is owed to Class 9.

14 THE COURT: Uh-huh.

15 MR. LANG: Of the remainder from that, HMIT should
16 receive 99.5 percent of those assets, whatever they are, the
17 value, rather than a \$336 million claim. That was the
18 objection.

19 THE COURT: But I didn't get any evidence of a
20 separate way of competing -- of doing that. I heard credible
21 testimony from Mr. Seery about why he used the math he used
22 and I didn't hear any countervailing evidence of, wait, this
23 is a more fair, realistic way of computing it. And what I did
24 hear is the .5 percent limited partnership interest of Dugaboy
25 is subordinated in its payment rights under the limited

1 partnership agreement of Highland.

2 MR. LANG: It's subordinated under the plan, but yes,
3 the plan does not say to use --

4 THE COURT: Under the partnership agreement is the
5 reason the plan did it, is what I've been presented.

6 MR. LANG: I believe Mr. Seery -- and I could be
7 wrong -- I think I heard him say that he has used the other
8 method, but I could have misheard him in the testimony.

9 THE COURT: Well, that's not what I heard. I heard
10 him emphasizing the fact that the Class 8 interests, including
11 that of Dugaboy, are subordinated with regard to payment
12 rights under the Highland partnership agreement. And so
13 that's why he didn't think it made sense to just apply
14 percentages.

15 MR. LANG: That's what he testified to.

16 THE COURT: So I'm just -- anyway, I'm just trying to
17 figure out what the countervailing evidence is here to suggest
18 his methodology is wrong.

19 MR. LANG: I believe the partner -- or, the plan says
20 that the Class 10, when the GUC certification is a Class 10,
21 and the Class 11 received pro rata, it doesn't specify the
22 account balance is to be used as the number to determine what
23 they receive.

24 THE COURT: Okay. You want to point out what you are
25 focused on?

1 MR. LANG: I believe it's under Treatment.

2 THE COURT: Okay.

3 MR. LANG: Section --

4 THE COURT: I don't want to hunt. I want you to tell
5 me what the language is that you think is supportive of that.

6 MR. LANG: And the second -- I guess the secondary
7 issue that we probably should just get to is the release. We
8 think it's broad, and just Dugaboy and Dondero are carved out.
9 And Mr. Morris did send me a proposal last -- yesterday
10 evening that I haven't gotten to. But that is an objection
11 that we have, is just to make sure that the -- that nobody can
12 argue that the release covers any claim Dugaboy might have, if
13 any.

14 THE COURT: Okay. I think many hours ago I remember
15 this being mentioned. I guess it was a little bit more broad
16 than just -- I think it was Highland employees. I don't know.

17 What is the agreement, Mr. Morris, if you're awake there,
18 on --

19 MR. MORRIS: I am awake, Your Honor. Apologies.

20 THE COURT: Okay. I didn't mean to be flippant.

21 MR. MORRIS: Yeah.

22 THE COURT: I get punchy and --

23 MR. MORRIS: That's okay. With respect to the
24 release?

25 THE COURT: Right.

1 MR. MORRIS: We don't have an agreement. We have an
2 agreement -- well, I sent a proposal last night, but it didn't
3 get responded to. If they want to accept that proposal,
4 that's terrific.

5 THE COURT: Okay. I don't know what the agreement
6 says. Are you saying you want to accept what they proposed
7 last night?

8 MR. LANG: No, I have edits to it. I just couldn't
9 -- I was tied up on another filing last night. I have not
10 been able to get to it today.

11 THE COURT: Okay. I'm going to make a ruling today.
12 Okay? If it means y'all sit here in the courtroom a while,
13 fine. But just like all of you, I have a mountain of other
14 stuff waiting for me, so I really want to rule today. So, --

15 MR. LANG: Understood.

16 THE COURT: Yeah.

17 MR. LANG: Maybe we can work on it as soon as I'm
18 done and I can get back to 'em --

19 THE COURT: Okay.

20 MR. LANG: -- and get back to you.

21 Your Honor, the -- it's on Page 23 of the plan. It talks
22 about the Class 10 and Class 11, where the partnership
23 interests, that their treatment, they shall receive as pro
24 rata share of the contingent Claimant Trust interests. And
25 all we're asking is that be used or applied as a 99.5/.5

1 distribution.

2 (Pause.)

3 THE COURT: I'm sorry. Go ahead.

4 MR. LANG: Oh, sorry. I thought you were looking for
5 it.

6 And the last issue is authority. The only point of the
7 authority argument, Your Honor, is that the Joint
8 Administrators were appointed down in the Caymans to
9 investigate the transaction that moved basically the entire
10 ownership, because it's owned a hundred percent down to HMIT,
11 out. They're investigating the transactions. They have not
12 stipulated to authority. They're looking at everything.
13 They've requested a 45-day delay on this motion. And that's
14 all that -- not even asking to deny the 9019. They were just
15 asking time to basically bless this transaction so that nobody
16 could come back and make an issue of it. But I understand
17 your desire to rule today.

18 THE COURT: Okay. Any rebuttal?

19 MR. MORRIS: Yeah, briefly, Your Honor.

20 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

21 MR. MORRIS: I just want to point the Court to two
22 provisions of the operative documents that I think --

23 THE COURT: Okay.

24 MR. MORRIS: -- will resolve even further the issues
25 that we've presented today.

1 The Claimant Trust Agreement -- and I apologize, I don't
2 know if the whole document is in evidence, but I will
3 respectfully suggest to the Court that the Claimant Trust
4 Agreement provides in Article 5, Section 5.1(c), --

5 THE COURT: Okay. Let me catch up.

6 MR. MORRIS: Yes.

7 (Counsel confer.)

8 THE COURT: It's not Debtor's Exhibit 5.

9 MR. MORRIS: Yeah.

10 THE COURT: Daugherty's Exhibit 5?

11 MR. MORRIS: It's Daugherty Exhibit 5?

12 MR. YORK: Yes.

13 THE COURT: Okay.

14 MR. YORK: So we have a full copy at Daugherty --

15 THE COURT: I've got it. Daugherty's Exhibit 5.

16 MR. MORRIS: Okay. So if you could just go to Page
17 27, Your Honor. And this is in response to Mr. Lang's
18 argument about the calculation of the allowed claim. You'll
19 see it deals with contingent trust interests. And the very
20 last sentence says the equity trust --

21 THE COURT: Wait. What page again?

22 MR. MORRIS: 27.

23 THE COURT: Okay.

24 MR. MORRIS: Do you see Section C in the middle is
25 Contingent Trust Interests?

1 THE COURT: No.

2 THE CLERK: It's 26 of the Claimant Trust Agreement,
3 27 of the --

4 THE COURT: Ah, it's 26. Yes. On the bottom, it's
5 26; on the top, it's 27 of 38.

6 MR. MORRIS: Okay.

7 THE COURT: Okay.

8 MR. MORRIS: And at the end of Section C, it says
9 explicitly: The equity trust interests distributed to allowed
10 holders of Class A limited partnership interests -- that's
11 Dugaboy --

12 THE COURT: Uh-huh.

13 MR. MORRIS: -- shall be subordinated to the equity
14 interests distributed to the allowed holders of Class B and C.
15 That's Hunter Mountain. Okay?

16 So the trust agreement provides for exactly what we're
17 doing here. Dugaboy is in fact subordinated to HMIT. It
18 doesn't get paid until HMIT gets paid in full. And Mr. Seery
19 I think compellingly testified as to the reasonable
20 calculation that he did based on very objective numbers to
21 determine each respective limited partner's capital account.

22 With respect to Mr. Daugherty, the plan, which is on the
23 docket at 1943, has a definition of Disputed Claim Reserve.
24 And it states, among other things, that the amount of the
25 disputed claim upon which the disputed claim --

1 THE COURT: Give me the page number.

2 MR. MORRIS: I apologize, Your Honor.

3 THE COURT: I've got it right in front of me.

4 MR. MORRIS: It's Page 7 of the plan.

5 THE COURT: Okay. All right. I'm there. The
6 Defined Term.

7 MR. MORRIS: So the Defined Term "Disputed Claim,
8 Claims Reserve Amount" in the middle says: The amount of the
9 disputed claim upon which the disputed claims reserve is
10 calculated shall be -- they've got an A and then a B -- the
11 amount agreed to by the holder of the disputed claim and the
12 Claimant Trustee or Reorganized Debtor, as applicable. And
13 then it says D: Or is otherwise ordered by the Bankruptcy
14 Court, including an estimated -- an order estimating the
15 disputed claim.

16 And that last provision is vital, Your Honor, because that
17 is the hook upon which you can always hang your hat when you
18 decide that we are not going to wait until 2023 [sic] when the
19 IRS audit may be resolved, because you have the ability, as
20 ordered by the Bankruptcy Court, including estimating the
21 amount of the disputed claim. Which is one of the causes of
22 action that we've asserted in the complaint. It's either to
23 subordinate -- actually, it's to disallow, to subordinate, or
24 to estimate. Because this case does have to end, Your Honor.
25 We actually think he should be bound by the definition in B.

1 It is an agreed-upon amount.

2 I've heard the testimony from Mr. Daugherty that there was
3 no negotiation, but he didn't deny that he signed a document
4 that is called an agreement that sets forth the disputed claim
5 amount. And that is an agreement, and I think that satisfies
6 that definition. And even if it didn't, at some point this
7 case has to end.

8 Thank you, Your Honor.

9 THE COURT: Okay. Thank you.

10 All right. Well, it's been a long day and even a longer
11 case. I think a lot of people were on the receiving end of a
12 little bit of my grumpiness at times today, and I apologize
13 for that.

14 I always feel compelled to say to the lawyers and parties
15 when I rule from the bench that I can assure you it's not
16 knee-jerk. I can assure you my law clerk and I have read
17 every piece of paper submitted. And we come in here I think
18 well-prepared and we just want to listen to the evidence to
19 see if it supports -- who it supports. So I am going to rule
20 from the bench.

21 I first want to make clear that with regard to the motion
22 before the Court, the motion which was filed May 19th at
23 Docket Entry 4216, pursuant to Bankruptcy Rule 9019 and
24 Bankruptcy Code Section 363, the Court is being asked to
25 approve a very broad settlement that is between what are

1 defined as the HMIT entities, seven entities in all; Hunter
2 Mountain Investment Trust; as well as Beacon Mountain, LLC;
3 Rand Advisors, LLC; Rand PE Fund 1, LP; Rand PE Fund
4 Management, LLC; Atlas IDF, LP; and Atlas IDF GP, PLLC. So
5 this proposed compromise and settlement is between all of
6 those Hunter Mountain entities as well as the Reorganized
7 Debtor, the Highland Claimant Trust, the Highland Litigation
8 Subtrust, and the Highland Indemnity Trust.

9 I first will note that notice has been fulsome, reasonable
10 under the circumstances, to provide due process to anyone
11 affected by the proposed compromise.

12 The Court would note that the legal standard is a very
13 well-known and established legal standard here. Among other
14 things, the Court is to look at whether the settlement is
15 fair, reasonable, and in the best interest of the estate;
16 whether it would appear reasonable business judgment has been
17 exercised; is the compromise and settlement within the range
18 of reasonableness?

19 And this involves looking at, among other things, the
20 probability of success in the litigation -- that would be all
21 the various litigation involving HMIT, if it were to go
22 forward; the complexity and likely duration of further
23 litigation and attendant expense, inconvenience, and delay;
24 and all other factors bearing on the wisdom of the compromise.
25 We know that's *Cajun Electric, Jackson Brewing, Foster*

1 *Mortgage*, among other cases. I probably left out *AWECO*.

2 Anyway, applying all of those legal standards here, I do
3 think the evidence was very thorough in showing that the
4 compromise is a product of good faith and arm's-length
5 negotiations. Indeed, it was almost shocking to this Court
6 when I saw the motion, having the history I have with all of
7 the contested issues, adversary proceedings that have
8 transpired over the past few years between Hunter Mountain and
9 the Debtor.

10 I do think the evidence is that it's fair and equitable
11 and in the best interest of the estate and within the range of
12 reasonableness, given due regard for all of the expense,
13 delay, and likelihood of success.

14 I'll just briefly recount that, as noted early today,
15 there was an Exhibit B attached to the 9019 motion that listed
16 nine unresolved pending pieces of litigation that the Highland
17 entities are embroiled in. Two of those are now gone. This
18 was filed May 8th, and as of January 25th, they're gone. So
19 seven pieces of litigation, of which two will go entirely away
20 if I approve this settlement. The Kirschner adversary claims
21 against Hunter Mountain will go away.

22 We have very little, very little, relatively speaking,
23 left in this bankruptcy case to resolve if I approve this
24 settlement. That alone is very, very significant. Again, we
25 have large shall I say issues with Hunter Mountain. Highland

1 says Hunter Mountain owes the Highland entities something like
2 \$57.69 million on a note that Hunter Mountain is payor on
3 dated December 21st, 2015.

4 The flip side of that is that Hunter Mountain was sued by
5 Kirschner in the Kirschner action on various claims, including
6 this \$57 million note. We have had Hunter Mountain file
7 multiple motions for leave to sue Highland, the Claimant
8 Trust, Mr. Seery. And those have been denied, but are in
9 appeal status or remand status or some further litigation
10 status.

11 And again, we have numerous issues. Hunter Mountain
12 having sought valuation. The Court denied that. It's on
13 appeal.

14 So, so much goes away, so much further litigation goes
15 away and we make a monumental step in ending this long-running
16 case if I approve this settlement.

17 Now, on the flip side of this, I know that Dugaboy,
18 through the voice of Mr. Dondero today, expressed that Hunter
19 Mountain is, I forget the words he used, but not -- this isn't
20 close to being fair and equitable as far as he was concerned
21 for Hunter Mountain. That Hunter Mountain, in addition to
22 being through with litigation in this bankruptcy-land, would
23 be paid \$500,000 within five days. They would also be paid
24 separately \$10 million as an initial distribution, with the
25 hope of two more \$6.5 million distributions in '27 and '28.

1 And it would get a note, which I think has \$24 million -- I
2 think it was less than that, \$17 or \$18 million left on it,
3 perhaps, on which Dugaboy is a maker. The debtor is one of
4 the two payees. The Debtor gives up its rights in that note.

5 It looks like Hunter Mountain is getting a lot. And
6 again, the way this estate has been liquidated, there is money
7 that can flow to it as a Class 10 equity here, as the evidence
8 has shown.

9 So I am approving the settlement. I am specifically
10 overruling the remaining objections of both Dugaboy and Mr.
11 Daugherty.

12 As far as Mr. Daugherty's argument that the settlement
13 violates the absolute priority rule or violates the terms of
14 the plan or the confirmation order or the trust agreement by,
15 putting words in his mouth, skipping over the full payment of
16 whatever his Class 8 claim is going to be and allowing a
17 subordinate class, Class 10, to get paid, I have flipped and
18 studied the wording of the plan and the confirmation order and
19 the defined term for Disputed Reserve. And I referred to a
20 disputed reserve as a tried-and-true provision in Chapter 11
21 plans. I think it does what needs to happen for precisely
22 this kind of situation, that as long as an appropriate amount
23 is being held in reserve, and the Court can decide what is an
24 appropriate amount, we don't have to hold up a bankruptcy
25 estate for years and years.

1 So the disputed claim reserve is what allows me to find
2 this is fair and equitable and this isn't some sort of
3 violation of the absolute priority rule. I think this is
4 precisely the reason the disputed claim reserve mechanism is
5 in place, so that we can get on with the business of getting
6 more people paid sooner.

7 And based on the evidence I've heard, it is an appropriate
8 amount, I think. We're doing a lot of crystal-balling, what
9 may or may not ever happen when, but I think, based on all the
10 persuasive evidence I've heard, the Daugherty objection should
11 be overruled.

12 As far as Dugaboy, I, as noted, am overruling that
13 objection. I didn't have any persuasive evidence, solid
14 evidence to show me that Mark Patrick doesn't have appropriate
15 corporate governance authority to enter into this settlement
16 agreement.

17 I realize there's a lot swirling around in the Cayman
18 Islands, and that's going to play out however it plays out.
19 But as of today, I don't have any evidence that he doesn't
20 have authority currently to enter into the settlement. And it
21 speaks volumes that The Foundation backed down. It would seem
22 that they have been convinced that the lack-of-authority
23 argument was not one they wanted to press today. So that is
24 overruled.

25 I feel like we have all seen this movie many times before.

1 I wanted to understand, perhaps I went deeper than I needed
2 to, I know Mr. Phillips thinks I went deeper than I needed in
3 hearing some of the testimony from Mr. Patrick and Mr.
4 Dondero, but I'm just trying to understand what's happening
5 here. Why people who were so lockstep and friendly for years
6 of this case suddenly, when we're right on the brink of maybe
7 the case being put to bed -- I'm optimistic; it's not quite
8 that close -- all of a sudden they're at loggerheads.

9 And so how many times have I seen this over the years,
10 whether it's a breakdown in business and personal
11 relationships, Mr. Daugherty, Mr. Terry, Grant Scott, now Mark
12 Patrick? I'm probably leaving out someone. I don't know. I
13 feel like I'm watching the same movie. Okay, now these two
14 have parted ways. Now these two have parted ways.

15 And then, as I recall, when Grant Scott withdrew his
16 objection to the HarbourVest settlement all these years ago,
17 2020, 2021, which he had been lodging for Charitable DAF, I
18 think it was, --

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: -- then what happens? Well, I think Mark
21 Patrick came in to work or replace Grant Scott, and then a
22 bunch of people ended up getting sued in a different court
23 regarding the settlement I approved, the HarbourVest
24 settlement I approved.

25 So why am I saying this? I just, I'm trying to understand

1 things I'll never understand. I wanted to maybe hear
2 something that would make me better understand what's happened
3 now between Hunter Mountain, Mark Patrick, and Dondero and
4 Dugaboy, because it sure seems like they were on the same team
5 for many years. But it was very likely irrelevant, as Mr.
6 Phillips kept getting up and down and saying. I just was
7 seeing if it would lead to something relevant that would bear
8 on the wisdom of this compromise, since that's one of my other
9 legal standards. I'm supposed to consider all factors that
10 might bear on the wisdom of the compromise. And so I guess
11 that's where I was going in allowing all of that to come in.

12 All right. Well, while everyone is not thrilled with this
13 compromise and settlement, I heartily congratulate the human
14 beings that made it happen, and they know who they are. Maybe
15 I do, maybe I don't. But I think it's rather amazing. And I
16 hope that we are not coming to court for hearings in 2032. I
17 don't know who among us will be alive. I'm not going to be
18 alive by then. Certain people might cheer if that's the case.
19 But I congratulate the human beings who made this happen. And
20 you know who you are. Maybe I do, maybe I don't, but I
21 congratulate you.

22 All right. So I reserve the right to supplement or amend
23 this oral bench ruling in a more fulsome written order. I am
24 asking Mr. Morris and his team to be the scriveners on that
25 order. And obviously, you're going to run it by the other

1 lawyers here who participated today.

2 Is there anything else before we wrap it up?

3 MR. MORRIS: Just one other thing, Your Honor. And I
4 greatly appreciate your comments.

5 When we draft the order, are we authorized to say that
6 this settlement is approved not only pursuant to 9019 but to
7 363? Because there are asset sales that are part of this. We
8 moved under that provision, and I didn't hear Your Honor
9 reference that, --

10 THE COURT: Okay.

11 MR. MORRIS: -- but we would like to include that in
12 the order.

13 THE COURT: You may. And that is precisely why I
14 said I reserve the right to supplement or amend, because many
15 times I get out of here and look at this transcript and, ooh,
16 I forgot to say whatever.

17 MR. MORRIS: Yeah.

18 THE COURT: So I meant to say that and I didn't, so
19 you may add that.

20 MR. MORRIS: And I assume all Your Honor wants is a
21 fairly simple form of order that incorporates --

22 THE COURT: I do not want a 40-page order.

23 MR. MORRIS: Right.

24 THE COURT: Okay?

25 MR. MORRIS: Just an order that incorporates your

1 comments on the record, and to the extent that Your Honor
2 wants to amend that, you'll do so at your leisure?

3 THE COURT: Yes.

4 MR. MORRIS: Perfect.

5 THE COURT: All right.

6 MR. MORRIS: Thank you.

7 THE COURT: Thank you all. We're adjourned.

8 MR. PHILLIPS: Thank you, Your Honor.

9 THE CLERK: All rise.

10 (Proceedings concluded at 4:38 p.m.)

11 --oOo--

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CERTIFICATE

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22

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

23

/s/ Kathy Rehling

06/27/2024

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date



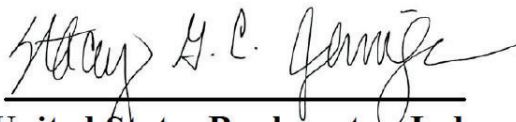
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed June 30, 2025


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER PURSUANT TO BANKRUPTCY RULE 9019 AND 11 U.S.C. § 363
APPROVING SETTLEMENT BETWEEN THE HIGHLAND ENTITIES AND THE
HMIT ENTITIES AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on the *Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4216] (the “Motion”)² filed by Highland Capital Management, L.P., the reorganized debtor (the “Debtor” or “Highland”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), the Highland Claimant Trust (the “Claimant”

¹ The last four digits of the Reorganized Debtor’s taxpayer identification number are 8357. The headquarters and service address for the Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

² Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion or the Settlement Agreement, as applicable.

Trust”), and the Highland Litigation Sub-Trust (the “Litigation Sub-Trust,” and together with Highland and the Claimant Trust, the “Movants”); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 as well as the retention of jurisdiction provisions of the Plan; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered (a) the Motion, (b) *Patrick Daugherty’s Objection to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4229] (the “Daugherty Objection”) filed by Patrick Daugherty, (c) the *Preliminary Objection of the Dugaboy Investment Trust to the Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities* [Docket No. 4230] (the “Dugaboy Objection,” and together with the Daugherty Objection, the “Objections”), filed by The Dugaboy Investment Trust, (d) the *Objection of the Dallas Foundation and Crown Global Life Insurance Ltd. to Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement with the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4231] (the “Charitable Foundation Objection”), filed by The Dallas Foundation (the “Dallas Foundation”) (on behalf of Empower Dallas Foundation (“EDF”) and The Okada Family Foundation (“Okada Family”), and Crown Global Life Insurance, Ltd., not individually, but solely in respect of Segregated Accounts 30218 and 30219 (“Crown”), (e) the evidence admitted into the record during the hearing on the Motion on June 25, 2025 (the “Hearing”) in support of, and in opposition to, the Motion, including the Court’s assessment of the witnesses’ credibility, and (f) all arguments heard at the Hearing in connection therewith; and the Court having found that the legal and factual bases set forth in the Motion establish sufficient

cause for the relief granted herein; and adequate notice of the Motion having been given; and after due deliberation and good cause appearing therefor,

THE COURT HEREBY FINDS THAT:

1. The Court's findings of fact and conclusions of law set forth on the record at the conclusion of the Hearing are incorporated by reference except as supplemented in this Order, and as may be further supplemented by the Court.

2. Entry into the Settlement Agreement is an appropriate exercise of the Movants' business judgment.

3. The Settlement Agreement is fair, reasonable, and in the best interests of each of the Highland Entities and their creditors and constituents.

4. The Settlement Agreement was negotiated and entered into by the Highland Entities and the HMIT Entities without collusion or fraud, in good faith, and was the product of arm's-length negotiations.

5. The HMIT Entities are not "insiders" or "affiliates" of Highland as those terms are defined in Bankruptcy Code sections 101(31) and 101(2).

6. The HMIT Entities entered into the Settlement Agreement, are acquiring the Transferred Claims and Dugaboy Note in good faith, and have proceeded with all aspects of the Settlement Agreement in good faith, and have received fair value in consideration of their entry into the Settlement Agreement.

7. The Transferred Claims and Dugaboy Note are property of the estate, and the Highland Entities' sale of those assets free and clear of all liens and encumbrances but otherwise subject to the Settlement Agreement is a proper exercise of their business judgment.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

8. The Motion is **GRANTED**.

9. As stated on the record during the Hearing, The Charitable Foundation Objection is withdrawn with prejudice.

10. All other Objections to the Motion are overruled.

11. The Settlement Agreement attached as **Exhibit 1** to the Demo Declaration is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code.

12. HMIT's Class 10 Interest is Allowed in the amount of \$336,940,230.58.

13. The HMIT Entities, as good faith purchasers of Estate assets in the Settlement, are entitled to the protections contained in section 363(m) of the Bankruptcy Code.

14. The Highland Entities and their agents are authorized to take any and all actions necessary or desirable to implement the Settlement Agreement without further notice or further Court approval.

15. Notwithstanding anything in the Settlement Agreement to the contrary, none of the Dallas Foundation, EDF, Okada Family, or Crown (collectively, the "Foundation Parties") are or will be included in the definitions of "HMIT Releasors" or "Highland Releasors." For the avoidance of doubt, however, any attempt by the Foundation Parties to assert a Claim against a HMIT Released Party by, through, or under, including derivatively, a Highland Entity, or against a Highland Released Party by, through, or under, including derivatively, a HMIT Entity is barred by this Order and the Settlement Agreement.

16. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

END OF ORDER

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

**MOTION FOR ORDER FIXING
ALLOWED AMOUNT OF CLASS 11 INTERESTS¹**

The Highland Claimant Trust (“**Claimant Trust**”) files this Motion (the “**Motion**”) for entry of an order pursuant to 11 U.S.C. § 502(b), substantially in the form attached as **Exhibit A**, fixing the allowed amount of the unvested Class 11 Contingent Claimant Trust Interests of: (a) The Dugaboy Investment Trust (“**Dugaboy**”) in the amount of \$740,081.61; (b) Strand Advisors, Inc.

¹ Capitalized terms used but not defined herein have the meanings given to them in the Claimant Trust Agreement or the Plan, as applicable.

(“**Strand**”), in the amount of \$994,707.76; (c) Mark K. Okada (“**Okada Individual**”) in the amount of \$192,754.38; (d) The Mark and Pamela Okada Family Trust – Exempt Trust #1 (“**Okada Trust #1**”) in the amount of \$38,868.17; and (d) The Mark and Pamela Okada Family Trust – Exempt Trust #2 (“**Okada Trust #2**”) in the amount of \$16,657.79 (Dugaboy, Strand, Okada Individual, Okada Trust #1 and Okada Trust #2 are collectively referred to as the “**Class 11 Holders**”), in each case, on account of their respective pre-petition Class A Limited Partnership Interests in Highland Capital Management, L.P. (“**Highland**”)

PRELIMINARY STATEMENT

1. Before the Claimant Trust can complete the dissolution and wind-up process, it must, among other things, fully resolve all Disputed Claims and Equity Interests.² With this Court’s recent Order³ approving the settlement with HMIT and allowing its Class 10 interest in the Claimant Trust on account of its pre-petition equity interest in Highland in the amount of \$336,940,230.58, the only unresolved Claims and Equity Interests are (a) the alleged Class 8 Claim held by Patrick Daugherty (which is fully reserved-for), and (b) the unvested Class 11 Contingent Claimant Trust Interests to be issued to the Class 11 Holders.⁴ This Motion addresses the Class 11 interests.

2. Specifically, the Claimant Trust asks the Court to fix the allowed amount of each unvested Class 11 Contingent Claimant Trust Interest to be issued to each Class 11 Holder as required by the Plan and the Claimant Trust Agreement and pursuant to Section 502 of the Bankruptcy Code. The Court should determine the amount of each Class 11 Contingent Claimant

² Claimant Trust Agreement § 9.1(d).

³ *Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement Between the Highland Entities and the HMIT Entities and Authorizing Actions Consistent Therewith* [Docket No. 4297] (the “**HMIT Order**”).

⁴ Earlier this year, Highland commenced an adversary proceeding (Adv. Pro. No. 25-03055-sgj) to resolve Mr. Daugherty’s remaining claim, leaving the Class 11 Interests as the only Disputed Claim or Equity Interest.

Trust Interest consistent with HMIT's Class 10 Contingent Claimant Trust Interest—that is, the allowed amount of each unvested Class 11 Contingent Claimant Trust Interest should be fixed in the amount of each Class 11 Holder's Petition Date capital account balance.⁵

3. Accordingly, the Claimant Trust respectfully requests that the Court enter an order in the form annexed as **Exhibit A** granting the Motion and fixing the amount of each unvested Class 11 Contingent Claimant Trust Interest as set forth in Exhibit A.

RELEVANT BACKGROUND

I. Highland's Partnership Structure

4. Highland was a limited partnership organized under the laws of the State of Delaware. In December 2015, Highland, through a series of transactions, restructured its limited partnership interests into three classes: Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests. The Hunter Mountain Investment Trust ("**HMIT**") acquired 100% of Highland's Class B/C Limited Partnership Interests by contributing funds into Highland as well as by purchasing interests from James Dondero, Mark Okada, and certain entities affiliated with them.⁶ The HMIT Class B/C Limited Partnership Interests accounted for 99.5% of the pre-petition partnership interests in Highland and entitled the holders thereof to priority distributions. Mr. Dondero (through Dugaboy and Strand) and Mr. Okada (through Okada Individual, Okada Trust #1, and Okada Trust #2) retained Highland's Class A Limited Partnership Interests, which accounted for 0.5% of Highland's pre-petition partnership interests.

⁵ HMIT's Class 10 Contingent Claimant Trust Interest was fixed based on the amount of its limited partner capital account as of the Petition Date, offset by the HMIT Note Balance (as defined below).

⁶ Concurrent with its acquisition of the Class B/C Limited Partnership Interests, HMIT executed the *Secured Promissory Note*, dated December 21, 2015, in the original face amount of \$63,000,000 in favor of Highland (the "**HMIT Note**"), which, as of the Petition Date, had an outstanding principal and interest balance of \$57,690,640.95 (the "**HMIT Note Balance**").

5. On December 24, 2015, Highland and its limited partners entered into the Limited Partnership Agreement, which governed the rights and obligations of the Class A and Class B/C limited partners and remained in effect until the Effective Date. Consistent with the requirements of the Internal Revenue Code and IRS regulations promulgated thereunder,⁷ the Limited Partnership Agreement required the establishment and maintenance of a capital account at Highland reflecting each partner's economic interest in the partnership and the amounts the partners would receive – after payment of senior obligations – in a liquidation or buyout. The capital accounts for each partner were consistently adjusted based on partnership economic activity and were maintained in accordance with IRS regulations and the Limited Partnership Agreement, and Schedule K-1s were distributed to the partners annually.⁸

6. Between year-end 2018 (as reflected in the 2018 Tax Return and accompanying K-1s) and the Petition Date, the capital accounts of the Highland partners fluctuated in accordance with the requirements of the Limited Partnership Agreement based on Highland's 2019 year-to-date economic performance. As of the Petition Date: (a) HMIT's capital account balance on account of its Class B/C Limited Partnership Interests was \$394,630,871.53; (b) Dugaboy's capital account on account of its Class A Limited Partnership Interest was \$740,081.61; (c) Strand's capital account on account of its Class A Interest was \$994,707.76; (d) Okada Individual's capital account on account of its Class A Limited Partnership Interest was \$192,754.38; (e) Okada #1's capital account on account of its Class A Limited Partnership Interest was \$38,868.17; and (f)

⁷ IRC § 704 *et seq.*; IRS Reg. 1.704-1(b)(2)(iv); LPA § 3.7.

⁸ Each of the Class 11 Holders received a Highland Schedule K-1 each year (including 2018 and 2019) reflecting, among other things, their respective share of Highland's calendar year income and losses as well as each partner's beginning and year-end capital accounts. The K-1s were derived from Highland's IRS Form 1065 U.S. Return of Partnership Income for each year (a "**Tax Return**") and were to be used by each Class 11 Holder in preparation of their own respective tax returns. Under penalty of perjury, the 2018 Tax Return was executed by Mr. Dondero (9/15/19), and the 2019 Tax Return was executed by Frank Waterhouse (9/10/20). *See* Claimant Trust's Exhibits 115 and 116, admitted into evidence during the June 25, 2025, hearing resulting in the HMIT Order [Doc. 4293].

Okada #2's capital account on account of its Class A Limited Partnership Interest was \$16,657.79. The total of these six capital accounts was \$396,613,941.24.⁹

II. The Bankruptcy Case

7. Highland commenced the Bankruptcy Case in the District of Delaware on October 16, 2019, by filing its voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Bankruptcy Case was subsequently transferred to this Court.

8. On February 22, 2021, the Bankruptcy Court entered the *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [Doc. 1943], which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Doc. 1943-1] (the “**Plan**”). The Plan went effective on August 11, 2021 [Doc. 2700] (the “**Effective Date**”).

9. On the Effective Date and in accordance with the Plan, the Claimant Trust was created pursuant to the terms of the Claimant Trust Agreement (the “**CTA**”). Pursuant to Section 5.1(c) of the CTA and in accordance with the Plan (Art. III.H.10 and 11): (a) the pre-petition Class B/C Limited Partnership Interests and the Class A Limited Partnership Interests in Highland were extinguished; (b) the Holders of allowed Class B/C Limited Partnership Interests would receive unvested Class 10 Contingent Claimant Trust Interests if and when their Equity Interests were allowed in amounts as determined under the Plan; and (c) Holders of allowed Class A Limited Partnership Interests would receive unvested Class 11 Contingent Claimant Trust Interests if and when their Equity Interests were allowed in amounts as determined under the Plan.

10. The Plan requires that Holders of Class 10 and Class 11 whose interests are allowed receive a Pro Rata share of the Contingent Claimant Trust Interest. Pro Rata means the allowed

⁹ See, e.g., Debtor's Monthly Op. Rpt. Nov. 2019 at 2. Partners' Capital 10/15/2019 \$396,614,000, Docket No. 289. Each subsequent monthly operating report also contained the identical Petition Date balance.

amount a holder's interest bears to the total allowed amount in the class.¹⁰ To determine the amount of the Contingent Claimant Trust Interests to be issued to each Holder of allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests, as applicable, the Plan and the CTA requires the calculation of a ratio equal to the amount of each Holder's allowed Class 10 or Class 11 Interest divided by the total amount of all allowed Class 10 and Class 11 Interests, as applicable.¹¹ Contingent Claimant Trust Interests distributed to the Holders of allowed Class A Limited Partnership Interests (*i.e.*, Class 11 Holders) are subordinated to the Contingent Claimant Trust Interests issued to the Holders of allowed Class B/C Limited Partnership Interests and receive nothing unless and until allowed Class 10 Interests are paid in full.¹²

11. On June 30, 2025, this Court entered the HMIT Order allowing HMIT's Class 10 Contingent Claimant Trust Interest in the fixed amount of \$336,940,230.58, based on HMIT's capital account balance in respect of its Class B/C Limited Partnership Interests as of the Petition Date (\$394,630,871.53) minus the HMIT Note Balance (\$57,690,640.95).

12. Prior to the HMIT Order, on December 27, 2024, this Court approved and entered the stipulated and agreed order (the "**HCLOM Order**") relating to the claims of Highland CLO Management, Ltd. ("**HCLOM**") pursuant to which HCLOM's claim against Highland was subordinated and then allowed as a Class 10 Contingent Claimant Trust Interest in the fixed amount of \$10,140,633.26, subject to the terms of that order.¹³ HMIT and HCLOM are the only Holders of Class 10 Interests, subject to the terms of their respective allowance orders.

¹⁰ Plan Art. I.B.97.

¹¹ See Plan Art. III.H.10 and 11; CTA § 5.1(c).

¹² See Plan Art. I.B.44 and CTA § 5.1(c).

¹³ *Stipulated and Agreed Order Resolving (A) HCLOM Ltd.'s Scheduled Claims 3.65 and 3.66 and (B) Highland Capital Management, L.P.'s (1) Objection and (2) Motion for Bad Faith Finding and Award of Attorneys' Fees Against HCLOM Ltd. and James Dondero in Connection Therewith* [Doc. 4199]. HCLOM and its control person, Mr. Dondero, expressly agreed to all terms of the HCLOM Order, and Dugaboy and HMIT approved the HCLOM Order "as to form and substance." *Id.*

13. With Class 10 Interest amounts fixed, the Plan and the CTA require the fixing of the allowed amounts of the Holders of Class 11 Interests. Unless such amounts are fixed, it is impossible to calculate the Holders' Pro Rata share of the Contingent Claimant Trust Interests as required by the Plan and the CTA.

BASIS FOR RELIEF REQUESTED

14. Under 11 U.S.C. § 502(b), this Court, "after notice and hearing, shall determine the amount of [a] claim ... as of the date of the filing of the petition, and shall allow such claim in such amount" "In determining the amount of a claim, the court is guided by otherwise applicable state or federal law, whether the claim is liquidated or contingent or if any other issues exist which bear upon the amount of the claim. ... If the claim is liquidated and properly existing under state law, the task of the court in determining the amount may be relatively straightforward." 4 COLLIER ON BANKRUPTCY ¶ 502.03.

15. To enable the Claimant Trust to complete the issuance of unvested Class 11 Contingent Claimant Trust Interests to the Holders of pre-petition Class A Limited Partnership Interests, the Court should allow the Class 11 Holders' Contingent Claimant Trust Interest in the amount of their respective Highland Class A Limited Partnership Interest capital account balances as of the Petition Date, in a manner consistent with the HMIT Order.

NO PRIOR REQUEST

16. No previous request for the relief sought herein has been made to any court.

PRAYER

17. WHEREFORE, the Claimant Trust respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the Motion and the relief requested herein as well as any further relief the Court deems just and proper.

Dated: August 8, 2025.

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

In re:	)	Chapter 11
HIGHLAND CAPITAL	)	Case No. 19-34054-
MANAGEMENT, L.P.,	)	sgj11
Reorganized Debtor.	)	
	)	

**DUGABOY INVESTMENT TRUST’S RESPONSE OPPOSING
HIGHLAND CLAIMANT TRUST’S MOTION FOR ORDER FIXING
ALLOWED AMOUNT OF CLASS 11 INTERESTS**

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The Dugaboy Investment Trust (“Dugaboy”) respectfully asks the Court to deny the *Motion for Order Fixing the Allowed Amount of Class 11 Interests*, filed by the Highland Claimant Trust (“Highland”)¹ on August 8, 2025 (Dkt. 4362).

I. INTRODUCTION

This dispute is about more than just determining the amount of Dugaboy’s² Class 11 allowed claim. It will also determine the fate of any surplus funds or assets left over after all senior claimants have been paid in full. Highland says Dugaboy’s claim should be reduced to a fixed dollar amount that puts a hard ceiling on any potential recovery. Dkt. 4362 at 1–2. Dugaboy instead contends Class 11 should share in any residual funds based on a *pro rata* percentage in proportion to its share of the equity ownership interests.³ This is not an extravagant request, as Dugaboy only owns 0.5%⁴ of the equity compared to HMIT’s 99.5%. Under Dugaboy’s approach, it has a fair chance of getting some money. Under Highland’s approach, Dugaboy gets no money. Highland is wrong, and its Motion should be denied for four reasons.

¹ Except where otherwise specified, this Response uses “Highland” to refer to Highland Claimant Trust, the Movant on this Motion.

² For simplicity, this Response uses “Dugaboy” as a shorthand for all of the Class 11 interest-holders. The claimants in Class 11 include Dugaboy, Strand Advisors, Mark Okada individually, and two Okada Family Trust entities.

³ See June 30, 2025 Hearing Transcript 245:25–246:18 (Dugaboy’s closing argument).

⁴ The 0.5% figure represents the total equity owned by all the members of Class 11. For Dugaboy by itself, its equity share is 0.1866%. See Hrg. Tr. 81:1–5.

First, both the confirmed Reorganization Plan (“Plan”), and the Claimant Trust Agreement (“CTA”) require that any excess funds or surplus assets left over after all senior creditors have been paid in full must revert to the equity interest holders, which include Dugaboy as well as HMIT.

Second, longstanding principles of bankruptcy law and controlling precedent require that any distribution of excess funds be made on a *pro rata* or “ratable” basis, meaning that whatever the actual dollar amounts, Dugaboy is entitled to share in any such distribution in proportion to its 0.5% equity interest.

Third, the absolute priority rule does not block Dugaboy from sharing in a distribution of excess funds, because any such funds will only become available after all senior classes of creditors have been paid in full. To the contrary, the absolute priority rule helps Dugaboy because it prohibits senior creditors from receiving *more* than they are owed under the Plan and directs that excess value must be allocated to junior classes of creditors or equity.

Finally, Highland’s proposed method for determining the value of Dugaboy’s claim—the same method it previously used for HMIT’s claim at the June 25, 2025 hearing⁵—must be rejected as both unreliable and contrary to the principles of

⁵ Dugaboy acknowledges that the Court has already ruled on the allowed amount of HMIT’s Class 10 claim. *See* Dkt. 4297. Dugaboy assures the Court that its continued argument on this issue is not meant to try the Court’s patience but is merely for the sake of preserving error and avoiding waiver. Discussion of HMIT is also relevant because Highland is asking the Court to take exactly the same approach to valuing Dugaboy’s interest as it did with HMIT. *See* Dkt. 4362 at 7 (asking the Court to allow the Class 11 interests “in a manner consistent with the HMIT Order”).

bankruptcy law. Highland arbitrarily chose to calculate claim values based on the “value” given in the equity holders’ limited partnership capital accounts, a number calculated for tax purposes that bears little relation to the market value of the partnership interest. And by limiting Dugaboy’s claim to a fixed (and unreliable) number derived from its capital accounts, Highland improperly deprives Dugaboy of its right to *pro rata* treatment in proportion to its ownership share.

II. BACKGROUND

Before its bankruptcy filing on October 16, 2019, the original debtor existed as a limited partnership entity named Highland Capital Management, L.P. (“HCMLP”). Dkt. 1943. As relevant here, HCMLP structured its limited partnership interests into three classes named “A”, “B”, and “C.” HMIT acquired all of the Class B and C interests, which amounted to 99.5% of HCMLP’s partnership interests. Several other entities (including Dugaboy) retained the Class A interests which amounted to the remaining 0.5% of HCMLP’s equity. Dkt. 4362 at 3. For tax purposes, HCMLP was required to maintain “limited partner capital accounts” that purported to track the value of each partner’s interest. *Id.* at 6.

On February 22, 2021, this Court confirmed the *Fifth Amended Plan of Reorganization* for HCMLP (“Plan”) [Dkt. 1943] with an effective date of August 11, 2021 [Dkt. 2700]. As relevant here, the pre-petition limited partnership interests in HCMLP would become unvested Contingent Claimant Trust interests when their equity interests were allowed by the Court under the Plan (and once allowed, those

interests would only vest after more senior creditors were paid in full). Dkt. 4362 at 5. The pre-filing Class B and C interests owned by HMIT became Class 10, and the Class A interests owned by Dugaboy and others became Class 11. *Id.*

At the June 25, 2025 hearing, the Court heard argument and evidence on determining an allowed amount for HMIT's Class 10 equity interests. Claimant Trustee James Seery explained that he used the valuation in HMIT's capital account on the date the petition was filed (\$394,630,871.53) as the basis for calculating HMIT's allowed amount for purposes of its bankruptcy claim. Hrg. Tr. 93:11–94:9. After subtracting the balance of approximately \$57 million on a note HMIT owed to Highland, Seery arrived at a claim value of \$336,940,230.58. *Id.* Despite strenuous objections from Dugaboy—which argued for calculating the allowed amounts for both HMIT and Dugaboy by using a *pro rata* percentage based on their respective 99.5%/0.5% equity ownership shares—the Court sided with Highland and allowed HMIT's Class 10 claim in the same fixed amount calculated by Seery. Dkt. 4297 ¶ 12; *see* Hrg. Tr. 245:25–247:23; 249:20–250:1.

In this Motion, Highland asks the Court to calculate Dugaboy's Class 11 allowed amount using the same method—*i.e.*, the value of its limited partner capital account as of the petition date—it has already used for HMIT. For the reasons discussed below, the Court should decline that invitation.

III. LEGAL STANDARD

Section 502 of the Bankruptcy Code provides that (subject to various exceptions not relevant here) if a claim is objected to, the Court “after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount.” 11 U.S.C. § 502(b). The Court may also “estimate” the amount of any contingent or unliquidated claim, if fixing or liquidating such claim would cause undue delay. *Id.* § 502(c). While § 502 requires the Court to determine a dollar value, it does not dictate any specific method for doing so. Instead, the Court should choose the methods and sources of information that is best suited to the circumstances. *See In re Brints Cotton Marketing, Inc.*, 737 F.2d 1338, 1341 (5th Cir. 1984) (“In estimating a claim, the bankruptcy court should use whatever method is best suited to the circumstances.”).

Section 1129 of the Bankruptcy Code sets forth the requirements that must be met for a proposed reorganization Plan to be confirmed by the bankruptcy court. One is the “Absolute Priority Rule,” which requires that the claims of each senior class of creditors be paid in full before holders of junior claims can receive anything. 11 U.S.C. § 1129(b); *In re Pacific Lumber Co.*, 584 F.3d 229, 244–45 (5th Cir. 2009). Another is that the Plan be “fair and equitable” with respect to each class of claim holders. *Id.* § 1129(b).

IV. ARGUMENT

Imagine there is money left over after paying every senior class of creditors the full amounts they are owed under the Plan. This is not farfetched. After paying off Class 9, there could be as much as \$45–\$50 million left for distribution to Classes 10 and 11. *See* Hrg. Tr. 81:15–18. HMIT has a significant interest in these funds, given its 99.5% equity ownership share. The question is whether Dugaboy can claim the remaining 0.5% of any excess funds based on its own equity rights, even if those funds exceed whatever fixed amount the Court may have used for valuing Dugaboy’s allowed claim. The answer, as explained below, is a resounding yes.

A. Excess funds and surplus assets revert to the equity interest holders.

Both the Plan and the Contingency Trust Agreement make express provision for the disposition of any funds or assets that may be left over after all classes of creditors have been paid in full under the Plan. Upon the wind-down and dissolution of the Reorganized Debtor and the Claimant Trust, “any remaining Claimant Trust Assets *that exceed the amounts required to be paid under the Plan*” will be transferred to the holders of the claimant trust interests, *i.e.*, the Class 10 and Class 11 claimants. Plan, Art. IV(B)(14) (emphasis added); *see* similar provisions at Plan IV(A), IV(C) and CTA ¶ 9.2. This is consistent with the Bankruptcy Code, which provides that any distribution of estate property must go, in the last instance, to the debtor. *See* 11 U.S.C. § 726(a)(6).

B. Dugaboy is entitled to its *pro rata* share of any excess funds.

Highland’s proposal to put a fixed ceiling on Dugaboy’s allowed claim and cut it off from any further share in excess funds is contrary to the letter and spirit of the Bankruptcy Code, the confirmed Reorganization Plan, and the Claimant Trust Agreement. All of these make clear that holders of contingent equity interests like Dugaboy are entitled to their *pro rata* proportionate ownership shares without being limited by any fixed ceiling. The Plan specifically provides that both Class 10 (HMIT) and Class 11 (Dugaboy and others) will receive their “Pro Rata share of the Contingent Claimant Trust Interests.” Plan Art. III, H(10) and (11); *see* CTA ¶ 5.1(c) (providing that Class 10 and Class 11 holders will receive contingent trust interests “*equal to the ratio*” that each holder’s allowed interest bears to the total amount of allowed interests for their respective class).

These requirements reflect the Bankruptcy Code’s statutory interest in upholding the “important norm” in corporate finance of similar treatment for similarly situated creditors. *In re Serta Simmons Bedding, Inc.*, 125 F.4th 555, 565 (5th Cir. 2024). In bankruptcy, that statutory purpose takes the form of mandates to bring about a “ratable [*i.e.*, *pro rata*] distribution” of assets among the creditors. *Brints*, 737 F.2d at 1341; *see Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 162–63 (1946) (“[A] purpose of bankruptcy is to administer an estate as to bring about a *ratable distribution* of assets among the bankrupt’s creditors.”) (emphasis added). “Ratable treatment is such an important norm that it is often

described as a lender’s ‘sacred right’ under syndicated loan agreements.” *Serta Simmons*, 125 F.4th at 565.

Disregarding these clear and powerful authorities, Highland contends that because of the absolute priority rule and contractual subordination clauses, HMIT would get 100% of any excess leftover funds—regardless of their amount—and Dugaboy would get nothing beyond the fixed ceiling of the amount allowed by the Court. Hrg. Tr. 133:9–134:3 (Seery testimony); *see* Plan ¶ I(B)(44) (stating Class A interests will be subordinated to Class B/C interests); CTA ¶5.1(c) (same). This contention is wrong, as explained next.

C. The Absolute Priority Rule does not defeat Dugaboy’s right to share in any surplus funds.

Highland misunderstands the purpose of the absolute priority rule, which is to meet the statutory requirement for “fair and equitable” treatment by ensuring each class is fully paid in order of its priority before the next junior class gets anything at all. *See* 11 U.S.C. § 1129(b)(2)(C); *In re Seaquest Diving, L.P.*, 579 F.3d 411, 420 n.5 (5th Cir. 2009) (“The absolute priority rule requires that certain classes of claimants be paid in full before any member of a subordinate class is paid.”). But in a scenario where excess cash remains after *every creditor class has been paid in full*, the absolute priority rule has served its purpose and no longer poses an obstacle to distribution of residual funds. *See, e.g., In re Introgen Therapeutics*, 429 B.R. 570, 585 (Bankr. W.D. Tex. 2010) (acknowledging that absolute priority “would not be an issue” after higher-priority classes are paid in full). Instead, here that distribution

is governed by the terms of the Plan and the Claimant Trust Agreement, which provide that excess funds will eventually be distributed to the equity interest holders (*i.e.*, HMIT and Dugaboy) in proportion to their percentage interest. *See* Section IV(A) above. In that scenario, Dugaboy’s designation under Class 11 and HMIT’s Class 10 is not a subordination; the Plan and other legal principles require that all equity holders be paid pro rata from excess funds. The designations do not strip Dugaboy of its 0.5% equity share or the right to participate in distributions of excess funds that comes with it.

If the Court allows HMIT to collect 100% (rather than its pro rata share of 99.5%) of any residual funds, while barring Dugaboy’s participation by holding it under the hard ceiling of a fixed dollar amount, it will violate an important corollary to the absolute priority rule that prohibits senior classes of claimholders from receiving *more than* the full amount they are owed under the Plan. *See, e.g., In re Idearc, Inc.*, 423 B.R. 138, 170 (Bankr. N.D. Tex. 2009) (“The corollary of the absolute priority rule is that senior classes cannot receive more than a one hundred percent (100%) recovery for their claims.”). Instead, the excess value “must be allocated to junior classes of debt or equity, as the case may be.” *In re Granite Broadcasting Corp.*, 369 B.R. 120, 140–41 (Bankr. S.D.N.Y. 2007). This rule is intended to protect junior classes from greedy overreach by senior creditors. Because there is no class more junior than Dugaboy’s Class 11, this rule is meant to protect

Dugaboy and ensure it is not wrongfully deprived of the rights and benefits of its 0.5% share.

D. No authority supports Highland’s use of limited partner capital accounts to set the proposed allowed value of the claims of Classes 10 and 11.

Although Highland’s Claimant Trustee James Seery rejected the use of a *pro rata* approach in this case, he admitted under cross-examination that using equity ownership percentages was a “standard” methodology he had employed in other cases to value a partnership interest for sale or liquidation. Hrg. Tr. 132:24–133:8. Seery also admitted that the underlying limited partnership agreement expressed HMIT’s and Dugaboy’s relative equity interests as percentages (99.5% and 0.5% respectively) and not fixed dollar amounts. *Id.* 94:10–12.

By contrast, no authority supports Seery’s arbitrary choice to use pre-petition limited partner capital accounts as the basis for calculating the value of allowed claims for equity interest holders. *See id.* 93:11–94:9. The Bankruptcy Code does not even mention (let alone require) such an approach, and it is similarly absent from both the Plan and the Claimant Trust Agreement. That’s probably for a good reason. Because partnership capital accounts are maintained and calculated largely for tax purposes (*see* Dkt. 4362 at 4), the resulting book values may bear little relation to what an equity interest might command in a market sale.

Contrary to the usual practice in complex bankruptcies, no one has performed an expert valuation of HMIT’s equity interest. *See, e.g., Granite Broadcasting*, 369

B.R. at 140–41 (describing the lengthy and detailed valuation analyses performed by both sides’ experts). Thus, little reliance can be placed on Seery’s back-of-the-envelope estimation that HMIT’s claim is worth over \$336 million. *See* Hrg. Tr. 110:14–111:6. And the Court can give no greater confidence to Highland’s assertion (based on the same dubious methodology) that Dugaboy’s interest should be capped at a fixed ceiling of \$740,081.61. *See* Dkt. 4362 at 1. This approach unfairly and inequitably cuts off Dugaboy from its right to participate in any distributions of excess assets according to its 0.5% *pro rata* equity share. Even in a bankruptcy, equity deserves to be treated equitably.

All of this acceleration of the determination of the value of equity interests is untimely and unnecessary. It puts the cart before the horse. There is no reason—and Highland has offered none—for the Court to strain to adopt a methodology to value the claim of each equity holder. The Plan takes care of this, providing that each equity holder should be paid *pro rata* from excess funds that arise. When excess funds arise, they should be divided according to the equity ownership percentages. Highland’s effort prematurely to make these determinations is without need or cause or reason and should be rejected.

V. CONCLUSION AND PRAYER

For the reasons above, Dugaboy respectfully asks the Court to deny Highland’s Motion.

Dated: September 8, 2025

Respectfully submitted,

WINSTON & STRAWN LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 8, 2025, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Geoffrey S. Harper
Geoffrey S. Harper

Highland Claimant Trust's Motion for Order Fixing Allowed Amount of Class 11 Interests [Docket No. 4384] (the "Objection") filed by The Dugaboy Investment Trust ("Dugaboy"). In further support of the Motion, the Claimant Trust states as follows:

I. PRELIMINARY STATEMENT²

1. Dugaboy's Objection impermissibly requires the rewriting of the Plan and the Claimant Trust Agreement ("CTA") so that Class 10 and Class 11 would no longer be treated as distinct Classes of Contingent Claimant Trust Interests but instead would effectively be collapsed into a single Class with Class 11 treated *pari passu* with Class 10. But Class 11 is not *pari passu* with Class 10; it is expressly subordinated to Class 10 and that Plan treatment cannot be changed.

2. Dugaboy mischaracterizes the Plan, the CTA, and the Bankruptcy Code's absolute priority rule, ignores this Court's prior orders, and renders meaningless the mandated distinction between Classes 10 and 11; indeed, under Dugaboy's new approach, the rationale for Class 11 would cease to exist. Dugaboy's proposal has no basis in law or fact and must be rejected for several reasons.

3. **First**, Dugaboy's argument that the Plan and the CTA require *pro rata* distributions between Classes 10 and 11 is plainly wrong. The Debtor's prepetition limited partnership agreement created different classes of limited partnership interests, each of which had different rights. The Plan, the Confirmation Order, and the CTA respected these differences by, among other things, creating separate classes of interests—Classes 10 and 11—and expressly subordinating Class 11 to Class 10. As a result of this priority structure, Class 10 must be paid in full before Class 11 can receive anything. Dugaboy cannot now rewrite the plain language of the Plan.

² Capitalized terms used but not defined herein have the meanings given to them in the Motion or below.

4. **Second**, Dugaboy ignores this Court's prior orders allowing the claims of the two Class 10 Interest holders (HMIT and HCLOM) in fixed dollar amounts. Consequently, Dugaboy's proposed Plan modification cannot work and would result in the disparate treatment among Class 10 Interest holders, since HCLOM is not a former limited partner and has no former prepetition percentage interest in the Debtor.

5. **Third**, Dugaboy's legal arguments in support of its Objection are misplaced. Dugaboy argues that bankruptcy law requires *pro rata* distribution to ensure that similar claims are treated the same. But, Class 10 and Class 11 Interests are not the same, were properly separately classified in the Plan, and Class 11 is expressly subordinate to Class 10. The Confirmation Order cementing that treatment is final; and notably, Dugaboy never objected to the Plan's differing treatment of Classes 10 and 11. Dugaboy's new scheme would also turn the absolute priority rule on its head by forcibly gifting Class 11, a junior class, a distribution *before* Class 10, a senior class, is paid in full.

6. Class 11 is subordinate to Class 10, and the Plan requires the fixing of the dollar amounts of the Class 10 and Class 11 Interests in order to satisfy that subordination.³ Section 502 requires the calculation of those interests as of the Petition Date, and using their respective Petition Date capital accounts is faithful to principles of partnership law, the Debtor's Limited Partnership Agreement as of the Petition Date, and the Plan. It is the only logical method to use in this case—as this Court ruled previously when fixing HMIT's Class 10 Interest.

7. For the reasons set forth herein and that will be established at the hearing, Dugaboy's Objection should be overruled, and the Motion should be granted.

³ As James Dondero and Dugaboy know, the fixing of the Class 10 Interests also enabled HMIT and HCLOM to share the prior Class 10 distributions consistent with the written agreement between them.

II. REPLY

8. Notwithstanding the plain language of the Plan, Dugaboy argues the Class 10 and Class 11 Interests should not be reduced to a fixed amount and it should share in any distributions to Class 10 based on its 0.1866% prepetition Class A limited partnership percentage interest in the Debtor. Dugaboy ignores the seniority of the Class 10 Interests already held by HMIT and HCLOM (which had no prepetition percentage interest in the Debtor) and collapses Class 10 and Class 11 into a single Class with no distinctions whatsoever. Dugaboy's proposal is contrary to the Bankruptcy Code, the Plan, the CTA, and this Court's prior orders.

9. Dugaboy pretends the Class 11 Interests are *pari passu* with the Class 10 Interests; they are not. On the Effective Date, all Highland limited partnership interests were extinguished, and the former limited partners became entitled to receive Class 10 Contingent Trust Interests if they held Class B/C Limited Partnership Interests and Class 11 Contingent Trust Interests if they held Class A Limited Partnership Interests.⁴ Dugaboy's suggestion that the Plan provides for *pro rata* treatment among holders of Class 10 and Class 11 is simply false.

10. The Plan and the CTA recognized the priorities in Highland's prepetition Limited Partnership Agreement by expressly subordinating holders of Class 11 Interests to holders of Class 10 Interests.⁵ Although Dugaboy filed an extensive objection to the Plan [Docket No. 1667], it did not object to the separate classification of Class A Limited Partnership Interests in

⁴ See, e.g., Plan, Art. III.H.10, 11 (allocating Class 10 Interests to holders of Allowed Class B/C Limited Partnership Interests and Class 11 Interests to Holders of Allowed Class A Limited Partnership Interests); CTA, § 5.1(c) ("The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the *amount* of each Holder's Allowed Class 10 or Class 11 Interest bears to the total *amount* of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan.") (emphasis added).

⁵ Plan, Art. I.A.44 ("*[T]he Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.*") (emphasis added); CTA, § 5.1(c) ("*The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.*") (emphasis added).

Class 11 and Class B/C Limited Partnership Interests in Class 10 or the subordination of Class 11 to Class 10 (nor did anyone else). And, in the Confirmation Order, this Court found the separate classification of Interests into Class 10 and Class 11 was proper because the Class B/C Limited Partnership Interests and Class A Limited Partnership Interests were not similarly situated, had different payment priorities, and required different treatment.⁶ Accordingly, Class 10 and Class 11 are not now (and never were) similarly situated and, to reflect the differences in the prepetition limited partnership interests, *the Plan expressly subordinated Class 11 to Class 10*. Class 11 cannot receive a penny until Class 10 is paid in full.

11. Dugaboy's proposed plan modification also ignores that the Class 10 Interests held by HMIT and HCLOM were previously allowed in fixed dollar amounts and are not subject to adjustment. The HCLOM Order, which Dugaboy approved, was entered on December 27, 2024, and granted HCLOM, an entity controlled by Dugaboy, an Allowed Class 10 Interest in a fixed dollar amount of \$10,140,633.26. The HCLOM Order was not appealed and is final.⁷

12. On May 19, 2025, Highland and the Claimant Trust moved, *inter alia*, to allow HMIT's Class 10 Interest in an amount equal to its capital account balance in Highland as of the Petition Date, less amounts HMIT owed the estate [Docket No. 4216] (the "HMIT Motion").⁸ On June 25, 2025, during the hearing on the HMIT Motion, Dugaboy orally objected (for the first time) to the methodology used to allow HMIT's Class 10 Interests and asked this Court not

⁶ See, e.g., Confirmation Order ¶ 36 ("The Plan properly separately classifies the Equity Interests in Class 10 ... from the Equity Interests in Class 11 ... because they represent different types of equity security interests in the Debtor and different payment priorities.").

⁷ After the HCLOM Order was entered, HMIT and HCLOM agreed to an allocation of distributions between them as the holders of Class 10 Interests. See *Intercreditor and Participation Agreement* dated as of January 10, 2025, and filed as Exhibit 69 at Docket No. 4255. HMIT and HCLOM have already given effect to their agreement by actually sharing the distributions HMIT received under its settlement agreement with Highland.

⁸ Dugaboy objected to the HMIT Motion [Docket No. 4230] and requested discovery. Highland and the Claimant Trust produced to Dugaboy voluminous discovery concerning Highland's remaining assets and liabilities and the current projected value of those assets and liabilities. Tr. (6/25/25 hearing) at 91:8-16.

to fix HMIT's Class 10 Interests but to permit Class 10 and Class 11 to receive their supposed "*pro rata*" share of the estate's remaining assets, substantively the same plan modification raised in the Objection. *See, e.g.*, Tr. (6/25/25 hearing) at 79:24-80:19; 81:1-82:15.⁹

13. On June 30, 2025, this Court entered the HMIT Order and allowed HMIT's Class 10 Interest "in the amount of \$336,940,230.58," *i.e.*, the value of HMIT's capital account on the Petition Date (\$394,630,871.53), minus the HMIT Note Balance (\$57,690,640.95).¹⁰

14. Dugaboy ignores the fixed dollar amount of HMIT's Interest and does not even consider how the final HCLOM order would be affected. The fixed amount of HCLOM's Class 10 Interest (a) was acknowledged and agreed to by Dugaboy, (b) is not subject to appeal, and (c) cannot be squared with Dugaboy's new proposal. In contrast, fixing the dollar amount of the Allowed Class 11 Interests as the Claimant Trust proposes, allows for the calculation of (i) the dollar amount of distributions to each Class 10 holder, and (ii) once Class 10 has been paid in full, the dollar amount of any theoretical distributions to each Class 11 holder, in each case, as required by the Plan, the Confirmation Order, and the CTA.

15. In short, Dugaboy fails to take into account that (a) HMIT and HCLOM's Class 10 Interests were previously allowed in a fixed amount and (b) HCLOM was never a limited partner of Highland and therefore could never receive its "*pro rata*" share of anything based on former limited partnership interests.

⁹ At the hearing, Highland and the Claimant Trust introduced significant documentary evidence, including evidence showing the current value of Highland's assets and liabilities. James P. Seery, Jr., the trustee of the Claimant Trust, also described the methodology used to value HMIT's Class 10 Interest. The evidence showed that the respective capital accounts represented each limited partner's interest in the estate's profits and losses and the approximate amount they would have expected to receive if Highland were liquidated as of the Petition Date. The evidence also showed that (a) the capital accounts were maintained in the ordinary course of Highland's business; (b) both Mr. Dondero and Mr. Waterhouse were actively involved in the calculation of each limited partner's capital accounts; and (c) both Mr. Dondero and Mr. Waterhouse signed tax documents, under penalty of perjury, attesting to the calculation of the capital accounts and each partner's allocable share of Highland's value. *See* Tr. (6/25/25 hearing) at 93:8-97:11; 110:10-111:6; Exhibits 113-118 (Docket No. 4255).

¹⁰ Dugaboy has appealed the HMIT Order; however, the HMIT Order is still binding unless and until overturned on appeal.

16. Dugaboy also now argues that treating Class 10 and Class 11 differently violates the absolute priority rule because “where excess cash remains after *every creditor class has been paid in full*, the absolute priority rule has served its purpose and no longer poses an obstacle to distribution of residual funds.”¹¹ Dugaboy is wrong because it ignores 11 U.S.C. § 1129(b)(2)(C)(ii), which provides that, absent consent, “[t]he holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.” The Confirmation Order created Class 10 and Class 11 because the Class B/C Limited Partnership Interests (placed in Class 10) and the Class A Limited Partnership Interests (placed in Class 11) were not substantially similar and had different payment priorities.¹² The Plan accounted for the differences in Highland’s limited partnership interests by subordinating Class 11 to Class 10. Allowing Class 11, a junior equity class, to receive anything of value before Class 10, a senior equity class, is paid in full violates the Plan and the absolute priority rule, too. Fixing the Class 11 amount and honoring the Plan subordination is not an option; it is required.

17. Section 502(b) of the Bankruptcy Code provides for a determination of the amount of a claim or interest “as of the date of the filing of the petition”¹³ The Claimant Trust’s detailed capital account methodology honors Section 502(b) and allows the Class 10 and Class 11 Interests at the gross amount such interest holders would have received in a hypothetical liquidation of Highland’s assets *on the Petition Date* calculated consistently with amounts set and approved (and sworn to) by Mr. Dondero and Mr. Waterhouse. Dugaboy ignores the timing requirement in Section 502(b) and seeks to allow the Class 11 Interests in

¹¹ Objection at 8-9 (emphasis in original).

¹² See, e.g., Confirmation Order ¶ 36.

¹³ 11 U.S.C. § 502(b).

amounts determined at some future date when the net assets are actually distributed.

18. Using each former limited partner’s respective Petition Date capital account to fix the dollar amount of its Interest respects (a) the way Highland allocated the value of its assets and liabilities to its limited partners prior to and on the Petition Date,¹⁴ (b) the priorities in the Limited Partnership Agreement and the Plan, (c) this Court’s prior orders, and (d) the requirements of 11 U.S.C. § 502(b). Using the capital accounts results in each former limited partner’s Interest—regardless of whether in Class 10 or Class 11—being allowed in an amount consistent with the capital account balances delivered to the partners and reported to the IRS on their respective Form K-1s both before and after the Petition Date.

Interest Holder	Class	Petition Date Capital Account Balance
HMIT	Class 10	\$394,630,871.53*
Dugaboy	Class 11	\$740,081.61
Strand Advisors, Inc.	Class 11	\$994,707.76
Mark K. Okada	Class 11	\$192,754.38
The Mark and Pamela Okada Family Trust – Exempt Trust #1	Class 11	\$38,868.17
The Mark and Pamela Okada Family Trust – Exempt Trust #2	Class 11	\$16,657.79
TOTALS:		\$396,613,941.24

19. In contrast, Dugaboy ignores (a) the priority provisions of the Limited Partnership Agreement and the resulting waterfall priorities in the Plan and CTA, (b) that HMIT’s Class 10 Interest is fixed and HCLOM’s Class 10 Interest is not only fixed but is incapable of being adjusted on a *pro rata* basis because it was never a limited partner, and (c) that the Class 11 Interests must be valued as of the Petition Date.

¹⁴ The Limited Partnership Agreement required Highland to maintain a capital account for each limited partner that was (a) credited with (i) all property contributed to Highland by such limited partner and (ii) such limited partner’s allocable share of Highland’s profits and (b) debited by (i) all property distributed to the limited partner and (ii) the limited partner’s allocable share of Highland’s losses. LPA § 3.7(a); *see also Delaware Revised Uniform Partnership Act*, § 15-401(a). Consistent with that requirement, Highland, while under Mr. Dondero’s control, continually updated each limited partner’s capital account with its allocable share of profits and losses and reported such amounts to the Internal Revenue Service under penalty of perjury as “true, correct, and complete.”

20. For the reasons set forth in the Motion and here, the Court should overrule Dugaboy's Objection and grant the Motion.

[Signature Page Follows]

WHEREFORE, for the reasons set forth above and in the Motion, the Claimant Trust respectfully requests that the Court overrule the Objection and grant the Motion.

September 15, 2025

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**FOURTH AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.**

THIS FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into on this 24th day of December, 2015, to be effective as of December 24, 2015, by and among Strand Advisors, Inc., a Delaware corporation ("**Strand**"), as General Partner, the Limited Partners party hereto, and any Person hereinafter admitted as a Limited Partner.

Certain terms used in this Agreement are defined in Article 2.

ARTICLE 1

GENERAL

1.1. Continuation. Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act.

1.2. Name. The name of the Partnership shall be, and the business of the Partnership shall be conducted under the name of Highland Capital Management, L.P. The General Partner, in its sole and unfettered discretion, may change the name of the Partnership at any time and from time to time and shall provide Limited Partners with written notice of such name change within twenty (20) days after such name change.

1.3. Purpose. The purpose and business of the Partnership shall be the conduct of any business or activity that may lawfully be conducted by a limited partnership organized pursuant to the Delaware Act. Any or all of the foregoing activities may be conducted directly by the Partnership or indirectly through another partnership, joint venture, or other arrangement.

1.4. Term. The Partnership was formed as a limited partnership on July 7, 1997, and shall continue until terminated pursuant to this Agreement.

1.5. Partnership Offices; Addresses of Partners.

(a) Partnership Offices. The registered office of the Partnership in the State of Delaware shall be 1013 Centre Road, Wilmington, Delaware 19805-1297, and its registered agent for service of process on the Partnership at that registered office shall be Corporation Service Company, or such other registered office or registered agent as the General Partner may from time to time designate. The principal office of the Partnership shall be 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other place as the General Partner may from time to time designate. The Partnership may maintain offices at such other place or places as the General Partner deems advisable.

(b) Addresses of Partners. The address of the General Partner is 300 Crescent Court, Suite 700, Dallas, Texas 75201. The address of each Limited Partner shall be the address of that Limited Partner appearing on the books and records of the Partnership. Each Limited Partner agrees to provide the General Partner with prompt written notice of any change in his/her/its address.

ARTICLE 2

DEFINITIONS

2.1. Definitions. The following definitions shall apply to the terms used in this Agreement, unless otherwise clearly indicated to the contrary in this Agreement:

“Additional Capital Contribution” has the meaning set forth in Section 3.1(b) of this Agreement.

“Adjusted Capital Account Deficit” means, with respect to any Partner, the deficit balance, if any, in the Capital Account of that Partner as of the end of the relevant Fiscal Year, or other relevant period, giving effect to all adjustments previously made thereto pursuant to Section 3.7 and further adjusted as follows: (i) credit to that Capital Account, any amounts which that Partner is obligated or deemed obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c); (ii) debit to that Capital Account, the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6); and (iii) to the extent required under the Treasury Regulations, credit to that Capital Account (A) that Partner’s share of “minimum gain” and (B) that Partner’s share of “partner nonrecourse debt minimum gain.” (Each Partner’s share of the minimum gain and partner nonrecourse debt minimum gain shall be determined under Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5), respectively.)

“Affiliate” means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term *“control”* means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting Securities, by contract or otherwise.

“Agreement” means this Fourth Amended and Restated Agreement of Limited Partnership, as it may be amended, supplemented, or restated from time to time.

“Business Day” means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States or the State of Texas shall not be regarded as a Business Day.

“Capital Account” means the capital account maintained for a Partner pursuant to Section 3.7(a).

“Capital Contribution” means, with respect to any Partner, the amount of money or property contributed to the Partnership with respect to the interest in the Partnership held by that Person.

“Certificate of Limited Partnership” means the Certificate of Limited Partnership filed with the Secretary of State of Delaware by the General Partner, as that Certificate may be amended, supplemented or restated from time to time.

“Class A Limited Partners” means those Partners holding a Class A Limited Partnership Interest, as shown on Exhibit A.

“Class A Limited Partnership Interest” means a Partnership Interest held by a Partner in its capacity as a Class A Limited Partner.”

“Class B Limited Partner” means those Partners holding a Class B Limited Partnership Interest, as shown on Exhibit A.

“Class B Limited Partnership Interest” means a Partnership Interest held by a Partner in its capacity as a Class B Limited Partner.”

“Class B NAV Ratio Trigger Period” means any period during which the Class B Limited Partner’s aggregate capital contributions, including the original principal balance of the Contribution Note, and reduced by the aggregate amount of distributions to the Class B Limited Partner, exceed 75 percent of the product of the Class B Limited Partner’s Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class B NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class B NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class B NAV Ratio Trigger Period.

“Class C Limited Partner” means those Partners holding a Class C Limited Partnership Interest, as shown on Exhibit A.

“Class C Limited Partnership Interest” means a Partnership Interest held by a Partner in its capacity as a Class C Limited Partner.”

“Class C NAV Ratio Trigger Period” means any period during which an amount equal to \$93,000,000.00 reduced by the aggregate amount of distributions to the Class C Limited Partner after the Effective Date exceeds 75 percent of the product of the Class C Limited Partner’s Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class C NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class C NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class C NAV Ratio Trigger Period.

“Code” means the Internal Revenue Code of 1986, as amended and in effect from time to time.

“Contribution Note” means that certain Secured Promissory Note dated December 21, 2015 by and among Hunter Mountain Investment Trust, as maker, and the Partnership as Payee.

“Default Loan” has the meaning set forth in Section 3.1(c)(i).

“Defaulting Partner” has the meaning set forth in Section 3.1(c).

“Delaware Act” means the Delaware Revised Uniform Limited Partnership Act, Part IV, Title C, Chapter 17 of the Delaware Corporation Law Annotated, as it may be amended, supplemented or restated from time to time, and any successor to that Act.

“Effective Date” means the date first recited above.

“Fiscal Year” has the meaning set forth in Section 3.11(b).

"Founding Partner Group" means, all partners holding partnership interests in the Partnership immediately before the Effective Date.

"General Partner" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a General Partner pursuant to the terms of this Agreement; and (ii) has not ceased to be a General Partner pursuant to the terms of this Agreement.

"Limited Partner" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a Limited Partner pursuant to the terms of this Agreement, and (ii) has not ceased to be a Limited Partner pursuant to the terms of this Agreement.

"Liquidator" has the meaning set forth in Section 5.3.

"Losses" means, for each Fiscal Year, the losses and deductions of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any expenditures described in Code Section 705(a)(2)(B).

"Majority Interest" means the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners.

"NAV Ratio Trigger Period" means a Class B NAV Ratio Trigger Period or a Class C NAV Ratio Trigger Period.

"Net Increase in Working Capital Accounts" means the excess of (i) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the end of the period being measured over (ii) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the beginning of the period being measured; provided, however, that amounts within each of the aforementioned categories shall be excluded from the calculation to the extent they are specifically identified as being derived from investing or financing activities. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership and appropriate adjustments may be made to the extent the Partnership adds new ledger accounts to its books and records that are current assets or current liabilities.

"New Issues" means Securities that are considered to be "new issues," as defined in the Conduct Rules of the National Association of Securities Dealers, Inc.

"Nonrecourse Deduction" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1), as computed under Treasury Regulations Section 1.704-2(c).

"Nonrecourse Liability" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"Operating Cash Flow" means Total Revenue less Total Operating Expenses plus Depreciation & Amortization less Net Increase in Working Capital Accounts year over year. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership.

“*Partner*” means a General Partner or a Limited Partner.

“*Partner Nonrecourse Debt*” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4).

“*Partner Nonrecourse Deductions*” has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2).

“*Partner Nonrecourse Debt Minimum Gain*” has the meaning set forth in Treasury Regulations Section 1.704-2(i)(5).

“*Partnership*” means Highland Capital Management, L.P., the Delaware limited partnership established pursuant to this Agreement.

“*Partnership Capital*” means, as of any relevant date, the net book value of the Partnership’s assets.

“*Partnership Interest*” means the interest acquired by a Partner in the Partnership including, without limitation, that Partner’s right: (a) to an allocable share of the Profits, Losses, deductions, and credits of the Partnership; (b) to a distributive share of the assets of the Partnership; (c) if a Limited Partner, to vote on those matters described in this Agreement; and (d) if the General Partner, to manage and operate the Partnership.

“*Partnership Minimum Gain*” has the meaning set forth in Treasury Regulations Section 1.704-2(d).

“*Percentage Interest*” means the percentage set forth opposite each Partner’s name on Exhibit A as such Exhibit may be amended from time to time in accordance with this Agreement.

“*Person*” means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

“*Priority Distributions*” has the meaning set forth in Section 3.9(b).

“*Profits*” means, for each Fiscal Year, the income and gains of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership’s method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership’s information tax return filed for federal income tax purposes, plus any income described in Code Section 705(a)(1)(B).

“*Profits Interest Partner*” means any Person who is issued a Partnership Interest that is treated as a “profits interest” for federal income tax purposes.

“*Purchase Notes*” means those certain Secured Promissory Notes of even date herewith by and among Hunter Mountain Investment Trust, as maker, and The Dugaboy Investment Trust, The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #1, and The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #2, each as Payees of the respective Secured Promissory Notes.

“*Record Date*” means the date established by the General Partner for determining the identity of Limited Partners entitled to vote or give consent to Partnership action or entitled to exercise rights in respect of any other lawful action of Limited Partners.

“*Second Amended Buy-Sell and Redemption Agreement*” means that certain Second Amended and Restated Buy-Sell and Redemption Agreement, dated December 21, 2015, to be effective as of December 21, 2015 by and between the Partnership and its Partners, as may be amended, supplemented, or restated from time to time.

“*Securities*” means the following: (i) securities of any kind (including, without limitation, “securities” as that term is defined in Section 2(a)(1) of the Securities Act; (ii) commodities of any kind (as that term is defined by the U.S. Securities Laws and the rules and regulations promulgated thereunder); (iii) any contracts for future or forward delivery of any security, commodity or currency; (iv) any contracts based on any securities or group of securities, commodities or currencies; (v) any options on any contracts referred to in clauses (iii) or (iv); or (vi) any evidences of indebtedness (including participations in or assignments of bank loans or trade credit claims). The items set forth in clauses (i) through (vi) herein include, but are not limited to, capital stock, common stock, preferred stock, convertible securities, reorganization certificates, subscriptions, warrants, rights, options, puts, calls, bonds, mutual fund interests, debentures, notes, certificates of deposit, letters of credit, bankers acceptances, trust receipts and other securities of any corporation or other entity, whether readily marketable or not, rights and options, whether granted or written by the Partnership or by others, treasury bills, bonds and notes, any securities or obligations issued or guaranteed by the United States or any foreign country or any state or possession of the United States or any foreign country or any political subdivision or agency or instrumentality of any of the foregoing, and derivatives of any of the foregoing.

“*Securities Act*” means the Securities Act of 1933, as amended, and any successor to such statute.

“*Substitute Limited Partner*” has the meaning set forth in Section 4.6(a).

“*Transfer*” or derivations thereof, of a Partnership Interest means, as a noun, the transfer, sale, assignment, exchange, pledge, hypothecation or other disposition of a Partnership Interest, or any part thereof, directly or indirectly, and as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate or otherwise dispose of.

“*Treasury Regulations*” means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

2.2. Other Definitions. All terms used in this Agreement that are not defined in this Article 2 have the meanings contained elsewhere in this Agreement.

ARTICLE 3

FINANCIAL MATTERS

3.1. Capital Contributions.

(a) Initial Capital Contributions. The initial Capital Contribution of each Partner shall be set forth in the books and records of the Partnership.

(b) Additional Capital Contributions.

(i) The General Partner, in its reasonable discretion and for a *bona fide* business purpose, may request in writing that the Founding Partner Group make additional Capital Contributions in proportion to their Percentage Interests (each, an “*Additional Capital Contribution*”).

(ii) Any failure by a Partner to make an Additional Capital Contribution requested under Section 3.1(b)(i) on or before the date on which that Additional Capital Contribution was due shall result in the Partner being in default.

(c) Consequences to Defaulting Partners. In the event a Partner is in default under Section 3.1(b) (a “*Defaulting Partner*”), the Defaulting Partner, in its sole and unfettered discretion, may elect to take either one of the option set forth below.

(i) Default Loans. If the Defaulting Partner so elects, the General Partner shall make a loan to the Defaulting Partner in an amount equal to that Defaulting Partner’s additional capital contribution (a “*Default Loan*”). A Default Loan shall be deemed advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the Applicable Federal Mid-Term Rate (determined by the Internal Revenue Service for the month in which the loan is deemed made) from the date actually advanced until the same is repaid in full. The term of any Default Loan shall be six (6) months, unless otherwise extended by the General Partner in its sole and unfettered discretion. If the General Partner makes a Default Loan, the Defaulting Partner shall not receive any distributions pursuant to Section 3.9(a) or Section 5.3 or any proceeds from the Transfer of all or any part of its Partnership Interest while the Default Loan remains unpaid. Instead, the Defaulting Partner’s share of distributions or such other proceeds shall (until all Default Loans and interest thereon shall have been repaid in full) first be paid to the General Partner. Such payments shall be applied first to the payment of interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Partner. The Defaulting Partner shall be liable for the reasonable fees and expenses incurred by the General Partner (including, without limitation, reasonable attorneys’ fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Partner shall have the right to repay, in full, the Default Loan (including interest and any other charges). If the General Partner makes a Default Loan, the Defaulting Partner shall be deemed to have pledged to the General Partner and granted to the General Partner a continuing first priority security interest in, all of the Defaulting Partner’s Partnership Interest to secure the payment of the principal of, and interest on, such Default Loan in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Defaulting Partner shall promptly execute, acknowledge and deliver such financing statements, continuation statements or other documents and take such other actions as the General Partner shall request in writing in order to perfect or continue the perfection of such security interest; and, if the Defaulting Partner shall fail to do so within seven (7) days after the Defaulting Partner’s receipt of a notice making demand therefor, the General Partner is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Partner, to execute, acknowledge and deliver all such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The General Partner shall, prior to exercising any right or remedy (whether at law, in equity or pursuant to the terms hereof) available to it in connection with such security interest, provide to the Defaulting Partner a notice, in reasonable detail, of the right or remedy to be exercised and the intended timing of such exercise which shall not be less than five (5) days following the date of such notice.

(ii) Reduction of Percentage Interest. If the Defaulting Partner does not elect to obtain a Default Loan pursuant to Section 3.1(c)(i), the General Partner shall reduce the Defaulting Partner's Percentage Interest in accordance with the following formula:

The Defaulting Partner's new Percentage Interest shall equal the product of (1) the Defaulting Partner's current Percentage Interest, multiplied by (2) the quotient of (a) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), divided by (b) the sum of (i) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), plus (ii) the amount of the additional capital contribution that such Defaulting Partner failed to make when due.

To the extent any downward adjustment is made to the Percentage Interest of a Partner pursuant to this Section 3.1(c)(ii), any resulting benefit shall accrue to the Partners (other than the Defaulting Partner) in proportion to their respective Percentage Interests.

3.2. Allocations of Profits and Losses.

(a) Allocations of Profits. Except as provided in Sections 3.4, 3.5, and 3.6, Profits for any Fiscal Year will be allocated to the Partners as follows:

(i) First, to the Partners until cumulative Profits allocated under this Section 3.2(a)(i) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(iii) for all prior periods in the inverse order in which such Losses were allocated; and

(ii) Next, to the Partners until cumulative Profits allocated under this Section 3.2(a)(ii) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(ii) for all prior periods in the inverse order in which such Losses were allocated; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be allocated as follows:

(i) First, to the Partners until cumulative Losses allocated under this Section 3.2(b)(i) for all prior periods equal the cumulative Profits allocated to the Partners under Section 3.2(a)(iii) for all prior periods in the inverse order in which such Profits were allocated; and

(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; *provided, however*, losses shall first be allocated to reduce amounts that were last allocated to the Capital Accounts of the Partners; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(c) Limitation on Loss Allocations. If any allocation of Losses would cause a Limited Partner to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the General Partner.

3.3. Allocations on Transfers. Taxable items of the Partnership attributable to a Partnership Interest that has been Transferred (including the simultaneous decrease in the Partnership Interest of existing Partners resulting from the admission of a new Partner) shall be allocated in accordance with Section 4.3(d).

3.4. Special Allocations. If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Partnership Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Partner shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(a) is intended to comply with the partnership minimum gain chargeback requirements of the Treasury Regulations and shall be subject to all exceptions provided therein.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3 (other than Section 3.4(a)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Partner with a share of such Partner Nonrecourse Debt Minimum Gain as of the beginning of the year shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in an amount equal to that Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of the Treasury Regulations, shall be interpreted consistently with the Treasury Regulations and shall be subject to all exceptions provided therein.

(c) Qualified Income Offset. If a Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), then items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible; *provided, however*, an allocation pursuant to this Section 3.4(c) shall be made if and only to the extent that the Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.4(c).

(d) Gross Income Allocation. If a Partner has a deficit Capital Account at the end of any Fiscal Year of the Partnership that exceeds the sum of (i) the amount the Partner is obligated to restore, and (ii) the amount the Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), then each such Partner shall be specially allocated items of income and gain of the Partnership in the amount of the excess as quickly as possible; *provided, however*, an allocation pursuant to this Section 3.4(d) shall be made if and only to

the extent that the Partner would have a deficit Capital Account in excess of that sum after all other allocations provided for in this Article 3 have been tentatively made without considering Section 3.4(c) or 3.4(d).

(e) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made shall be allocated among the Partners in accordance with their Percentage interests.

(f) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Partnership under Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

(h) Section 481 Adjustments. Any allocable items of income, gain, expense, deduction or credit required to be made by Section 481 of the Code as the result of the sale, transfer, exchange or issuance of a Partnership Interest will be specially allocated to the Partner receiving said Partnership Interest whether such items are positive or negative in amount.

3.5. Curative Allocations. The “*Basic Regulatory Allocations*” consist of (i) the allocations pursuant to Section 3.2(c), and (ii) the allocations pursuant to Sections 3.4. Notwithstanding any other provision of this Agreement, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of the allocations of other items and the Basic Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 3.5 shall be made with respect to allocations pursuant to Section 3.4 (g) and (h) only to the extent that it is reasonably determined that those allocations will otherwise be inconsistent with the economic agreement among the Partners. To the extent that a special allocation under Section 3.4 is determined not to comply with applicable Treasury Regulations, then the Partners intend that the items shall be allocated in accordance with the Partners’ varying Percentage Interests throughout each tax year during which such items are recognized for tax purposes.

3.6. Code Section 704(c) Allocations. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation at the time of the contribution between the tax basis of the property to the Partnership and the fair market value of that property. Except as otherwise provided herein, any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the Capital Account of any Partner or the share

of Profits, Losses, other tax items or distributions of any Partner pursuant to any provision of this Agreement.

3.7. Capital Accounts.

(a) Maintenance of Capital Accounts. The Partnership shall establish and maintain a separate capital account ("Capital Account") for each Partner in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), subject to and in accordance with the provisions set forth in this Section 3.7.

(i) The Capital Account balance of each Partner shall be credited (increased) by (A) the amount of cash contributed by that Partner to the capital of the Partnership, (B) the fair market value of property contributed by that Partner to the capital of the Partnership (net of liabilities secured by that contributed property that the Partnership assumes or takes subject to under Code Section 752), and (C) that Partner's allocable share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Sections 3.4 and 3.5; and

(ii) The Capital Account balance of each Partner shall be debited (decreased) by (A) the amount of cash distributed to that Partner by the Partnership, (B) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by that distributed property that such Partner assumes or takes subject to under Code Section 752), (C) that Partner's allocable share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (D) that Partner's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Sections 3.2, 3.4 and 3.5.

The provisions of this Section 3.7 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The General Partner may modify the manner in which the Capital Accounts are maintained under this Section 3.7 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions.

(b) Negative Capital Accounts. If any Partner has a deficit balance in its Capital Account, that Partner shall have no obligation to restore that negative balance or to make any Capital Contribution by reason thereof, and that negative balance shall not be considered an asset of the Partnership or of any Partner.

(c) Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Capital Accounts.

(d) No Withdrawal. No Partner shall be entitled to withdraw any part of his/her/its Capital Contribution or his/her/its Capital Account or to receive any distribution from the Partnership, except as provided in Section 3.9 and Article 5.

(e) Loans From Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

(f) Revaluations. The Capital Accounts of the Partners shall not be "booked-up" or "booked-down" to their fair market values under Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f) or otherwise.

3.8. Distributive Share for Tax Purpose. All items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated among the Partners in accordance with the allocations of Profits and Losses hereunder as determined by the General Partner in its sole and unfettered discretion. Notwithstanding the foregoing, the General Partner may (i) as to each New Issue, specially allocate to the Partners who were allocated New Issue Profit from that New Issue any short-term capital gains realized during the Fiscal Year upon the disposition of such New Issue during that Fiscal Year, and (ii) specially allocate items of gain (or loss) to Partners who withdraw capital during any Fiscal Year in a manner designed to ensure that each withdrawing Partner is allocated gain (or loss) in an amount equal to the difference between that Partner's Capital Account balance (or portion thereof being withdrawn) at the time of the withdrawal and the tax basis for his/her/ its Partnership Interest at that time (or proportionate amount thereof); *provided, however*, that the General Partner may, without the consent of any other Partner, (a) alter the allocation of any item of taxable income, gain, loss, deduction or credit in any specific instance where the General Partner, in its sole and unfettered discretion, determines such alteration to be necessary or appropriate to avoid a materially inequitable result (e.g., where the allocation would create an inappropriate tax liability); and/or (b) adopt whatever other method of allocating tax items as the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the Treasury Regulations under Code Sections 704(b) and 704(c).

3.9. Distributions.

(a) General. The General Partner may make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness; *provided, however*, that the General Partner may not make non-pro rata distributions under this Section 3.9(a) during an NAV Ratio Trigger Period without the consent of the Class B Limited Partner (in the case of a Class B NAV Ratio Trigger Period) and/or the Class C Limited Partner (in the case of a Class C NAV Ratio Trigger Period); *provided, further* this provision should not be interpreted to limit in any way the General Partner's ability to make non-pro rata tax distributions under Section 3.9(c) and Section 3.9(f). The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Any distributions made to the Class B Limited Partner or the Class C Limited Partner pursuant to Section 3.9(b) shall reduce distributions otherwise allocable to such Partners under this Section 3.9(a) until such aggregate reductions are equal to the aggregate distributions made to the Class B Partners and the Class C Partners under Section 3.9(b).

(b) Priority Distributions. Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("**Priority Distributions**") pro-rata among the Class B Limited Partner and the Class C Limited Partner in accordance with their relative Percentage Interests:

(i) No later than March 31st of each calendar year, commencing March 31, 2017, an amount equal to \$1,600,000.00;

(ii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records;

(iii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year; and

(iv) No later than December 24th of each year, commencing December 24, 2016, an amount equal to the aggregate annual principal and interest payments on the Purchase Notes for the then current year.

(c) Tax Distributions. The General Partner may, in its sole discretion, declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "***Tax Distribution***"). The General Partner may, in its discretion, make Tax Distributions to the Founding Partner Group without also making Tax Distributions to other Partners; provided, however, that if the General Partner makes Tax Distributions to the Founding Partner Group, Tax Distributions must also be made the Class B Limited Partner to the extent the Class B Limited Partner provides the Partnership with documentation showing it is subject to an entity-level federal income tax obligation. Notwithstanding anything else in this Agreement, the General Partner may declare and pay Tax Distributions even if such Tax Distributions cause the Partnership to be unable to make Priority Distributions under Section 3.9(b).

(d) Payments Not Deemed Distributions. Any amounts paid pursuant to Sections 4.1(e) or 4.1(h) shall not be deemed to be distributions for purposes of this Agreement.

(e) Withheld Amounts. Notwithstanding any other provision of this Section 3.9 to the contrary, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership with respect to that Partner as a result of that Partner's participation in the Partnership. If and to the extent that the Partnership shall be required to withhold or pay any such taxes, that Partner shall be deemed for all purposes of this Agreement to have received a payment from the Partnership as of the time that withholding or tax is paid, which payment shall be deemed to be a distribution with respect to that Partner's Partnership Interest to the extent that the Partner (or any successor to that Partner's Partnership Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which that Partner is entitled for that period, the amount of such excess shall be considered a loan from the Partnership to that Partner. Such loan shall bear interest (which interest shall be treated as an item of income to the Partnership) at the "Applicable Federal Rate" (as defined in the Code), as determined hereunder from time to time, until discharged by that Partner by repayment, which may be made in the sole and unfettered discretion of the General Partner out of distributions to which that Partner would otherwise be subsequently entitled. Any withholdings authorized by this Section 3.9(d) shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel or other evidence satisfactory to the General Partner to the effect that a lower rate is applicable, or that no withholding is applicable.

(f) Special Tax Distributions. The Partnership shall, upon request of such Founding Partner, make distributions to the Founding Partners (or loans, at the election of the General Partner) in an amount necessary for each of them to pay their respective federal income tax obligations incurred through the effective date of the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., the predecessor to this Agreement.

(g) Tolling of Priority Distributions. In the event of a "Honis Trigger Event," as defined in the Second Amended Buy-Sell and Redemption Agreement, the Partnership shall not make any distributions, including priority distributions under Section 3.9(b), to the Class B Limited Partner or the Class C Limited Partner until such time as a replacement trust administrator, manager and general partner,

as applicable, acceptable to the Partnership in its sole discretion, as indicated by an affirmative vote of consent by a Majority Interest, shall be appointed to the Class B Limited Partner/Class C Limited Partner and any of its direct or indirect owners that have governing documents directly affected by a Honis Trigger Event.

3.10. Compensation and Reimbursement of General Partner.

(a) Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that no compensation above five million dollars per year may be approved, even by a Majority Interest, during a NAV Ratio Trigger Period.

(b) Reimbursement for Expenses. In addition to amounts paid under other Sections of this Agreement, the General Partner and its Affiliates shall be reimbursed for all expenses, disbursements, and advances incurred or made, and all fees, deposits, and other sums paid in connection with the organization and operation of the Partnership, the qualification of the Partnership to do business, and all related matters.

3.11. Books, Records, Accounting, and Reports.

(a) Records and Accounting. The General Partner shall keep or cause to be kept appropriate books and records with respect to the Partnership's business, which shall at all times be kept at the principal office of the Partnership or such other office as the General Partner may designate for such purpose. The books of the Partnership shall be maintained for financial reporting purposes on the accrual basis or on a cash basis, as the General Partner shall determine in its sole and unfettered discretion, in accordance with generally accepted accounting principles and applicable law. Upon reasonable request, the Class B Limited Partner or the Class C Limited Partner may inspect the books and records of the Partnership.

(b) Fiscal Year. The fiscal year of the Partnership shall be the calendar year unless otherwise determined by the General Partner in its sole and unfettered discretion.

(c) Other Information. The General Partner may release information concerning the operations of the Partnership to any financial institution or other Person that has loaned or may loan funds to the Partnership or the General Partner or any of its Affiliates, and may release such information to any other Person for reasons reasonably related to the business and operations of the Partnership or as required by law or regulation of any regulatory body.

(d) Distribution Reporting to Class B Limited Partner and Class C Limited Partner. Upon request, the Partnership shall provide the Class B Limited Partner and/or the Class C Limited Partner information on any non-pro rata distributions made under Section 3.9 to Partners other than the Partner requesting the information.

3.12. Tax Matters.

(a) Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gain, loss, deduction, credit and other items necessary for federal, state and local income tax purposes. The General Partner shall deliver to each Partner as copy of his/her/its IRS Form K-1 as soon as practicable after the end of the Fiscal Year, but in no event later than October 1. The classification, realization, and recognition of income, gain, loss, deduction, credit and

other items shall be on the cash or accrual method of accounting for federal income tax purposes, as the General Partner shall determine in its sole and unfettered discretion. The General Partner in its sole and unfettered discretion may pay state and local income taxes attributable to operations of the Partnership and treat such taxes as an expense of the Partnership.

(b) Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and unfettered discretion, determine whether to make any available tax election.

(c) Tax Controversies. Subject to the provisions hereof, the General Partner is designated the Tax Matters Partner (as defined in Code Section 6231), and is authorized and required to represent the Partnership, at the Partnership's expense, in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner in connection with such proceedings.

(d) Taxation as a Partnership. No election shall be made by the Partnership or any Partner for the Partnership to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF PARTNERS

4.1. Rights and Obligations of the General Partner. In addition to the rights and obligations set forth elsewhere in this Agreement, the General Partner shall have the following rights and obligations:

(a) Management. The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and Limited Partners shall have no right of control over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any provision of this Agreement, the General Partner shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including, without limitation: (i) the determination of the activities in which the Partnership will participate; (ii) the performance of any and all acts necessary or appropriate to the operation of any business of the Partnership (including, without limitation, purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables and any other obligations); (iii) the procuring and maintaining of such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partner; (iv) the acquisition, disposition, sale, mortgage, pledge, encumbrance, hypothecation, of exchange of any or all of the assets of the Partnership; (v) the execution and delivery on behalf of, and in the name of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale and any and all other contracts or instruments necessary or incidental to the conduct of the Partnership's business; (vi) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurrence of any obligations it deems necessary or advisable for the conduct of the activities of the Partnership, including, without limitation, the payment of compensation and reimbursement to the General Partner and its Affiliates pursuant to Section 3.10; (vii) the use of the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms it sees fit, including, without limitation, the financing of operations of the Partnership, the lending of funds to other Persons, and the repayment of obligations

of the Partnership; (viii) the negotiation, execution, and performance of any contracts that it considers desirable, useful, or necessary to the conduct of the business or operations of the Partnership or the implementation of the General Partner's powers under this Agreement; (ix) the distribution of Partnership cash or other assets; (x) the selection, hiring and dismissal of employees, attorneys, accountants, consultants, contractors, agents and representatives and the determination of their compensation and other terms of employment or hiring; (xi) the formation of any further limited or general partnerships, joint ventures, or other relationships that it deems desirable and the contribution to such partnerships, ventures, or relationships of assets and properties of the Partnership; and (xii) the control of any matters affecting the rights and obligations of the Partnership, including, without limitation, the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits.

(b) Certificate of Limited Partnership. The General Partner caused the Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Delaware as required by the Delaware Act and shall cause to be filed such other certificates or documents (including, without limitation, copies, amendments, or restatements of this Agreement) as may be determined by the General Partner to be reasonable and necessary or appropriate for the formation, qualification, or registration and operation of a limited partnership (or a partnership in which Limited Partners have limited liability) in the State of Delaware and in any other state where the Partnership may elect to do business.

(c) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser or other Person, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to verify any representation by the General Partner as to its authority to encumber, sell, or otherwise use any assets or properties of the Partnership, and any such lender, purchaser, or other Person shall be entitled to rely exclusively on such representations and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against any such lender, purchaser, or other Person to contest, negate, or disaffirm any action of the General Partner in connection with any such sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, and each such Person shall be entitled to rely on the assumptions that the Partnership has been duly formed and is validly in existence. In no event shall any such Person be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative, and every contract, agreement, deed, mortgage, security agreement, promissory note, or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i), at the time of the execution and delivery thereof, this Agreement was in full force and effect; (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership; and (iii) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

(d) Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner. The General Partner may, in its sole and unfettered discretion, deposit funds of the Partnership in a central disbursing account maintained by or in the name of the General Partner, the Partnership, or any other Person into which funds of the General Partner, the Partnership, or other Persons are also deposited; *provided, however*, at all times books of account are maintained that show the amount of funds of the Partnership on deposit in such account and interest accrued with respect to such funds as credited to the Partnership. The General Partner may use the funds of the Partnership as compensating balances for its benefit; *provided, however*, such funds do

not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, employee, agent, representative, or Affiliate thereof. Nothing in this Section 4.1(d) shall be deemed to prohibit or limit in any manner the right of the Partnership to lend funds to the General Partner or any Affiliate thereof pursuant to Section 4.1(e)(i). All withdrawals from or charges against such accounts shall be made by the General Partner or by its representatives. Funds of the Partnership may be invested as determined by the General Partner in accordance with the terms and provisions of this Agreement.

(e) Loans to or from General Partner: Contracts with Affiliates; Joint Ventures.

(i) The General Partner or any Affiliate of the General Partner may lend to the Partnership funds needed by the Partnership for such periods of time as the General Partner may determine; *provided, however*, the General Partner or its Affiliate may not charge the Partnership interest at a rate greater than the rate (including points or other financing charges or fees) that would be charged the Partnership (without reference to the General Partner's financial abilities or guaranties) by unrelated lenders on comparable loans. The Partnership shall reimburse the General Partner or its Affiliate, as the case may be, for any costs incurred by the General Partner or that Affiliate in connection with the borrowing of funds obtained by the General Partner or that Affiliate and loaned to the Partnership. The Partnership may loan funds to the General Partner and any member of the Founding Partner Group at the General Partner's sole and exclusive discretion.

(ii) The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any service rendered for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership.

(iii) The Partnership may Transfer any assets to joint ventures or other partnerships in which it is or thereby becomes a participant upon terms and subject to such conditions consistent with applicable law as the General Partner deems appropriate; *provided, however*, that the Partnership may not transfer any asset to the General Partner or one of its Affiliates during any NAV Ratio Trigger Period for consideration less than such asset's fair market value.

(f) Outside Activities' Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.

(g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.

(h) Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively,

the “GP Party”), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership’s business, including, without limitation, attorneys’ fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however*, the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct. The Partnership, in the sole and unfettered discretion of the General Partner, may indemnify and hold harmless any Limited Partner, employee, agent, or representative of the Partnership, any Person who is or was serving at the request of the Partnership acting through the General Partner as a director, officer, partner, trustee, employee, agent, or representative of another corporation, partnership, joint venture, trust, or other enterprise, and any other Person to the extent determined by the General Partner in its sole and unfettered discretion, but in no event shall such indemnification exceed the indemnification permitted by the Delaware Act. Notwithstanding anything to the contrary in this Section 4.1(h) or elsewhere in this Agreement, no amendment to the Delaware Act after the date of this Agreement shall reduce or limit in any manner the indemnification provided for or permitted by this Section 4.1(h) unless such reduction or limitation is mandated by such amendment for limited partnerships formed prior to the enactment of such amendment. In no event shall Limited Partners be subject to personal liability by reason of the indemnification provisions of this Agreement.

(i) Liability of General Partner.

(i) Neither the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct.

(ii) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its directors, officers, employees, agents, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(j) Reliance by General Partner.

(i) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner believes to be within such Person’s professional or expert competence shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(k) The General Partner may, from time to time, designate one or more Persons to be officers of the Partnership. No officer need be a Partner. Any officers so designated shall have such authority and perform such duties as the General Partner may, from time to time, delegate to them. The General Partner may assign titles to particular officers, including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer. Each officer shall hold office until such Person’s successor shall be duly designated and shall qualify or until such Person’s death or

until such Person shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Partnership shall be fixed from time to time by the General Partner. Any officer may be removed as such, either with or without cause, by the General Partner whenever in the General Partner's judgment the best interests of the Partnership will be served thereby. Any vacancy occurring in any office of the Partnership may be filled by the General Partner.

4.2. Rights and Obligations of Limited Partners. In addition to the rights and obligations of Limited Partners set forth elsewhere in this Agreement, Limited Partners shall have the following rights and obligations:

(a) Limitation of Liability. Limited Partners shall have no liability under this Agreement except as provided herein or under the Delaware Act.

(b) Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

(c) Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement.

(d) Second Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Second Amended Buy-Sell and Redemption Agreement.

(e) Default on Priority Distributions. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner or the Class C Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

4.3. Transfer of Partnership Interests.

(a) Transfer. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement. Any Transfer or purported Transfer of any Partnership Interest not made in accordance with this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement shall be null and void. An alleged transferee shall have no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books. The Partnership shall be entitled to treat the alleged transferor of a Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability to any alleged transferee for distributions to the Partner owning that Partnership Interest of record or for allocations of Profits, Losses, deductions or credits or for transmittal of reports and notices required to be given to holders of Partnership Interests.

(b) Transfers by General Partner. The General Partner may Transfer all, but not less than all, of its Partnership Interest to any Person only with the approval of a Majority Interest; provided, however, that the General Partner may not Transfer its Partnership Interest during any NAV Ratio Trigger Period except to the extent such Transfers are for estate planning purposes or resulting from the death of the individual owner of the General Partner. Any Transfer by the General Partner of its Partnership Interest under this Section 4.3(b) to an Affiliate of the General Partner or any other Person shall not constitute a withdrawal of the General Partner under Section 4.5(a), Section 5.1(b), or any other provision of this Agreement. If any such Transfer is deemed to constitute a withdrawal under such provisions or otherwise and results in the dissolution of the Partnership under this Agreement or the laws of any jurisdiction to which the Partnership of this Agreement is subject, the Partners hereby unanimously consent to the reconstitution and continuation of the Partnership immediately following such dissolution, pursuant to Section 5.2.

(c) Transfers by Limited Partners. The Partnership Interest of a Limited Partner may not be Transferred without the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), and in accordance with the Second Amended Buy-Sell and Redemption Agreement.

(d) Distributions and Allocations in Respect of Transferred Partnership Interests. If any Partnership Interest is Transferred during any Fiscal Year in compliance with the provisions of Article 4 and the Second Amended Buy-Sell and Redemption Agreement, Profits, Losses, and all other items attributable to the transferred interest for that period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner; provided that no allocations shall be made under this Section 4.3(d) that would affect any special allocations made under Section 3.4. All distributions declared on or before the date of that Transfer shall be made to the transferor. Solely for purposes of making such allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer; *provided, however*, if the Partnership does not receive a notice stating the date that Partnership Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the Partnership, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Partnership Interest. Neither the Partnership nor any Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 4.3(d), whether or not any Partner or the Partnership has knowledge of any Transfer of ownership of any Partnership Interest.

(e) Forfeiture of Partnership Interests Pursuant to the Contribution Note. In the event any Class B Limited Partnership Interests are forfeited in favor of the Partnership as a result of any default on the Contribution Note, the Capital Accounts and Percentage Interests associated with such Class B Limited Partnership Interests shall be allocated pro rata among the Class A Partners. The Priority Distributions in Section 3.9(b) made after the date of such forfeiture shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the Class B Limited Partnership Interest transferred pursuant to this Section 4.3(e) over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any forfeiture of such Class B Limited Partnership Interest.

(f) Transfers of Partnership Interests Pursuant to the Purchase Notes. Notwithstanding any other provision in this Agreement, the Partnership shall respect, and the General Partner hereby provides automatic consent for, any transfers (in whole or transfers of partial interests) of

the Class C Limited Partnership Interests, or a portion thereof, if such transfer occurs as a result of a default on the Purchase Notes. Upon the transfer of any Class C Limited Partnership Interest to any member of the Founding Partner Group (or their assigns), such Class C Limited Partnership Interest shall automatically convert to a Class A Partnership Interest. The Priority Distributions in Section 3.9(b) shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the transferred Class C Limited Partnership Interest over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any transfer of such Class C Limited Partnership Interest.

4.4. Issuances of Partnership Interests to New and Existing Partners.

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners ("Additional Limited Partners") to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion; provided, however, that the General Partner may only admit additional Persons as Limited Partners in relation to the issuance of equity incentives to key employees of the Partnership; provided, further that the General Partner may not issue such equity incentives to the extent they entitle the holders, in the aggregate, to a Percentage Interest in excess of twenty percent without the consent of the Class B Limited Partner and the Class C Limited Partner. All Class A Limited Partners, the Class B Limited Partner and the Class C Limited Partner shall be diluted proportionately by the issuance of such limited partnership interests. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement.

(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interests of the members of the Founding Partner Group shall be diluted proportionately. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Second Amended Buy-Sell and Redemption Agreement.

4.5. Withdrawal of General Partner

(a) Option. In the event of the withdrawal of the General Partner from the Partnership, the departing General Partner (the "*Departing Partner*") shall, at the option of its successor (if any) exercisable prior to the effective date of the departure of that Departing Partner, promptly receive from its successor in exchange for its Partnership Interest as the General Partner, an amount in cash equal to its Capital Account balance, determined as of the effective date of its departure.

(b) Conversion. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), the Partnership Interest of the Departing Partner as the General Partner of the Partnership shall be converted into a Partnership Interest as a Limited Partner.

4.6. Admission of Substitute Limited Partners and Successor General Partner.

(a) Admission of Substitute Limited Partners. A transferee (which may be the heir or legatee of a Limited Partner) or assignee of a Limited Partner's Partnership Interest shall be entitled to receive only the distributive share of the Partnership's Profits, Losses, deductions, and credits attributable to that Partnership Interest. To become a substitute Limited Partner (a "*Substitute Limited Partner*"),

that transferee or assignee shall (i) obtain the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), (ii) comply with all the requirements of this Agreement and the Second Amended Buy-Sell and Redemption Agreement with respect to the Transfer of the Partnership Interest at issue, and (iii) execute an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement. Upon admission of a Substitute Limited Partner, that Limited Partner shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of a Limited Partner under and pursuant to this Agreement with respect to the Partnership Interest held by that Limited Partner.

(b) Admission of Successor General Partner. A successor General Partner selected pursuant to Section 5.2 or the transferee of or successor to all of the Partnership Interest of the General Partner pursuant to Section 4.3(b) shall be admitted to the Partnership as the General Partner, effective as of the date of the withdrawal or removal of the predecessor General Partner or the date of Transfer of that predecessor's Partnership Interest.

(c) Action by General Partner. In connection with the admission of any substitute Limited Partner or successor General Partner or any additional Limited Partner, the General Partner shall have the authority to take all such actions as it deems necessary or advisable in connection therewith, including the amendment of Exhibit A and the execution and filing with appropriate authorities of any necessary documentation.

ARTICLE 5

DISSOLUTION AND WINDING UP

5.1. Dissolution. The Partnership shall be dissolved upon:

(a) The withdrawal, bankruptcy, or dissolution of the General Partner, or any other event that results in its ceasing to be the General Partner (other than by reason of a Transfer pursuant to Section 4.3(b));

(b) An election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of a Majority Interest; *provided, however*, the General Partner may dissolve the Partnership without the approval of the Limited Partners in order to comply with Section 14 of the Second Amended Buy-Sell and Redemption Agreement; or

(c) Any other event that, under the Delaware Act, would cause its dissolution.

For purposes of this Section 5.1, the bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (i) through (iv) of this paragraph; (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties; or (vii) one hundred twenty (120) days expire after the date of the commencement of a proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under any law if the proceeding has not been previously dismissed, or ninety (90) days expire after the date of the appointment, without the General Partner's consent or acquiescence, of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties if the appointment has not previously been vacated or stayed, or ninety (90) days expire after the date of expiration of a stay, if the appointment has not previously been vacated.

5.2. Continuation of the Partnership. Upon the occurrence of an event described in Section 5.1(a), the Partnership shall be deemed to be dissolved and reconstituted if a Majority Interest elect to continue the Partnership within ninety (90) days of that event. If no election to continue the Partnership is made within ninety (90) days of that event, the Partnership shall conduct only activities necessary to wind up its affairs. If an election to continue the Partnership is made upon the occurrence of an event described in Section 5.1(a), then:

- (a) Within that ninety (90)-day period a successor General Partner shall be selected by a Majority Interest;
- (b) The Partnership shall be deemed to be reconstituted and shall continue until the end of the term for which it is formed unless earlier dissolved in accordance with this Article 5;
- (c) The interest of the former General Partner shall be converted to an interest as a Limited Partner; and
- (d) All necessary steps shall be taken to amend or restate this Agreement and the Certificate of Limited Partnership, and the successor General Partner may for this purpose amend this Agreement and the Certificate of Limited Partnership, as appropriate, without the consent of any Partner.

5.3. Liquidation. Upon dissolution of the Partnership, unless the Partnership is continued under Section 5.2, the General Partner or, in the event the General Partner has been dissolved, becomes bankrupt (as defined in Section 5.1), or withdraws from the Partnership, a liquidator or liquidating committee selected by a Majority Interest, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall agree not to resign at any time without fifteen (15) days' prior written notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and duties of the original Liquidator) shall within thirty (30) days thereafter be selected by a Majority Interest. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator shall be deemed to refer also to any such successor or substitute Liquidator appointed in the manner provided herein. Except as expressly provided in this Article 5, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) To the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees and closing costs;

(b) To the payment of creditors of the Partnership, including Partners, in order of priority provided by law;

(c) To the Partners and assignees to the extent of, and in proportion to, the positive balances in their respective Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2); *provided, however*, the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount determined by the Liquidator to be appropriate for such purposes; and

(d) To the Partners in proportion to their respective Percentage Interests.

5.4. Distribution in Kind. Notwithstanding the provisions of Section 5.3 that require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners and assignees, the Liquidator may defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) and/or may distribute to the Partners and assignees, in lieu of cash, as tenants in common and in accordance with the provisions of Section 5.3, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any joint operating agreements or other agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

5.5. Cancellation of Certificate of Limited Partnership. Upon the completion of the distribution of Partnership property as provided in Sections 5.3 and 5.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and Limited Partners if necessary) shall cause the cancellation of the Certificate of Limited Partnership in the State of Delaware and of all qualifications and registrations of the Partnership as a foreign limited partnership in jurisdictions other **than** the State of Delaware and shall take such other actions as may be necessary to terminate the Partnership.

5.6. Return of Capital. The General Partner shall not be personally liable for the return of the Capital Contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be **made** solely from Partnership assets.

5.7. Waiver of Partition. Each Partner hereby waives any rights to partition of the Partnership property.

ARTICLE 6

GENERAL PROVISIONS

6.1. Amendments to Agreement. The General Partner may amend this Agreement without the consent of any Partner if the General Partner reasonably determines that such amendment is necessary and appropriate; *provided, however*, any action taken by the General Partner shall be subject to its fiduciary duties to the Limited Partners under the Delaware Act; provided further that any amendments

that adversely affect the Class B Limited Partner or the Class C Limited Partner may only be made with the consent of such Partner adversely affected.

6.2. Addresses and Notices. Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by United States registered or certified mail to the Partner at his/her/its address as shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

6.3. Titles and Captions. All article and section titles and captions in the Agreement are for convenience only, shall not be deemed part of this Agreement, and in no way shall define, limit, extend, or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles," "Sections" and "Exhibits" are to "Articles," "Sections" and "Exhibits" of this Agreement. All Exhibits hereto are incorporated herein by reference.

6.4. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

6.5. Further Action. The parties shall execute all documents, provide all information, and take or refrain from taking all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

6.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

6.7. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

6.8. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

6.9. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

6.10. Counterparts. This agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

6.11. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

6.12. Invalidity of Provisions. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is

not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

6.13. General Partner Discretion. Whenever the General Partner may use its sole discretion, the General Partner may consider any items it deems relevant, including its own interest and that of its affiliates.

6.14. Mandatory Arbitration. In the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and /or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and thereafter, require arbitration of all issues of final relief. The arbitration will be conducted by the American Arbitration Association, or another mutually agreeable arbitration service. A panel of three arbitrators will preside over the arbitration and will together deliberate, decide and issue the final award. The arbitrators shall be duly licensed to practice law in the state of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each, each deposition to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admissions; (v) ten request for production (in response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents, including electronic documents); and (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrators shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. The arbitrators will not have the authority to render a decision that contains an outcome based on error of state or federal law or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrators have failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable arbitration services rules. All proceedings shall be conducted in Dallas, Texas or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and /or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

*Remainder of Page intentionally Left Blank.
Signature Page Follows.*

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____

James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: _____

Name: Nancy M. Dondero
Its: Trustee

**THE MARK AND PAMELA OKADA FAMILY
TRUST - EXEMPT TRUST #1**

By: _____

Name: Lawrence Tonomura
Its: Trustee

**THE MARK AND PAMELA OKADA FAMILY
TRUST - EXEMPT TRUST #2**

By: _____

Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

Mark K. Okada

*Signature Page to Fourth Amended and Restated
Agreement of Limited Partnership*

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____

James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: _____

Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY
TRUST – EXEMPT TRUST #1

By: _____

Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY
TRUST – EXEMPT TRUST #2

By: _____

Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

Mark K. Okada

*Signature Page to Fourth Amended and Restated
Agreement of Limited Partnership*

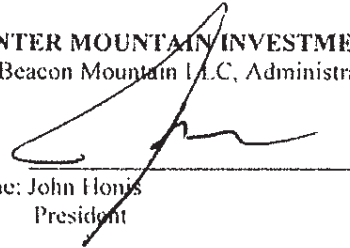
HUNTER MOUNTAIN INVESTMENT TRUST

By: Beacon Mountain LLC, Administrator

By:

Name: John Honis

Its: President



*Signature Page to Fourth Amended and Restated
Agreement of Limited Partnership*

INTERCREDITOR AND PARTICIPATION AGREEMENT

This Intercreditor and Participation Agreement (the “Agreement”) is entered into as of January 10, 2025 (the “Effective Date”) by and between Highland CLO Management, Ltd. (together with its successors and assigns in such capacities, “HCLOM Ltd.”) and Hunter Mountain Investment Trust (together with its successors and assigns in such capacities, “HMIT”). HCLOM Ltd. and HMIT are each referred to herein individually as a “Party” and jointly as the “Parties.”

RECITALS

WHEREAS, on September 22, 2020, Highland Capital Management, L.P. filed a Notice of Filing of Debtor’s Amended Schedules in its pending Chapter 11 Case No. 19-34054-sgj11 (the “Bankruptcy Case”) in which it, among other things, scheduled a creditor’s claim by HCLOM Ltd. (the “HCLOM Claim”); and

WHEREAS, on December 27, 2024, the Bankruptcy Court entered a Stipulated and Agreed Order Resolving (A) HCLOM, Ltd.’s Scheduled Claims 3.65 and 3.66; and (B) Highland Capital Management, L.P.’s (1) Objection and (2) Motion for a Bad Faith Finding and an Award of Attorneys’ Fees Against HCLOM, Ltd. and James Dondero in Connection Therewith [Docket Nos. 3657, 4176] in the Bankruptcy Case (the “Stipulation and Agreed Order”); and

WHEREAS, the Stipulation and Agreed Order converted the HCLOM Claim to a Class 10 interest/claim (as such is defined in Article III.H. ¶ 10 of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) in the Bankruptcy Case) (the “Plan”) in the amount of \$10,140,633.26; and

WHEREAS, the Parties have agreed to certain rights and priorities solely as between themselves regarding HCLOM Ltd.’s participation in the payment of Class 10 interests/claims;

THEREFORE, for and in consideration of the promises, covenants, conditions, stipulations, benefits, and obligations described and provided herein, the sufficiency and adequacy of which is expressly hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **HMIT Payment Obligation to HCLOM Ltd.** Upon HMIT’s receipt of distributions on account of its Class 10 interest/claim (the “Distributions”), HMIT will pay to HCLOM Ltd. an amount equal to five percent (5%) of the funds received by HMIT within two (2) business days after receipt of indefeasible funds by HMIT (the “HMIT Payment Obligation”). HMIT shall be entitled to deduct from the Distributions the fees and expenses billed by Kelly Hart Hallman, LLP which directly relate to the Stipulation and Agreed Order or this Agreement (the “HMIT Expenses”) until all HMIT Expenses are paid in full.

2. **No Additional Duties to HCLOM Ltd.** HMIT shall retain and have the sole discretion to act with respect to its Class 10 interest/claim, and shall owe no additional duties to HCLOM Ltd. or any other person or entity, including without limitation, with respect to (i) the amount of Distributions or recovery by HMIT on account of its Class 10 interests/claims,

(ii) the amount of Distributions that could be received by any holder of Class 10 interests/claims, (iii) the rights of any holder of Class 10 interests/claims, or (iv) any pleading or document that could or should be filed in any way related to the Bankruptcy Case, the Plan, or the HMIT Class 10 interests/claims.

3. **No Liens or Encumbrances.** HMIT will not take any action that could reasonably be expected to encumber HMIT's Class 10 interests/claims, limit or affect HMIT's right or ability to fulfil and perform the HMIT Payment Obligation, or limit or affect HCLOM Ltd.'s right to receive the Distributions.

4. **This Agreement Supersedes the Effects of the Stipulated and Agreed Order Among the Parties.** HCLOM acknowledges and agrees that, notwithstanding the Stipulated and Agreed Order, the terms of this Agreement amends and supersedes the effect of the Stipulation and Agreed Order as between the Parties and HCLOM's rights to payment under the Plan are limited solely to the HMIT Payment Obligation.

5. **Non-Interference; No Cause of Action.** Notwithstanding Paragraph 3, HCLOM will not have any rights to object to or otherwise interfere with the rights of HMIT as a holder of Class 10 interest to reach a settlement with Highland Capital Management, LP ("Highland"). HCLOM acknowledges that it shall have no right to notice or approval of such a settlement nor will it have any cause of action against HMIT arising out of any such settlement.

6. **Remittance Agreement.** The Parties acknowledge that contemporaneously herewith NREA SB II Holdings, LLC (together with its successors and assigns in such capacities, "NexPoint Small Bay."), Charitable DAF Holdings Corp. (together with its successors and assigns in such capacities, "Charitable DAF"), and Liberty CLO Holdco, Ltd. (together with its successors and assigns in such capacities, "Liberty CLO") have entered into that certain Remittance Agreement effective January 10, 2025 (the "Remittance Agreement"). HCLOM agrees that if NexPoint Small Bay fails to make the DAF Bridge Equity Payment (as defined in the Remittance Agreement) pursuant to the terms of the Remittance Agreement, HMIT will have no obligations to make the HMIT Payment Obligation, and HMIT shall not receive any distribution from HMIT or any other party related to any Class 10 interest/claim. Notwithstanding any failure of NexPoint Small Bay to adhere to the terms of the Remittance Agreement, HCLOM acknowledges that by executing this Agreement, it shall have no other recourse or rights to payment under the Plan other than the terms of this Agreement.

7. **Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law provisions. Each Party to hereby consents and agrees that the courts located in Texas shall have sole and exclusive jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Agreement or to any matter arising out of or relating to this Agreement. Each Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens*.

8. **Amendments; Waivers.** No amendment, modification, or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of each Party, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Party making such waiver or the obligations of the other Party in any other respect or at any other time.

9. **Binding Effect.** Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors, assigns, executors, representatives, and administrators.

10. **Entire Agreement.** The Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into this Agreement.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signature by facsimile or other similar electronic transmission shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Intercreditor and Participation Agreement as of the Effective Date set forth above and in the capacities set forth below.

HIGHLAND CLO MANAGEMENT, LTD.

By: 
Name: James Dondero
Title: President

HUNTER MOUNTAIN INVESTMENT TRUST

By: 
Name: Mark Patrick
Title: Administrator

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:

For the Reorganized Debtors: John A. Morris
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transcript produced by transcription service.

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

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

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

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

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

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

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

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

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 --

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

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,

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

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

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

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

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

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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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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?

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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?

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 --

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

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

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

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

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

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 --

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.

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.

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

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,

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

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

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

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 --

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

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 --

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.

(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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