Docket #0105 Date Filed: 4/15/2026

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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.,[1]	§	Case No. 19-34054 (BWO)
Reorganized Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
v.	§	Adversary No. 25-03055
PATRICK HAGAMAN DAUGHERTY,	§	
Defendant.	§	

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

4936-1255-9005

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PATRICK DAUGHERTY'S SECOND AMENDED WITNESS AND EXHIBIT LIST

Defendant and Counter-Plaintiff Patrick Daugherty files this Second Amended Witness and Exhibit List for Trial scheduled on April 17, 2026, at 9:00 a.m.

Witnesses

1. Patrick Daugherty
2. James Seery
3. T.J. Liles-Tims
4. Any witnesses called or designated by any other party;
5. Any witnesses necessary for impeachment, depending on the witnesses and evidence presented by other parties; and
6. Any witnesses necessary for rebuttal, depending on the witnesses and evidence presented by the parties.

Daugherty reserves the right to cross-examine any witness called by any other party.

Exhibits

Daugherty designates the following exhibits:

EXHIBIT NUMBER	DESCRIPTION	NOTES
PD-1	Complaint for (1) Disallowance of Claim No. 205 In Its Entirety, (2) Estimation of Claim No. 205 For Allowance Purposes, Or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty in Adversary Proceeding No. 25-03055-sgj, *Highland Capital Management, L.P. v. Patrick Hagaman Daugherty* (Docket No. 1)	
PD-2	Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith (Main Case Docket No. 3088 in Case 19-34054-sgj)	
PD-3	Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of An Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith (Main Case Docket No. 3089 in Case 19-34054-sgj)	

EXHIBIT NUMBER	DESCRIPTION	NOTES
PD-4	Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith (Doc. No. 3298 in Case 19-34054-sgj)	
PD-5	Highland Capital Management, L.P.'s (A) Objection to Patrick Daugherty's Motion to Dismiss and (B) Cross Motion for Relief from a Final Order Pursuant to Bankruptcy Rule 9024 (Docket No. 10)	
PD-6	Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 (Main Case Docket No. 1281 in Case 19-34054-sgj)	
PD-7	Transcript Regarding Hearing Held 11/17/2020 Regarding Motion for Temporary Allowance of Claim (Main Case Docket No. 1426 in Case 19-34054-sgj)	
PD-8	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)	
PD-9	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief	
PD-10	Claimant Trust Agreement (Main Case Docket No. 1811-2 in Case 19-34054-sgj)	
PD-11	(PDADV_004266)	
PD-12	(DAUGHERTY ROGS 001407735)	
PD-13	(DAUGHERTY ROGS 001407743)	
PD-14	(PDADV_010520)	
PD-15	(PDADV_000019)	
PD-16	(DAUGHERTY ROGS 0003740)	
PD-17	(HUNTON 001105)	
PD-18	(HUNTON 00004)	
PD-19	(HUNTON 001131)	
PD-20	(HUNTON 001163)	
PD-21	(HUNTON 001170)	

EXHIBIT NUMBER	DESCRIPTION	NOTES
PD-21A	(PDADV 010244)	
PD-22	(PDADV 010262)	
PD-23	(PDADV_010268)	
PD-24	(PDADV_010346)	
PD-25	(PDADV_011013)	
PD-26	2008 Daugherty K-1	
PD-27	(DAUGHERTY ROGS 0003729)	
PD-28	(DAUGHERTY ROGS 0003730)	
PD-29	(DAUGHERTY ROGS 0003734)	
PD-30	(PDADV_004224)	
PD-31	(PDADV_004687)	
PD-32	(PDADV_004856)	
PD-33	(DAUGHERTY ROGS 00016700)	
PD-34	(DAUGHERTY ROGS 00022527)	
PD-35	Email from J. Morris to M. Bobo dated May 24, 2024	
PD-36	November 17, 2020 Main Bankruptcy Hearing Transcript	
PD-37	June 25, 2025 Main Bankruptcy Hearing Transcript	
PD-38	September 4, 2025 Main Bankruptcy Hearing Transcript	
PD-39	March 1, 2022 Main Bankruptcy Hearing Transcript	
PD-40	(PDADV_004971)	
PD-41	(PDADV_011022)	
PD-42	(PDADV_018160)	
PD-43	(PDADV_018162)	
PD-44	(PDADV_018178)	

EXHIBIT NUMBER	DESCRIPTION	NOTES
PD-45	(PDADV_018197)	
PD-46	(PDADV_004808)	
PD-47	(PDADV_018517)	
PD-48	(PDADV_018518)	
PD-49	(PDADV_018522)	
PD-50	(PDADV_018520)	
PD-51	(PDADV_018531)	
PD-52	(PDADV_018521)	
PD-53	(PDADV_018441)	
PD-54	Highland's Interrogatory Responses in this Adversary Proceeding	
PD-55	(PDADV_018431)	
PD-56	(PDADV_008926)	
PD-57	(PDADV_010052)	
PD-58	(Daugherty ROGs00003060)	
PD-59	(Daugherty ROGs00003294)	
PD-60	(Daugherty ROGs00003634)	
PD-61	(Daugherty ROGs00002069)	
PD-62	(Daugherty ROGs00001255)	
PD-63	(Daugherty ROGs00001109)	
PD-64	(Daugherty ROGs00002753)	
PD-65	(Daugherty ROGs00002009)	
PD-66	(Daugherty ROGs00002162)	
PD-67	(Daugherty ROGs00001282)	

EXHIBIT NUMBER	DESCRIPTION	NOTES
PD-68	(Daugherty ROGs00003659)	
PD-69	(Daugherty ROGs00001302)	
PD-70	(Daugherty ROGs00001578)	
PD-71	(Daugherty ROGs00002893)	
PD-72	(Daugherty ROGs00001257)	
PD-73	(Daugherty ROGs00002041)	
PD-74	(Daugherty ROGs00003352)	
PD-75	(Daugherty ROGs00001054)	
PD-76	(Daugherty ROGs00000714)	
PD-77	(Daugherty ROGs00001830)	
PD-78	Reserved.	
PD-79	2021.12.17 – Email w/ J. Seery & Sidley Counsel (JPS/Ell-000865)	
PD-80	2021.10.15 - Doc. 1 (Adv. Proc. 21-03076-sgj) – Highland's Complaint	
PD-81	2022.05.19 - Doc. 158 (Adv. Proc. 21-03076-sgj) - Amended Highland's Complaint and Objection to Claims	
PD-82	TJ Liles Expert Report	
PD-83	2021.07.13 - J. Seery Email (JPS_ELL-011979)	
PD-84	2021.10.01 – P. Daugherty Email (JPS_ELL-008163)	
PD-85	2021.10.01 – P. Daugherty Email (JPS_ELL-012313)	
PD-86	2021.07.13 – J. Seery Email (JPS_ELL-013203)	
PD-87	2022.02.16 - Doc. 3242 (Case 19-34054) Ellington's Objection to Settlement	
PD-88	2022.01.11 – Doc. 3265-1 (Case 19-34054) Ellington's Petition, App for TRO, TI and Permanent Injunction	
PD-89	2022.01.05 - Doc. 4266-20 (Case No. 19-34054) P. Daugherty Email to M. Kirschner	

EXHIBIT NUMBER	DESCRIPTION	NOTES
PD-90	2023.09.13 - Doc 3910 (19-34054) - Highland's Motion to Show Cause	
PD-91	2023.11.10 - Doc 3969 (19-34054) - Highland's Reply ISO Motion to Show Cause	
PD-92	2023.12.12 - Doc 3991 (19-34054) - Order Dismissing Show Cause due to Consensual Resolution	
PD-93	2022.08.08 - UBS PowerPoint in Support of August 8, 2022 Hearing (Adv. Proc. No. 21-03020-sgj, Doc. 169)	
PD-94	Tolling Agreement Extending Claim Objection Deadline (Main Case Docket No. 4255-60 in Case 19-34054-sgj)	
PD-	Any document entered or filed in the Debtor's chapter 11 bankruptcy case, including any exhibits thereto	
PD-	Any exhibits identified by or offered by any other party at the hearing	
PD-	Any exhibits offered for impeachment and/or rebuttal purposes	

Daugherty reserves the right to supplement or amend this Second Amended Witness and Exhibit List any time prior to the trial. This Second Amended Witness and Exhibit List is not intended to limit Daugherty at the hearing or to imply that Daugherty may not seek introduction of evidence that is not on this list. Daugherty reserves the right to use any of the exhibits designated by any other party in this case.

Dated: April 15, 2026.

Respectfully submitted,

GRAY REED

By: */s/ Andrew K. York*

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Counsel to Patrick Daugherty

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing instrument was served on all Parties or counsel of record herein on this 15th day of April 2026, via the CM/ECF system and/or email.

/s/ Andrew K. York
ANDREW K. YORK

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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.,[1]	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
v.	§	_____
	§	
PATRICK HAGAMAN DAUGHERTY,	§	
	§	
Defendant.	§	

COMPLAINT FOR (1) DISALLOWANCE OF CLAIM NO. 205 IN ITS ENTIRETY, (2) ESTIMATION OF CLAIM NO. 205 FOR ALLOWANCE PURPOSES, OR (3) SUBORDINATION OF ANY ALLOWED PORTION OF CLAIM NO. 205 OF PATRICK HAGAMAN DAUGHERTY

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

DEFENDANT'S EXHIBIT
1
25-03055

Highland Capital Management, L.P., the reorganized debtor ("Highland" or the "Debtor" as applicable) in the above-captioned chapter 11 case ("Bankruptcy Case") and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), files the *Complaint for (1) Disallowance of Claim No. 205 in Its Entirety, (2) Estimation of Claim No. 205 for Allowance Purposes, or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty* (the "Complaint"), alleging upon knowledge of its own actions and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT[2]

1. Patrick Daugherty is a former employee of, and former limited partner in, the Debtor. Mr. Daugherty filed a claim (denoted as Claim No. 205) in which he asserted a myriad of claims against the Debtor. All of Mr. Daugherty's claims were settled except his unliquidated, contingent claim that the Debtor has a continuing and indefinite obligation to make him whole if a tax refund he apparently received for tax year 2008 on account of his Partnership Interests is ever successfully challenged by the IRS.

2. As discussed below, in 2009, Mr. Daugherty was allocated his applicable losses from Highland for tax year 2008 on account of his Partnership Interests. The allocation of losses in 2009 fully satisfied the 2008 Refund line item in the 2009 Statement; Mr. Daugherty received exactly what he was entitled to receive from Highland. Accordingly, Mr. Daugherty's Claim against the Debtor for additional compensation for 2008 has no basis and the Claim should be disallowed.

3. To avoid this result, Mr. Daugherty alleges the Debtor is required to make him whole if any portion of the tax refund he received for 2008 on account of his Partnership Interest

[2] All capitalized terms used but not defined in this Preliminary Statement have the meanings given to them below.

is clawed back by the IRS—Highland's 2008 tax return is currently subject to an IRS audit. But the 2009 Statement contains no future, ongoing obligations. Under the 2009 Statement, if Mr. Daugherty received the material equivalent of the "2008 Refund" (which he apparently did), Highland's obligations have been satisfied in full. The 2009 Statement contains no ongoing obligation for Highland to defend Mr. Daugherty or indemnify him. And it would violate basic tenets of contract law to read vague and indefinite precatory language in the 2009 Statement as creating a specific continuing and binding payment obligation that can be enforced forever. This is particularly true where the agreement that governed Mr. Daugherty's employment by the Debtor expressly provided that after his separation from the Debtor, the Debtor would have no further liability or obligation to Mr. Daugherty in connection with his employment.

4. However, even if Mr. Daugherty's Claim is not disallowed in its entirely, it remains contingent on the outcome of the 2008 Audit. It is unclear when, how, or if the 2008 Audit will be finally resolved. Moreover, if the Claim is not disallowed, it will need to be estimated—after taking into account the likely outcome of the 2008 Audit, including adjustments that result therefrom—pursuant to 11 U.S.C. § 502(c). The Claim (in whatever amount) based on his partnership tax allocations must also be subordinated to the interests in Class 10 pursuant to 11 U.S.C. § 510(b).

JURISDICTION AND VENUE

5. This Adversary Proceeding arises in and relates to Highland's Bankruptcy Case.

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

7. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and, pursuant to Bankruptcy Rule 7008, Highland consents to the entry of a final order by the Court if

it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the U.S. Constitution.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

THE PARTIES

9. Highland is a limited partnership formed under the laws of Delaware with a business address at 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

10. Upon information and belief, Defendant Patrick Daugherty is an individual residing at 3621 Cornell Avenue, Suite 830, Dallas, Texas 75205.

STATEMENT OF FACTS

I. The Bankruptcy Case and Mr. Daugherty's Claims

11. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the Bankruptcy Case.

12. On April 1, 2020, Mr. Daugherty filed Proof of Claim No. 67 ("Claim 67"). On April 6, 2020, Mr. Daugherty filed Proof of Claim No. 77 ("Claim 77"), which superseded and replaced Claim 67 in its entirety. On December 23, 2020, Mr. Daugherty filed Proof of Claim No. 205 (the "Claim" or "Claim 205"), which superseded and replaced Claim 77 in its entirety.

13. On February 22, 2021, this Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943],[3] which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Docket No. 1808] (as amended, the "Plan"). The Plan became effective August 11, 2021 [Bankr. Docket No. 2700].

[3] Bankr. Docket No. __" refers to the docket maintained in Case No. 19-34054-sgj11.

14. On December 8, 2021, the Debtor filed *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Bankr. Docket No. 3088] (the "Settlement Motion").

15. This Court approved the Settlement Motion on March 8, 2022 [Bankr. Docket No. 3298] (the "Settlement Order"), disallowing Claim 67 and Claim 77 with prejudice and resolving all of Claim 205 other than Mr. Daugherty's claim for the 2008 Refund.

II. Mr. Daugherty Was Employed by the Debtor and Became a Limited Partner

16. Mr. Daugherty was hired by the Debtor in 1998. Later, he became eligible to participate in the Debtor's long-term incentive plan (the "LTIP"). Pursuant to the LTIP, at various times, Mr. Daugherty received limited partnership interests in the Debtor (the "Partnership Interests") and became one of the Debtor's limited partners. At all relevant times with respect to Claim 205 as it relates to the 2008 Tax Refund, Mr. Daugherty's employment was governed by an *Amended and Restated Employment Agreement*, dated as of December 31, 2004 (the "Employment Agreement"). For the 2008 tax year, Mr. Daugherty was allocated 0.740262% of the taxable losses of the Debtor on account of his Partnership Interests.

17. Because the Debtor was a limited partnership, it was a pass-through entity for tax purposes and paid no federal income tax. The Debtor's limited partners, including Mr. Daugherty, were therefore required to pay individual federal income taxes (among other taxes) based on, among other things, their allocable share of the Debtor's income, if any, or could use their allocable share of any losses to offset other current income or, in certain circumstances, carry back losses, and receive a tax refund from the Internal Revenue Service (the "IRS"). Thus, because of his Partnership Interests, Mr. Daugherty was entitled to receive a pass through of his allocable share of any taxable gains or losses generated by the Debtor. Taxable gains increase tax liability; taxable losses decrease tax liability.

III. The 2009 Statement and IRS Audit

18. On February 27, 2009, the Debtor provided Mr. Daugherty with a *Comprehensive Compensation and Benefits Statement* recapping all earnings, awards, and benefits Mr. Daugherty received in connection with his employment by and Partnership Interests in the Debtor during calendar year 2008 (the "2009 Statement"). A true and accurate copy of the 2009 Statement is attached hereto as **Exhibit A**. Such statements were provided to all employees each year at the conclusion of the annual performance review and bonus cycle.

19. The 2009 Statement included what Highland estimated to be the tax refund Mr. Daugherty could expect for tax year 2008 in the amount of $1,475,816 (the "2008 Refund"). That amount purported to be an estimate of the pre-tax equivalent refund that Mr. Daugherty should have expected to receive from the IRS on account of the losses attributable to his Partnership Interests for the 2008 tax year.

20. The 2008 Refund was "an estimated amount" based on the notion that losses in 2008 would equal or exceed total partnership gains that had been allocated to Mr. Daugherty in tax years 2005, 2006, and 2007 and assuming a 27% effective tax rate for each year for all of the employee limited partners. The amount was then "grossed up" by 35% so that Mr. Daugherty could compare it to the value of the other benefits for being a Debtor partner and employee[4]. Finally, the estimated partner tax refund amount was calculated without reference to Mr. Daugherty's other personal tax attributes for the 2008 tax year or prior years, and partners were advised that each person's own actual refund may vary based on their own effective tax rate.

21. While the 2009 Statement vaguely noted that "[i]f actual refund deviates materially from estimate, other compensation will be fairly adjusted," partners like Mr.

[4] The calculation of the 2008 Refund was therefore 2005-2007 allocated income of $3,552,890 x 27% or $959,280. Then the $959,280 was divided by 35% for a "pre-tax" calculated amount of $1,475,816.

Daugherty were told that the tax refund amounts were "not guaranteed," and that if refund amounts were different, Highland would merely "consider what action to take on a case-by case basis, considering several factors."

22. As reflected on his K-1 for tax year 2008 (the "2008 K-1"), Mr. Daugherty was allocated ordinary business losses by Highland in excess of $4 million, along with other losses that well-exceeded the allocated income from 2005-2007.[5] As shown in the 2008 K-1, Mr. Daugherty received what he was promised in the 2009 Statement, if not more.

23. After the obligations to Mr. Daugherty under the 2009 Statement had been satisfied, the IRS began an audit of Highland's 2008 tax return (the "2008 Audit").[6] On information and belief, the 2008 Audit is not yet fully resolved.

24. On October 31, 2011, Mr. Daugherty terminated his employment with Highland. Pursuant to the express conditions of his Employment Agreement, Mr. Daugherty acknowledged and agreed that the Debtor would "have no further liability or obligation to [Mr. Daugherty] under [the Employment Agreement] or in connection with his/her employment of termination."

IV. The Alleged Basis for the Claim

25. In the Claim, Mr. Daugherty demands the Debtor pay him $2,650,353, which consists of the full amount of the 2008 Refund ($1,475,816) plus interest of $1,174,537.[7] Mr.

[5] In the simplest terms, to determine whether an individual owes additional taxes or is entitled to a refund, income or losses are multiplied by the applicable tax rate. As an example, in a vacuum, $4 million of taxable losses allocated to an individual in the 27% bracket would result in $1.1 million of benefit in terms of reduction to their taxes owed ($4 million x 27% = $1.1 million). Likewise, $1 million of adjusted gross income resulting from W-2 wage income for an individual would result in $270,000 of tax liability for an individual whose effective tax rate is 27%, all else equal.

[6] Strand Advisors, Inc. ("Strand"), is the Debtor's "tax matters partner" for purposes of defending the 2008 Audit. Control of Strand reverted to James Dondero—the Debtor's ousted founder—in 2021, and the Debtor has no role in the 2008 Audit or visibility into its current status or how it is being conducted. On information and belief, the 2008 Audit has not been resolved and is heading to court with a resolution not expected until approximately 2029.

[7] Mr. Daugherty has provided no statutory or other justification for his claim for interest nor has he provided a proposed interest rate.

Daugherty's theory seems to be that if, upon the conclusion of the 2008 Audit, he is required to reverse the tax loss he received as a limited partner, the Debtor must reimburse him for the entirety of the 2008 Refund with interest. In other words, Mr. Daugherty reads a continuing obligation into the 2009 Statement to indemnify him for personal income taxes he may owe, if any, as a result of the 2008 Audit.

26. However, and as set forth above, there is no such obligation in the 2009 Statement. Mr. Daugherty has no claim.

27. But even if Mr. Daugherty did have a claim (he does not), it would be unliquidated and contingent and subordinated as it arises solely from his Partnership Interests.

FIRST CLAIM FOR RELIEF

(Disallowance under Bankruptcy Code 11 U.S.C. § 502(a))

28. Highland repeats and re-alleges as if set forth herein the foregoing factual allegations.

29. Under 11 U.S.C. § 502(a) a "claim ..., proof of which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a).

30. The ultimate burden of proof for a claim always lies with the claimant. *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

31. Mr. Daugherty received and has benefited for the past 16 years from the 2008 Refund, *i.e.*, the 2008 losses allocated to Mr. Daugherty as a Highland partner. The benefit he received from the IRS (either as a tax refund or liability reduced through offsetting of income) did not materially deviate from, and may have exceeded, the basis for the estimated 2008 Refund set forth in the 2009 Statement.

32. Accordingly, the Debtor satisfied its obligations (to the extent it even had any) under the 2009 Statement in full, and no additional, future obligations exist under the 2009 Statement. Because the Debtor has satisfied its obligations, Claim 205 should be disallowed in its entirety.

33. Moreover, even if the tax benefits he received related to tax year 2008 materially deviated from the 2009 Statement, Mr. Daugherty would not be able to recover from the Debtor based on the vague statement in the 2009 Statement that lacks the definiteness required to form a contractual obligation.

SECOND CLAIM FOR RELIEF

(Estimation under Bankruptcy Code 11 U.S.C. § 502(c))

34. Highland repeats and re-alleges as if set forth herein the foregoing factual allegations.

35. As set forth above, Mr. Daugherty has no Claim; however, to the extent the Court believes he has one, it is unliquidated and contingent on the final outcome of the 2008 Audit, including the magnitude of any adjustments. If the 2008 Audit is successfully defended, Mr. Daugherty will have no claim.

36. Under 11 U.S.C. § 502(c) "[t]here shall be estimated for purposes of allowance … (1) any contingent or unliquidated claim, the fixing or liquidation of which … would unduly delay the administration of the case …."

37. The Plan was confirmed in February of 2021 and has been effective since August of 2021. Mr. Daugherty's Claim is the last unresolved claim[8] against the estate.

38. It is currently unknown when, if, or how the 2008 Audit will be resolved.

[8] The Equity Interests in subordinated Class 10 and further subordinated Class 11 have not been allowed under the terms of the Plan.

39. Accordingly, the Debtor requests that this Court estimate the Claim—after taking into account the likelihood and degree to which the 2008 Audit will be successful or unsuccessful—under 11 U.S.C. § 502(c) for purposes of allowance and distribution.

THIRD CLAIM FOR RELIEF

(Subordination under Bankruptcy Code 11 U.S.C. § 510(b))

40. Highland repeats and re-alleges as if set forth herein the foregoing factual allegations.

41. Under the Bankruptcy Code,

> a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security ….

11 U.S.C. § 510(b). Section 510(b) requires the subordination of claims arising from the purchase of the equity itself and all claims arising thereafter as incidents of ownership. *In re SeaQuest Diving, LP*, 579 F.3d 411, 421 (5th Cir. 2009).

42. Section 510(b) applies to the ownership of limited partnership interests. *Templeton v. O'Cheskey (In re Am. Hous. Found.)*, 785 F.3d 143, 154 (5th Cir. 2015).

43. Mr. Daugherty owned the Partnership Interests, and his Claim is contingent on the IRS clawing back the 2008 Refund he received on account of those Partnership Interests through the 2008 Audit.

44. But for the Partnership Interests, Mr. Daugherty would not have been entitled to the 2008 Refund nor would Mr. Daugherty have any potential liability to the IRS from the 2008 Audit. A nexus or causal relationship exists between Claim 205 and the "purchase" of the Partnership Interests.

45. Accordingly, judgment should issue declaring that the Claim—to the extent it is not disallowed in full—is subordinated pursuant to 11 U.S.C. § 510(b) and shall, subject to such other defenses or objections as may exist with respect to the Claim, have the same rank and priority as Class 11 under the Plan.

PRAYER

WHEREFORE, Highland prays for judgment as follows:

1. For the disallowance of the Claim in its entirety;

2. For estimation for the Claim for purposes of allowance and distribution;

3. For subordination of the Claim;

4. For damages and costs of suit, including attorneys' fees, incurred in connection herewith; and

5. For such other and further relief as the Court deems just and proper.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Dated: May 2, 2025.

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Counsel for Highland Capital Management, L.P.

EXHIBIT A

PAT DAUGHERTY

Date of Hire: 4/3/1998

Comprehensive Compensation and Benefits Statement

February 27, 2009

EARNINGS AND AWARDS

2008 Base Salary, as of 12/31/08	$ [redacted]0
2009 Base Salary, effective March 1, 2009 : $	**[redacted]0**
2008 Tax Refund	$ 1,475,816

Refund is an estimated amount. If actual refund deviates materially from estimate, other compensation will be fairly adjusted. Refund is expected to be received in approximately 4 months.

Loan Forgiven in 2009 as part of bonus:

2008 Other Awards
- 401K Match
- Defined Benefit

2008 Deferred Compensation
- Retention Award

[redacted]

Highland's Hedge Funds and Private Equity funds, for a variety of reasons, largely preclude redemptions and Highland Capital Management, L.P. may or may not be in a position to provide a cash equivalent upon triggering of any employee specific monetization. Therefore for this deferred compensation award and any previous awards of Option IT and STIP, Employee agrees to accept payment in kind settlement of any monetization if necessary. _____ (*Please Initial*)

2008 Total Earnings and Awards **$** [redacted]

HIGHLAND PAID BENEFITS

Medical
Dental
Basic and Dependent Life Insurance/AD&D
Short Term Disability and Long Term Disability
Executive LTD
Daily Catered Lunches
Blackberry
Parking

[redacted]

2008 Estimated Total Value of Highland Paid Benefits

TOTAL COMPENSATION PACKAGE $ [redacted]

Waiver and Release Payments in 2008 $ [redacted]0

ACCEPTED AND AGREED:

_____ _____

Patrick Daugherty **Date**

B1040 (FORM 1040) (12/24)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Highland Capital Management, L.P.	Patrick Hagaman Daugherty
ATTORNEYS (Firm Name, Address, and Telephone No.) Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, Tel.: (310) 277-6910; and Hayward PLLC, 10501 N. Central Expressway, Suite 106, Dallas, TX 75231, Tel.: (972) 755-7100	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) ☑ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor □ Other □ Trustee	**PARTY** (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin ☑ Creditor □ Other □ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Disallowance or estimation of claim under 11 U.S.C. 502 or subordination under 11 U.S.C. 510(b)

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(a) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(b) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(c) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(d) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(e) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(f) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(f) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(g) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(h) Subordination of Claim or Interest
- ☑ 81-Subordination of claim or interest

FRBP 7001(i) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(j) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

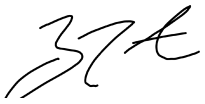
Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

□ Check if this case involves a substantive issue of state law	□ Check if this is asserted to be a class action under FRCP 23
□ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

Disallowance or estimation of claim under 11 U.S.C. 502

B1040 (FORM 1040) (12/24)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE May 2, 2025	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

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Counsel for Highland Capital Management, L.P.

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-sgj11
Reorganized Debtor.	§	

REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY (CLAIM NO. 205) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

DEFENDANT'S EXHIBIT
2
25-03055

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TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

Highland Capital Management, L.P., the above-captioned reorganized debtor (the "Reorganized Debtor" or "Debtor," as applicable), files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Settlement Agreement"),[2] a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion ("Morris Dec."), that, among other things, fully and finally resolves the proof of claim filed by Patrick Hagaman Daugherty ("Mr. Daugherty"). In support of this Motion, the Reorganized Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Bankruptcy Rules.

[2] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the official committee of unsecured creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). [Docket No. 186].[3]

6. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order") with respect to the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1808] (as subsequently modified, the "Plan").

7. The Plan went effective on August 11, 2021 (the "Effective Date") and, on that same date, the Reorganized Debtor filed the *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700]. The Reorganized Debtor has commenced making distributions on certain allowed claims in accordance with the terms of the Plan.

B. Procedural Overview of Mr. Daugherty's Claim

8. Mr. Daugherty is a former employee and limited partner of the Debtor and previously served in other positions with affiliates and former affiliates of the Debtor.

[3] All docket numbers refer to the docket maintained by this Court.

9. At the time of his resignation, Mr. Daugherty owned 19.1% of the preferred units of Highland Employee Retention Assets LLC ("HERA"), an employee deferred-compensation vehicle managed by the Debtor and Highland ERA Management, LLC ("ERA Management"). Mr. Daugherty contends that he owned or had the right to own all of the preferred units of HERA.

10. In April 2012, following Mr. Daugherty's resignation and while under the control of James Dondero ("Mr. Dondero"), the Debtor commenced an action against Mr. Daugherty in Texas state court (the "Texas Action"), and Mr. Daugherty subsequently asserted (i) counterclaims for breach of contract and defamation, and (ii) third-party claims against HERA and others.

11. After a three-week trial, (a) the Debtor obtained a verdict on its claims against Mr. Daugherty for breach of contract and breach of fiduciary duty and obtained an award of $2.8 million in attorney's fees; and (b) Mr. Daugherty obtained a verdict on his claims against the Debtor and Mr. Dondero for defamation with malice and a third-party claim against HERA and obtained an award of $2.6 million against HERA (the "HERA Judgment"). The HERA Judgment was affirmed on appeal on December 1, 2016.

12. In July 2017, after being unable to collect on the HERA Judgment, Mr. Daugherty commenced an action against the Debtor, Mr. Dondero, HERA, and ERA Management in the Delaware Chancery Court (the "Chancery Court") in a case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for, among other claims, fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and "fees on fees" (the "Highland Chancery Case").

13. In the spring of 2019, the Chancery Court in the Highland Chancery Case (i) found that the Dondero-related defendants improperly withheld dozens of documents in discovery on privilege grounds, and (ii) ruled that there was "a reasonable basis to believe that a fraud has been perpetrated" such that the Chancery Court applied the "crime-fraud exception" to

the attorney-client privilege. Mr. Daugherty asserts that the defendants' failure to provide required discovery injured him by undermining his attempts to build an evidentiary record to support his claims against the Debtor and the other defendants in the Highland Chancery Case.

14. On October 14, 2019, the Highland Chancery Case proceeded to trial, but on October 16, 2019, before the trial was completed and before the Chancery Court ruled on Mr. Daugherty's and the Debtor's cross-motions for summary judgment regarding indemnification and fees on fees, the Debtor filed for bankruptcy.

15. On December 1, 2019, Mr. Daugherty filed a separate lawsuit in the Chancery Court captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against Mr. Dondero, HERA, ERA Management, Hunton Andrews Kurth LLP, Marc Katz, Michael Hurst, the Debtor's then-chief compliance officer, and the Debtor's then in-house counsel, Isaac Leventon and Scott Ellington, for conspiracy to commit fraud among other claims (the "HERA Chancery Case" and together with the Highland Chancery Case, the "Chancery Cases").

16. On April 1, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least $37,483,876.59," and such claim was denoted by the Debtor's claims agent as Proof of Claim No. 67 ("Proof of Claim No. 67").

17. On April 6, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least $37,483,876.59" that superseded Proof of Claim No. 67 and that was denoted by the Debtor's claims agent as Proof of Claim No. 77 ("Proof of Claim No. 77").

18. On August 31, 2020, the Debtor commenced an adversary proceeding against Mr. Daugherty by filing a complaint (the "Complaint") in which the Debtor: (1) objected to Proof of Claim No. 77 on various grounds (the "Claim Objection"), and (2) asserted a cause of action for the subordination of part of Mr. Daugherty's Claim pursuant to section 510(b) of the

Bankruptcy Code. *See* Adv. Proc. No. 20-03107 (the "Adv. Proc.") [Adv. Docket No. 1] (the "Adversary Proceeding").

19. On September 29, 2020, Mr. Daugherty filed his answer to the Complaint [Adv. Docket No. 8] (the "Answer").

20. On September 24, 2020, Mr. Daugherty filed his *Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay* [Docket No. 1099] (the "Comfort Motion") pursuant to which he sought to sever the Debtor from the Highland Chancery Case and then consolidate the remaining claims in the Highland Chancery Case into the HERA Chancery Case and proceed with one case against the non-debtors.[4]

21. On October 23, 2020, Mr. Daugherty filed a motion seeking leave to amend his Proof of Claim [Docket No. 1280] (the "POC Amendment Motion"). The amended proof of claim attached to the POC Amendment Motion increased Mr. Daugherty's general, unsecured, non-priority claim against the Debtor to the amount of at "least $40,710,819.42" and sought to supersede Proof of Claim No. 67 and Claim No. 77.

22. On October 23, 2020, Mr. Daugherty filed his *Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion* seeking for his Claim to be temporarily allowed for voting purposes in the amount of $40,710,819.42 [Docket No. 1281] (the "3018 Motion").

23. On November 9, 2020, the Debtor filed its *Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion* [Docket No. 1349] (the "3018 Objection").

[4] On October 8, 2020, the Debtor commenced a second adversary proceeding against Mr. Daugherty (the "Second Adversary Proceeding"), seeking to enjoin him from prosecuting the Chancery Cases. Adv. Proc. 20-03128 ("2d Adv. Proc.") [2d Adv. Proc. Docket No. 1]. On January 29, 2021, the parties filed a Settlement that resolved the Second Adversary Proceeding, and the Second Adversary Proceeding was subsequently dismissed with prejudice. [2d Adv. Proc. Docket No. 12].

24. After conducting an evidentiary hearing with respect to the 3018 Motion, the Court entered an order temporarily allowing Mr. Daugherty's Claim for voting purposes in the amount of $9,134,019 [Docket No. 1474] (the "Rule 3018 Order").

25. On November 3, 2020, the Court granted the Comfort Motion [Docket No. 1327].

26. On December 10, 2020, the Court entered an order [Docket No. 1533] granting the POC Amendment Motion permitting Mr. Daugherty to amend his proof of claim. On December 23, 2020, Mr. Daugherty filed an amended proof of claim, designated by the Debtor's claim agent as Proof of Claim No. 205 ("Proof of Claim No. 205" or the "Daugherty Claim"). Proof of Claim No. 205 increased the amount of the Daugherty Claim to $40,710,819.42.

27. On November 30, 2020, Mr. Daugherty filed his *Motion to Lift the Automatic Stay* (the "Lift Stay Motion") [Docket No. 1491] seeking to lift the automatic stay to allow him to finish his trial in the Chancery Court and liquidate his claims. The Debtor opposed the Lift Stay Motion, and after a hearing was held on December 17, 2020, the Court denied the relief requested in the Lift Stay Motion [Docket No. 1612].

28. Except with respect to the Reserved Claim (as defined in the Settlement Agreement), the Parties have agreed to settle and resolve all claims and disputes between them, including the Daugherty Claim, on the terms set forth in the Settlement Agreement.

C. Summary of Mr. Daugherty's Claim

29. As generally described above, prior to the Petition Date, Mr. Daugherty on the one hand, and the Debtor, Mr. Dondero, other entities controlled by Mr. Dondero, and individuals then employed by the Debtor or otherwise associated with Mr. Dondero on the other hand, were embroiled in more than nine (9) years of highly contentious litigation involving a multitude of claims and counterclaims (the "Pre-Petition Litigation").

30. The Pre-Petition Litigation played out in front of a jury in Texas state court and wound its way through the state appellate courts. Thereafter, Mr. Daugherty opened a new front by commencing the Highland Chancery Case in the Chancery Court where he sought to hold the defendants to account for leaving HERA "judgment proof" and unable to satisfy the HERA Judgment that Mr. Daugherty had obtained.

31. While Mr. Dondero's decision to sue Mr. Daugherty in the Texas Action was questionable, his decisions to (a) continue fighting the HERA Judgment rather than accepting the net economic benefits awarded, and (b) fraudulently transfer HERA's assets leaving it "judgment proof" proved to be a disaster because it cost millions of dollars in legal fees and left the Debtor and related entities exposed to claims and liability for substantial wrongdoing.

32. The Daugherty Claim attaches and incorporates his operative complaint in the Highland Chancery Case and other voluminous documentation. The Daugherty Claim has the following components:

- Enforcement of the HERA Judgment against the Debtor, pursuant to unjust enrichment, promissory estoppel and fraudulent transfer claims, in the amount of $2.6 million plus prepetition interest of $1.22 million. (Mr. Daugherty contends that interest has continued to accrue post-petition);

- The estimated value of the HERA assets transferred to the Debtor on the theory that Daugherty owns 100% of HERA because the Debtor was not permitted to acquire the interests that it purchased from the former members and Daugherty was the last remaining interest holder. This allegedly leaves Mr. Daugherty by default as the 100% owner of the HERA Assets, which Mr. Daugherty asserts are worth at least $26.2 million as a whole;

- Indemnification for attorneys' fees, expenses, and interest of approximately $5.4 million incurred in the Texas Action under the Debtor's partnership agreement for actions Daugherty contends were taken in furtherance of his obligations to investors and funds under the Investment Advisors Act of 1940;

- Compensation as a former employee of the Debtor that Daugherty contends is contingent on the outcome of an audit of the Debtor's 2008/2009 tax returns and related expenses. Mr. Daugherty estimates this claim at approximately $2.7 million;

- Fee shifting and fees on fees that Daugherty contends are due to the bad faith actions of the Debtor, its officers, and agents in the Chancery Court. Daugherty estimates this claim at approximately $2.5 million; and

- Other related claims described in the Daugherty Claim for approximately $0.2 million.

33. The Debtor previously informed the Court that it does not object to Mr. Daugherty's claims related to the HERA Judgment ($2.6 Million, plus interest calculated at approximately $1.22 million as of about a year ago).

34. For a recitation of the Debtor's defenses to Daugherty's Claim, the Debtor incorporates by reference its 3018 Objection.

D. <u>The Parties Engage in Arm's-Length Settlement Discussions</u>

35. Although counsel for the Parties argued over the merits of, and the defenses to, the Daugherty Claim throughout the fall, they began discussing a possible resolution of Daugherty's Claim after the Court entered the 3018 Order.

36. In the days leading up to the Confirmation Hearing, those discussions evolved into substantive negotiations, and counsel for the parties exchanged various proposals and counterproposals in an effort to reach an agreement.

37. With the advice of counsel, James P. Seery, Jr., the Debtor's Chief Executive Officer, took the lead in the negotiations (directly and through counsel) and briefed the Independent Board on the progress.

38. The negotiations bore fruit. On February 2, 2021, at the commencement of the Confirmation Hearing, and with the unanimous approval of the Independent Board, Debtor's counsel announced that it had reached an agreement with Mr. Daugherty (subject to the execution of definitive documentation and Court approval) and read the principal terms into the record.

39. For a variety of reasons, documenting the agreement took more time than expected. For example, in the weeks and months that followed, (1) the principals and their counsel

addressed the implications of the Sentinel Disclosures (as that term is defined below); (2) the tasks related to getting to the Effective Date took a higher priority; (3) the Reorganized Debtor had to educate the newly appointed Oversight Board on the background and litigation concerning, and the proposed resolution of, the Daugherty Claim; (4) the parties exchanged numerous iterations of the Settlement Agreement and ancillary documents; and (5) frankly, it was difficult to get Mr. Daugherty to say "yes" as he sought very hard to improve the economic and non-economic terms of the deal based on certain revelations in the ensuing months (which, of course, was his right).

E. Summary of Settlement Terms

40. The Settlement Agreement contains the following material terms, among others:

- Mr. Daugherty shall receive an allowed general unsecured, non-priority Class 8 claim in the amount of $8.25 million;
- Mr. Daugherty shall receive an allowed subordinated general unsecured, non-priority Class 9 claim in the amount of $3.75 million;
- Mr. Daugherty shall receive a one-time lump sum payment in the amount of $750,000 to be paid within five business days of Bankruptcy Court approval of this Settlement Agreement;
- Releases shall be exchanged as provided for in paragraphs 3 through 6 of the Settlement Agreement;
- The Reorganized Debtor shall transfer its interests in HERA and ERA to Mr. Daugherty in accordance with paragraph 6 of the Settlement Agreement;
- The Parties shall cooperate to terminate all litigation in accordance with paragraphs 9 and 10 of the Settlement Agreement; and
- The Parties shall adhere to certain other non-economic matters agreed to by them as specifically set forth in the Settlement Agreement.

See generally Morris Dec. Exhibit 1.[5]

[5] With two exceptions, these settlement terms are materially the same as those announced on the record on February 2, 2021 in connection with the confirmation hearing on the Debtor's Plan. The two exceptions are that (a) the Class 9 claim was increased by $1 million, and (b) the Reorganized Debtor agreed to transfer its interests in HERA and ERA to Mr. Daugherty. The former change was intended to take into account the increased risk to the Debtor arising from

BASIS FOR RELIEF REQUESTED

41. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

42. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

43. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test "with a focus on comparing 'the terms of the compromise with the rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*,

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the post-confirmation discovery and disclosures related to Sentinel (the "Sentinel Disclosures"). *See UBS Secs. LLC v. Highland Capital Mgmt., L.P.*, Adv. Pro. No. 21-03020. The latter concerned Mr. Daugherty's final demand that the Debtor agreed to because (i) Mr. Daugherty continues to retain his claims against HERA and ERA and their respective officers, directors, and agents; (ii) HERA and ERA no longer have any tangible assets; (iii) the HERA Releasing Parties are confirming that they have no claims against and are releasing the HCMLP Released Parties pursuant to the HERA and ERA Release; and (iv) Mr. Daugherty insisted on this final term which, in the overall package, was not material under the Debtor's Plan or otherwise.

624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise." *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

44. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

45. First, although the Reorganized Debtor believes that it has valid defenses to the Daugherty Claim, there is no guarantee that the Reorganized Debtor would succeed in its litigation with Daugherty. Indeed, to establish its defenses, the Reorganized Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, the events giving rise to Mr. Daugherty's claims arose over five years ago, raising considerable questions about the reliability of those witnesses' recollection.

46. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the Daugherty Claim—including the Texas Action and the Highland Chancery Case—proceeded *for years* and have already cost the Debtor's estate millions of dollars in legal

fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive issues including, among other things, the conduct of Mr. Dondero and the other defendants in the pending Chancery Actions.

47. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Reorganized Debtor to: (a) avoid incurring substantial litigation costs; and (b) avoid the litigation risk associated with Daugherty's $40 million claim. Notably, as set forth in its 3018 Objection, and regardless of whether this settlement is approved, the Debtor has already conceded liability of almost $4 million in connection with the HERA Judgment, making the risk/reward analysis compelling.

48. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Reorganized Debtor's business judgment made after due deliberation of the facts and circumstances concerning Daugherty's Claim.

NO PRIOR REQUEST

49. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

50. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for Mr. Daugherty; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; and (d) parties requesting notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Reorganized Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 8, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
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-and-

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/s/ Zachery Z. Annable

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Counsel for Highland Capital Management, L.P.

EXHIBIT A

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-sgj11
Reorganized Debtor.	§	
	§	

ORDER GRANTING REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY (CLAIM NO. 205) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

This matter having come before the Court on the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Docket No. ____] (the "Motion")[2] filed by Highland Capital Management, L.P., the above-captioned reorganized debtor (the "Reorganized Debtor" or "Debtor", as applicable); and this Court having considered (a) the Motion; (b) the *Declaration of*

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

[2] Capitalized terms not otherwise defined in this order shall have the meanings ascribed to them in the Motion.

John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith [Docket No. ____] (the "Morris Declaration") and the exhibits annexed thereto, including the Settlement Agreement attached as Exhibit 1 (the "Settlement Agreement"); and (c) the arguments and law cited in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is truly the product of arm's-length bargaining, and not of fraud or collusion; and this Court having found that the Reorganized Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and all other documents filed in support of the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.

2. The Settlement Agreement attached hereto as **Exhibit 1** is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

3. The Reorganized Debtor, Mr. Daugherty, and all other parties are authorized to take any and all actions necessary and desirable to implement the Settlement Agreement.

4. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

PACHULSKI STANG ZIEHL & JONES LLP
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Counsel for Highland Capital Management, L.P.

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-sgj11
Reorganized Debtor.	§	

DECLARATION OF JOHN A. MORRIS IN SUPPORT OF THE REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY (CLAIM NO. 205) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

DEFENDANT'S EXHIBIT
3
25-03055

I, John A. Morris, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, declare as follows:

1. I am an attorney in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to Highland Capital Management, L.P. (the "Reorganized Debtor" or "Debtor", as appropriate), and I submit this Declaration in support of the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* (the "Motion") being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached hereto as **Exhibit 1** is a true and correct copy of that certain *Settlement Agreement* (the "Settlement Agreement") by and between the Reorganized Debtor and Patrick Hagaman Daugherty.

Dated: December 8, 2021.

/s/ John A. Morris
John A. Morris

EXHIBIT 1

Final Execution Copy

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement") is made and entered into by and between (i) Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), and (ii) Patrick Hagaman Daugherty ("Daugherty" and together with HCMLP, the "Parties," and individually as a "Party"). This Settlement provides for the treatment of certain claims asserted by Daugherty against the Debtor, and for the Parties to take certain other specified actions in settlement thereof.

RECITALS

WHEREAS, on October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code");

WHEREAS, the Debtor's chapter 11 case (the "Bankruptcy") is pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court");

WHEREAS, on February 2 and 3, 2021, the Court conducted a confirmation hearing with respect to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Docket No. 1808] (the "Plan");

WHEREAS, on February 8, 2021, the Court rendered an opinion from the bench in which it confirmed the Plan [Docket No. 1924];

WHEREAS, on February 22, 2021, the Court issued an order confirming the Plan [Docket No. 1943];

WHEREAS, on August 11, 2021, the Effective Date (as defined in the Plan) occurred [Docket No. 2700];

WHEREAS, Daugherty is a former employee and limited partner of the Debtor and has

served in other positions with affiliates and former affiliates of the Debtor;

WHEREAS, at the time of his resignation, Daugherty owned 19.1% of the preferred units of Highland Employee Retention Assets LLC ("HERA"), an employee deferred compensation vehicle managed by the Debtor and Highland ERA Management, LLC ("ERA") and contends that he owned or had the right to own all of the preferred units of HERA;

WHEREAS, prior to his resignation from HCMLP, Daugherty was awarded units of HERA, which vehicle owned interests in Restoration Capital Partners, LP ("RCP"), an HCMLP managed private equity fund, and other investments;

WHEREAS, in April 2012, the Debtor commenced an action against Daugherty in Texas state court (the "Texas Action"), and Daugherty subsequently asserted counterclaims for breach of contract and defamation, and third-party claims against HERA and others;

WHEREAS, after a three-week trial, the jury returned a verdict partially in favor of the Debtor, but Daugherty prevailed on his claims against the Debtor and James Dondero ("Dondero") for defamation with malice and a third-party claim against HERA and was awarded damages of $2.6 million against HERA, plus prejudgment and post-judgment interest at 5% (the "HERA Judgment");[1]

WHEREAS, in July 2017, after being unable to collect on the HERA Judgment, Daugherty commenced an action against the Debtor, Dondero, HERA, and ERA Management in the Delaware Chancery Court (the "Delaware Court"), in a case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and fees on fees (the "Highland Delaware Case");

[1] The Debtor prevailed on its claims against Mr. Daugherty for breach of contract and breach of fiduciary duty for non-monetary damages and obtained an award of $2.8 million in attorney's fees. The HERA Judgment was affirmed on appeal on December 1, 2016.

WHEREAS, the Delaware Court in the Highland Delaware Case (i) found that the Dondero-related defendants improperly withheld dozens of documents in discovery on privilege grounds, and (ii) ruled that there was "a reasonable basis to believe that a fraud has been perpetrated" such that the Delaware Court applied the "crime-fraud exception" to the attorney-client privilege assertion, and such rulings have not been overturned;

WHEREAS, Daugherty asserts that such withholding of documents and the failure to search defendants' and their employees personal electronic devices for stored documents and texts as well as other emails and domain names such as sasmgt.com and gmail.com which were in their possession and control and to provide required discovery injured him by undermining his attempts to build an evidentiary record to support his claims against the Debtor and the other defendants in the Highland Delaware Case;

WHEREAS, on October 14, 2019, the Highland Delaware Case proceeded to trial and two days later, on October 16, 2019, before the completion of the trial and before the Delaware Court ruled on Daugherty's and the Debtor's cross-motions for summary judgment regarding indemnification and fees on fees, the Debtor filed for bankruptcy;

WHEREAS, on December 1, 2019, Daugherty filed a separate lawsuit in the Delaware Court, captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against Dondero, HERA, ERA, Hunton Andrews Kurth LLP ("Andrews Kurth"), Marc Katz ("Katz"), Michael Hurst ("Hurst"), the Debtor's Chief Compliance Officer, the Debtor's then in-house counsel (Isaac Leventon ("Leventon")), and the Debtor's then general counsel (Scott Ellington ("Ellington")), for conspiracy to commit fraud, among other claims (the "HERA Delaware Case" and together with the Highland Delaware Case, the "Delaware Cases");

WHEREAS, on April 1, 2020, Daugherty filed a general, unsecured, non-priority claim

against the Debtor in the amount of at "least $37,483,876.59," and such claim was denoted by the Debtor's claims agent as Proof of Claim No. 67 ("Proof of Claim No. 67");

WHEREAS, on April 6, 2020, Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least $37,482,876.62" that superseded Proof of Claim No. 67 and that was denoted by the Debtor's claims agent as Proof of Claim No. 77 ("Proof of Claim No. 77");

WHEREAS, on August 31, 2020, the Debtor commenced an adversary proceeding against Daugherty by filing a complaint (the "Complaint") in which the Debtor: (1) objected to Proof of Claim No. 77 on various grounds (the "Claim Objection"), and (2) asserted a cause of action for the subordination of part of Daugherty's claim pursuant to section 510(b) of the Bankruptcy Code. Adv. Proc. No. 20-03107 (the "Adv. Proc.") [Adv. Docket No. 1] (the "Adversary Proceeding");

WHEREAS, on September 29, 2020, Daugherty filed his answer to the Complaint [Adv. Docket No. 8] (the "Answer");

WHEREAS, on September 24, 2020, Daugherty filed his *Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay* [Docket No. 1099] (the "Stay Motion") pursuant to which he sought to sever the Debtor from the Highland Delaware Case and then consolidate the remaining claims in the Highland Delaware Case into the HERA Delaware Case and proceed with one case against the non-Debtor parties;[2]

WHEREAS, on October 23, 2020, Daugherty filed a motion seeking leave to amend his Proof of Claim No. 77 [Docket No. 1280] (the "POC Amendment Motion"). The amended proof

[2] On October 8, 2020, the Debtor commenced a second adversary proceeding against Daugherty (the "Second Adversary Proceeding"), seeking to enjoin him from prosecuting the Delaware Cases. Adv. Proc. 20-03128 ("2d Adv. Proc.") [2d Adv. Proc. Docket No. 1]. On January 29, 2021, the parties filed a Settlement that resolved the Second Adversary Proceeding, and the Second Adversary Proceeding was subsequently dismissed with prejudice. [2d Adv. Proc. Docket No. 12].

of claim attached to the POC Amendment Motion increased Daugherty's general, unsecured, non-priority claim against the Debtor to the amount of at "least $40,410,819.42" and sought to supersede Proof of Claim No. 67 and Proof of Claim No. 77;

WHEREAS, on October 23, 2020, Daugherty filed his *Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion*, seeking for his Claim to be temporarily allowed for voting purposes in this amount of $40,410,819.42 [Docket No. 1281] (the "3018 Motion");

WHEREAS, on November 3, 2020, the Court granted the Stay Motion [Docket No. 1327];

WHEREAS, the Debtor opposed the 3018 Motion, and after conducting an evidentiary hearing for the limited purpose of determining the 3018 Motion, the Court entered an order temporarily allowing Daugherty's Claim only for voting purposes in the amount of $9,134,019 [Docket No. 1474];

WHEREAS, on December 10, 2020, the Court entered an order [Docket No. 1533] granting the POC Amendment Motion, and Daugherty was permitted to file an amendment to his proof of claim. On December 23, 2020, Daugherty filed an amended proof of claim, designated by the Debtor's claim agent as Proof of Claim No. 205 ("Proof of Claim No. 205" or the "Daugherty Claim"). Proof of Claim No. 205 superseded Proof of Claim No. 77 and increased the amount of the Daugherty's Claim to $40,710,819.42;

WHEREAS, on November 30, 2020, Daugherty filed his Motion to Lift the Automatic Stay (the "Lift Stay Motion") [Docket No. 1491] seeking to lift the automatic stay to allow him to finish his trial in the Delaware Court and liquidate his claims. The Debtor opposed the Lift Stay Motion, and after a hearing was held on December 17, 2020, the Court denied the relief requested in the Lift Stay Motion [Docket No. 1612];

WHEREAS, except with respect to the Reserved Claim (as defined below), the Parties have agreed to settle and resolve all claims and disputes between them and their respective current affiliates, managed entities, and employees, including the Daugherty Claim, on the terms set forth in this Settlement:

AGREEMENT

NOW, THEREFORE, after good-faith, arms-length negotiations, and in consideration of the foregoing, it is hereby stipulated and agreed that:

1. Allowed Claims: In full satisfaction of the entirety of the Daugherty Claim against the Debtor and HCMLP Released Parties (defined below), excluding the Reserved Claim, Daugherty shall receive (a) an allowed general unsecured Class 8 claim in the amount of $8,250,000; (b) an allowed subordinated general unsecured Class 9 claim in the amount of $3,750,000; and (c) a one-time lump sum cash payment in the amount of $750,000 to be paid within 5 business days of Bankruptcy Court approval of this Settlement Agreement.

2. Recovery: The Debtor makes no representation or warranty as to the recovery on Class 8 or Class 9 claims under the Plan.

3. Observation Access: As soon as practicable following entry of an order of the Bankruptcy Court approving this Settlement, HCMLP shall use reasonable efforts to petition the Claimant Trust Oversight Board[3] to permit Daugherty to have access as an observer to meetings of the Claimant Trust Oversight Board, subject to policies, procedures, and agreements applicable to other observers of the Claimant Trust Oversight Board, including policies, procedures, and agreements related to confidentiality and common interest. Whether Daugherty will be granted observer access and any continuing observer access is and will remain at the sole discretion of the

[3] The Claimant Trust Oversight Board refers to the Oversight Board as defined in the August 11, 2021 Highland Claimant Trust Agreement establishing the Claimant Trust, as defined therein.

Claimant Trust Oversight Board.

4. RCP Track Record: HCMLP shall use reasonable efforts to provide Daugherty with data constituting the investment performance track record of RCP during Daugherty's tenure at HCMLP. Daugherty shall not be entitled to any compensation with respect to the performance of RCP. HCMLP makes no representations or warranties regarding such data and takes no responsibility with respect to the use of such data for any purposes.

5. Daugherty Releases: Except as specifically provided in this paragraph 5, and to the maximum extent permitted by applicable law, the Debtor, on behalf of itself and each of the HCMLP Entities and HCMLP Parties (as those terms are defined in paragraph 6 below), hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue Daugherty, his successors, affiliates, and assigns, (and in each such category to include their respective advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, and designees) (collectively, the "Daugherty Additional Release Parties" and together with Daugherty, the "Daugherty Released Parties"), in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, or the Delaware Cases, all existing as of the date hereof (collectively, the "HCMLP Released Claims"); provided, however, that such release shall not

apply with respect to any and all defenses that HCMLP or the HCMLP Entities may have to the Reserved Claim or the Reserve Motion (as those terms are defined herein) or Daugherty's obligations under this Settlement. For the avoidance of doubt, the HCMLP Released Claims include all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

6. HCMLP Releases: Except as specifically provided in this paragraph 6, and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Released Parties, hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (a)(i) HCMLP; (ii) Strand Advisors Inc.; (iii) the Claimant Trust; (iv) the Claimant Trust Oversight Board; (v) the Highland Litigation Sub-Trust; (vi) the Highland Indemnity Trust; (vii) any entity of which greater than fifty percent of the voting ownership is held directly or indirectly by HCMLP as of the date hereof and any entity otherwise directly or indirectly controlled by HCMLP as of the date hereof,; and (viii) any entity managed by either HCMLP or a direct or indirect subsidiary of HCMLP, including Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Master, L.P. (and all of their respective general partners, feeder funds, managers, and affiliates) (the foregoing (a)(i) through (a)(viii) the "HCMLP Entities"), and (b) with respect to each such HCMLP Entity, such HCMLP Entity's respective current (meaning employed in their respective roles as of the date hereof) advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders (but not the shareholders of Strand Advisors Inc.), agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "HCMLP Parties," and together with the

HCMLP Entities, the "HCMLP Released Parties"),[4] in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, or the Highland Delaware Case (collectively, the "Daugherty Released Claims"); provided, however, that such release shall not apply with respect to the Reserved Claim or the Reserve Motion (as those terms are defined in paragraph 9 below) or HCMLP's obligations under this Settlement. This release expressly applies to all current employees of HCMLP as the Reorganized Debtor (as defined in the Plan), in their capacities as such. For the avoidance of doubt, the Daugherty Released Claims includes all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

7. Reservation of Daugherty Rights: Notwithstanding anything contained herein to the contrary, the term HCMLP Released Parties shall not include (a) NexPoint Advisors, L.P. (or any of its subsidiaries and employees, advisors, or agents), (b) the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and any of their respective employees, advisors, or agents), (c) NexBank, SSB (or any of its subsidiaries, employees, advisors, or agents), (d) James Dondero or any trust in which Dondero or any of his family members are a trustee or beneficiary (or any trustee acting for such trust), including but not limited to Hunter

[4] The Daugherty Additional Released Parties and the HCMLP Released Parties are collectively referred to as the "Additional Released Parties."

Mountain Investment Trust, The Get Good Trust, Dugaboy Investment Trust, SLHC Investment Trust, (e) HERA (subject to paragraph 8 below), (f) ERA (subject to paragraph 8 below), (g) Grant Scott, (h) Mark Okada and any trust in which Mark Okada or any of his family members are a beneficiary (or any trustee acting for such trust in their respective capacities), (i) Ellington, (j) Leventon, (k) Katz, (l) Hurst, (m) Andrews Kurth, or (m) any other former employee (as of the date hereof) of the HCMLP Released Parties.

8. HERA and ERA: The Parties acknowledge and agree that as of the date hereof, HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released at or prior to the date hereof, and no claims against the HCMLP Released Parties. The allowed claims provided in paragraph 1 hereof are expressly agreed to in order to satisfy any liability the Debtor may have in connection with the HERA Judgment. To facilitate recovery of such potential claims – which expressly excludes any and all claims by or in the name of HERA and ERA against any of the HCMLP Released Parties -- HCMLP will transfer its interests in HERA and ERA to Daugherty. Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system. Such transfer will be without representation or warranty of any type; including, for the avoidance of doubt, without any representation or warranty as to the merits of the potential claims or the efficacy of the transfer of the potential claims. Such transfer will be without any liability or material cost to HCMLP or its affiliates or the other HCMLP Released Parties, including any liability in respect of any assets that HERA or ERA ever actually or allegedly owned, possessed, or controlled and that were actually or allegedly transferred, conveyed, sold, written off or otherwise disposed of (in any such case, a "Disposition"). In connection with the transfer, HERA and ERA have expressly released the HCMLP Released Parties from any and all claims, including any claims actions or remedies related

to any Disposition, either of them may have against any HCMLP Released Party now or in the future (the "HERA and ERA Release"). Daugherty on behalf of himself and each of the Daugherty Released Parties acknowledges, accepts, and agrees not to challenge the HERA and ERA Release or support any challenge thereto. A copy of the HERA and ERA Release is annexed hereto as **Exhibit A**. Daugherty acknowledges and agrees that even though HERA and ERA are not HCMLP Released Parties under this Agreement, Daugherty and all Daugherty Released Parties shall (a) not seek to hold any HCMLP Released Party liable for any action or inaction taken by or on behalf of HERA or ERA, including through any derivative, veil-piercing or similar cause of action or remedy; and (b) not seek to recover damages or obtain any form of relief against any HCMLP Released Party on account of any action or inaction taken by or on behalf of HERA or ERA, including through any veil piercing or similar cause of action or remedy. If, for any reason, HERA or ERA, or any person or entity acting on their behalf, recovers anything from any HCMLP Released Party, Daugherty shall promptly turnover to HCMLP or its successors and assigns any amounts actually recovered by Daugherty or any Daugherty Released Party, from HERA or ERA arising from, related to, or derived from any claim that HERA or ERA or any person or entity acting on their behalf has or may have against any HCMLP Released Party. HCMLP will provide reasonable assistance to Daugherty to assist with the preparation of any required HERA K-1s for 2021, but any requirement to provide such K-1s will be the obligation, if any, of HERA.

9. IRS Compensation Claim: In section 4(ii) of the Addendum to Proof of Claim No. 205, Daugherty contends that he has a contingent, unliquidated claim against the Debtor arising out of a 2008/2009 compensation letter (the "Reserved Claim"), which claim is also related to an audit/dispute between the Debtor and the Internal Revenue Service (the "IRS") (the dispute between the Debtor and IRS being referred to herein as the "IRS Audit Dispute"). The Debtor

disputes the validity and amount of the Reserved Claim. Daugherty shall retain the Reserved Claim solely against the Debtor and not against any other HCMLP Released Party, and the Debtor reserves the right to assert any and all defenses thereto. Any litigation by and between the Debtor and Daugherty concerning the validity and amount of the Reserved Claim shall be stayed until the IRS makes a final determination with respect to the IRS Audit Dispute; provided, however, that Daugherty may file a motion with the Bankruptcy Court to have the Reserved Claim estimated for purposes of establishing a reserve as a "Disputed Claim" under the Debtor's Plan (the "Reserve Motion"), and the Debtor (and any successor) reserves the right to assert any and all defenses thereto. Notwithstanding the foregoing, Daugherty may address any personal claim or personal liability to the IRS as a result of the IRS Audit Dispute, including settlement of any such claims; provided, however, Daugherty agrees to forego settling or addressing any claims with the IRS without the written consent of the Debtor until March 31, 2022.

10. Current HCMLP Employees: The HCMLP Parties set forth on **Appendix A** hereto are currently employed by the Debtor are HCMLP Released Parties. By executing a copy of this Settlement and delivering it to Daugherty, each of the persons on Appendix A agrees not to sue, attempt to sue, or threaten or work with or assist any entity or person to sue, attempt to sue, or threaten any Daugherty Released Party on or in connection with any claim or cause of action arising prior to the date of this Settlement.

11. Dismissal and Motions in Other Actions. Within ten business days after approval of this Settlement by the Bankruptcy Court, the Parties shall take all steps necessary (a) to dismiss with prejudice (i) the Highland Delaware Case, as against the Debtor and any HCMLP Released Party, and (ii) the HERA Delaware Case, as against every HCMLP Released Party, (b) to file an agreed motion and proposed order to partially vacate the final judgment entered against Daugherty

in the Texas Action, (c) withdraw HCMLP's objection to the Daugherty motion to recuse in the Texas Action, and (d) to dismiss the Adversary Proceeding with prejudice. The parties shall file the foregoing motions and withdrawals substantially in the form of the documents annexed hereto as **Exhibit B**.

12. Additional Third Party Claims Discovery: The Debtor (a) shall accept service of any subpoenas via email served by Daugherty in connection with the Delaware Cases on behalf of itself, the HCMLP Entities, the HCMLP Parties (but only in their capacity as employees of HCMLP); and (b) acknowledge and consent to the jurisdiction of the Delaware Chancery Court for purposes of enforcing any such subpoenas, subject in all respects to the rights that the HCMLP Entities and HCMLP Parties to defend the requested production, if any.

13. Settlement of Third Party Claims: Daugherty shall not settle any claims or causes of action against any current or former director, officer, employee, agent or representative of HCMLP or Strand Advisors Inc. (collectively, the "Potentially Indemnified Parties") to the extent such claims have been brought or could have been brought against any Potentially Indemnified Parties, if any such settlement designates, defines or describes the settled claims as arising out of or relating to simple negligence or as having otherwise been within the scope of employment of the Potentially Indemnified Party.

14. Claims Register: As soon as practicable after the Settlement Effective Date, HCMLP shall instruct the claims agent in the Debtor's chapter 11 case to adjust the claims register in accordance with this Settlement.

15. Daugherty Representations: Daugherty represents and warrants to each of the HCMLP Released Parties that (a) he has full authority to release the Daugherty Released Claims and has not sold, transferred, or assigned any Daugherty Released Claim to any other person or

entity and that (b) no person or entity other than Daugherty has been, is, or will be authorized to bring, pursue, or enforce any Daugherty Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) Daugherty.

16. HCMLP Representations: Each of HCMLP and each HCMLP Released Party who has signed this Settlement represents and warrants to Daugherty that (a) he, she or it has not sold, transferred, pledged, assigned or hypothecated any HCMLP Released Claim to any other person or entity and (b) he, she, or it has full authority to release any HCMLP Released Claims that such HCMLP Released Party personally has against Daugherty.

17. Additional HCMLP Representations: HCMLP represents and warrants that it is releasing the HCMLP Released Claims on behalf of the HCMLP Entities to the maximum extent permitted by any contractual or other legal rights HCMLP possesses. To the extent any of the HCMLP Entities dispute HCMLP's right to release the HCMLP Released Claims on behalf of any of the HCMLP Entities, HCMLP shall use commercially reasonable efforts to support Daugherty's position, if any, that such claims were released herein. For the avoidance of doubt, HCMLP will have no obligations to assist Daugherty under this paragraph if HCMLP has been advised by external counsel that such assistance could subject HCMLP to liability to any third party or if such assistance would require HCMLP to expend material amounts of time or money. HCMLP shall not argue in any forum that the non-signatory status of any of the HCMLP Entities to this Settlement shall in any way affect the enforceability of this Settlement vis-à-vis any of the HCMLP Entities. The Parties agree that all of the HCMLP Entities are intended third-party beneficiaries of this Release.

18. HCMLP Covenant: HCMLP and the HCMLP Entities covenant and agree that they will not pursue or seek to enforce any injunctions entered in the Texas Action against

Daugherty.

19. Entire Agreement; Modification: This Settlement contains the entire agreement between the Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between the Parties. This Settlement may not be modified other than by a signed writing executed by the Parties.

20. Bankruptcy Court Approval: Notwithstanding anything to the contrary contained herein, the effectiveness of HCMLP and the Claimant Trust's execution of this Settlement shall be subject to entry of an order of the Bankruptcy Court approving this Settlement. HCMLP shall take all steps necessary to file with the Bankruptcy Court a motion for an order approving this Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code (the "Motion"). The parties agree to cooperate in the preparation and prosecution of the Motion which shall be filed no later than 5 business day after execution of this Settlement, unless such time is extended by mutual agreement.

21. Counterparts: This Settlement may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument and shall be effective against a Party or Additional Released Party upon approval of the Settlement by the Bankruptcy Court.

22. Governing Law; Jurisdiction: This Settlement will be exclusively governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles, and all claims relating to or arising out of this Settlement, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Delaware, excluding Delaware's conflicts of law principles. The Bankruptcy Court will retain exclusive jurisdiction over all disputes relating to this Settlement.

23. Headings: Paragraph headings included herein are for convenience and shall have no impact whatsoever on the meaning or interpretation of any part of this Settlement.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto, intending to be legally bound, have executed this Settlement as of the day and year set forth below:

Dated: 11-21-21

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____

Name: James P. Seery, Jr.
Title: Chief Executive Officer

HIGHLAND CLAIMANT TRUST

By: _____

Name: James P. Seery, Jr.
Title: Claimant Trustee

Dated: 11/22/21

PATRICK HAGAMAN DAUGHERTY

By: _____

Name: Patrick Hagaman Daugherty

EXHIBIT A

HERA RELEASE AGREEMENT

This HERA Release Agreement ("HERA Release Agreement") is entered into as of November 21, 2021 by and among Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), Patrick Hagaman Daugherty ("Daugherty"), Highland Employee Retention Assets, LLC ("HERA") and Highland ERA Management, LLC ("ERA" and together with HCMLP, and HERA, the "Parties," and individually as a "Party").

WHEREAS, reference is hereby made to the Settlement Agreement (the "Settlement") of even date herewith and attached hereto made and entered into by and between the Debtor, the Highland Claimant Trust, and Daugherty.

WHEREAS, the Settlement settles all of Daugherty's claims against the HCMLP Released Parties, including all claims against the HCMLP Released Parties relating to transfers of assets from HERA.

WHEREAS, the Settlement includes, among other things, the transfer by HCMLP to Daugherty of HCMLP's interests in HERA and ERA.

WHEREAS, under the Settlement such transfer is being made without any liability to any of the HCMLP Released Parties of any type and is conditional on the full release of, and covenant not to sue, each of the HCMLP Released Parties, by and from HERA, ERA, Daugherty and the Daugherty Released Parties.

WHEREAS, neither HERA nor ERA filed proofs of claim in the Bankrupty and have no claims against HCMLP.

WHEREAS, out of an abundance of caution to confirm that HERA, ERA, Daugherty, and the Daugherty Released Parties have no claims against the HCMLP Released Parties, this HERA Release Agreement is being entered into contemporaneously with the Settlement and constitutes an

essential part thereof.

WHEREAS, capitalized terms used herein but not otherwise defined herein have the respective meanings set forth in the Settlement.

NOW, THEREFORE, in consideration of the entry into of the Settlement, the transfer of the equity interests in HERA and ERA to Daugherty in accordance with the Settlement, and for other good and valuable consideration, including the provisions set forth herein, the parties hereto further agree as follows:

1. Upon entry of an order of the Bankruptcy Court approving this Settlement and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Additional Release Parties, together with each of HERA and ERA (Daugherty, the Daugherty Additional Release Parties, HERA and ERA shall be collectively referred to herein as the "HERA Releasing Parties"), each hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, any of the HCMLP Released Parties for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, Highland Delaware Case, or the HERA Delaware Case (collectively, "Claims"), in each case that in any way arise from or otherwise in any way relate to HERA or ERA, including, without limitation, any actual or potential claims, whether known or unknown, in any way related to or

arising out of the formation, management, operation or assets of HERA, ERA or any of their respective predecessors or successors, including the transfer of any assets to or from HERA or ERA, it being understood that all remaining assets of HERA have been transferred to HCMLP prior to the date hereof, and in addition to the releases set forth above, each of the HERA Releasing Parties irrevocably waives and releases and covenants not to sue with respect to any Claims against any of the HCMLP Released Parties in any way related to any such transfers or assets, whether *in personam* with respect to the HCMLP Released Parties or *in rem* with respect to any of their assets (collectively, the "HERA Released Claims") or any other Disposition.

2. This Release constitutes a part of, and is supplemental to, the provisions of the Settlement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

In witness whereof, the parties hereto, intending to be legally bound, have executed this HERA Release Agreement as of the date set forth above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

PATRICK HAGAMAN DAUGHERTY

By: _____
Name: Patrick Hagaman Daugherty

HIGHLAND EMPLOYEE RETENTION ASSETS, LLC

By: Highland ERA Management, LLC, its manager

By: Highland Capital Management, LP

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

HIGHLAND ERA MANAGEMENT, LLC

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

EXHIBIT B

CAUSE NO. 12-04005

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
v.	§	
PATRICK DAUGHERTY,	§	
Defendant and Counter-Plaintiff,	§	**DALLAS COUNTY, TEXAS**
v.	§	
SIERRA VERDE, LLC, HIGHLAND EMPLOYEE RETENTION ASSETS LLC, JAMES DONDERO, PATRICK BOYCE, AND WILLIAM L. BRITAIN,	§	
Third-Party Defendants.	§	
	§	**68th JUDICIAL DISTRICT**

AGREED MOTION TO PARTIALLY VACATE THE FINAL JUDGMENT DATED JULY 14, 2014

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Highland Capital Management, LP ("Highland") and Defendant Patrick Daugherty ("Daugherty" and together with Highland, the "Parties") file this *Agreed Motion to Partially Vacate the Final Judgment dated July 14, 2014* (the "Motion"), and respectfully show the following:

1. On July 14, 2014, this Court entered a *Final Judgment* (the "Judgment") that, among other things, granted Highland's motion for injunctive relief against Daugherty.

2. The Judgment was amended on March 23, and June 23, 2017.

3. On October 16, 2019, filed a petition under chapter 11 in the United States Bankruptcy Court for the District of Delaware ("Highland's Bankruptcy Case"). On October 24,

2019, as a result of the commencement of Highland's Bankruptcy Case, the Supreme Court of Texas issued an order abating a related case that Daugherty had brought in that court, Case No. 19-0758. Highland's Bankruptcy Case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas.

4. Daugherty asserted certain claims against Highland in Highland's Bankruptcy Case. The Parties have fully and finally resolved their disputes pursuant to a settlement agreement (the "Settlement Agreement") reached in the Highland Bankruptcy Case pursuant to which, among other things, (a) all of Daugherty's known and unknown claims against each of the Highland Released Parties (as those terms are defined in the Settlement Agreement) are resolved, and (b) this Motion seeking the *vacatur* of certain provisions of the Judgment specifically set forth below is being filed.

5. Highland and Daugherty hereby agree and stipulate that the Court has plenary power to issue an order granting this Motion because the Court retained authority to enforce the permanent injunction rendered in the Judgment, and that changed circumstances have now arisen such that the Court should dissolve the permanent injunction. Highland and Daugherty further agree and stipulate that this Motion shall be treated as an agreement of the Parties pursuant to Texas Rule of Civil Procedure 11, and is fully enforceable. *See Coale v. Scott*, 331 S.W.3d 829, 831-32 (Tex. App.—Amarillo 2011, no pet.) ("Irrespective of whether a trial court lost its plenary jurisdiction over its judgment, the trial court's authority to approve a Rule 11 agreement does not depend on whether it has such jurisdiction.").

6. Highland and Daugherty agree that the following portions of the Judgment shall be vacated pursuant to their settlement in the Highland Bankruptcy:

a. The second full paragraph on Page 2 of the Judgment, which begins "The Court, after considering the jury's findings regarding Daugherty's breaches of contract and breaches of fiduciary duty . . .";

b. The permanent injunction rendered against Daugherty in the third full paragraph on Page 2 of the Judgment, which begins "It is therefore further ORDERED that Daugherty be and hereby is commanded to cease and desist from . . .";

c. The fourth and fifth full paragraphs on Page 2 of the Judgment awarding Highland a monetary judgment against Daugherty for reasonable and necessary attorney's fees, as well as post-judgment interest on that award[1]; and

d. The jury's answers to Questions 1, 2, 5, 6, 9 and 12 in the Verdict, which was attached as Exhibit 1 to the Judgment.

7. Highland and Daugherty further agree that, as a result of the vacation of the permanent injunction in the Judgment, Highland hereby withdraws any pending motions to show cause or motions for contempt against Daugherty that allege Daugherty violated or is violating the permanent injunction. Highland also agrees not to seek to enforce the permanent injunction in any manner in the future.

[1] Daugherty previously satisfied the monetary judgment awarded to Highland, and Highland filed a release of the monetary judgment. Although Highland and Daugherty have agreed to vacate the monetary judgment awarded to Highland, Daugherty waives and relinquishes any right or claim to recover any amount previously paid in satisfaction of the Judgment and Highland shall not be required to reimburse Daugherty for his prior satisfaction of the monetary judgment. To the extent Daugherty is entitled to indemnification for any liabilities, losses, and damages allegedly incurred by him for actions taken in connection with Highland's business, including the liabilities Daugherty allegedly incurred in connection with this action and the Judgment, such indemnification claims have been fully and finally satisfied and resolved under the Settlement Agreement.

8. Concurrent with the filing of this Motion, Daugherty will file a motion to dismiss his as-yet unfiled petition for review pending before the Supreme Court of Texas under Case No. 19-0758.

9. Highland and Daugherty further agree that any portions of the Judgment that are not specifically vacated pursuant to this Motion shall remain in full force and effect.

WHEREFORE, Highland and Daugherty pray that the Court grant this Motion in its entirety, and for all further relief, at law or in equity, the Court deems necessary.

Respectfully submitted,

GRAY REED & McGRAW LLP

By: */s/ Sonya D. Reddy*
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ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been transmitted by electronic transmission to all counsel of record on February ___, 2021, as follows:

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Attorneys for Third-Party Defendants HERA, Patrick Boyce, and William Britain

/s/ Sonya D. Reddy
SONYA D. REDDY

APPENDIX A (signatures to follow)

1. James P. Seery, Jr.
2. Cameron Baynard
3. Nathan Burns
4. Timothy Cournoyer
5. Naomi Chisum
6. Stetson Clark
7. Sean Fox
8. Matthew Gray
9. Kristin Hendrix
10. David Klos
11. Vishal Patel
12. Thomas Surgent
13. Michael Throckmorton

Docket #3298 Date Filed: 3/8/2022

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 March 8, 2022

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-sgj11
Reorganized Debtor.	§	
	§	

ORDER APPROVING
SETTLEMENT WITH PATRICK HAGAMAN DAUGHERTY (CLAIM NO. 205)
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

This matter having come before the Court on the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Docket No. 3088] (the "Motion"),[2] filed by Highland Capital Management, L.P., the above-captioned reorganized debtor (the "Reorganized Debtor") in

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

DEFENDANT'S EXHIBIT
4
25-03055

the above-captioned chapter 11 case (the "Bankruptcy Case"); and this Court having considered (a) the Motion; (b) *Scott Ellington's Objection to the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Daugherty* [Docket No. 3242] (the "Ellington Objection"), filed by Scott Ellington ("Mr. Ellington"); (c) the *Reorganized Debtor's Reply in Further Support of Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty* [Docket No. 3257]; (d) *Patrick Daugherty's Joinder in Reorganized Debtor's Reply in Further Support of Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205)* [Docket No. 3258], filed by Patrick Hagaman Daugherty ("Mr. Daugherty"); (e) the exhibits identified on *Highland Capital Management L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held March 1, 2022* [Docket No. 3270], including the proposed Settlement Agreement signed by the Reorganized Debtor and Mr. Daugherty (the "Settlement Agreement"), all of which were admitted into evidence without objection; (f) Exhibit SE-2 identified on *Scott Ellington's Amended Witness and Exhibit List for Hearing Scheduled for March 1, 2022 at 1:30 pm (Prevailing Central Time)* [Docket No. 3265] ("Exhibit SE-2"), which was admitted into evidence without objection; (g) the testimony of Mr. James P. Seery, Jr. adduced during the hearing held on March 1, 2022 (the "Hearing"), including assessing Mr. Seery's credibility; and (h) the arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Reorganized Debtor, the Debtor's creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed

(1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views, and (ii) the extent to which the settlement is the product of arms-length bargaining, and not of fraud or collusion; and this Court having found that the Reorganized Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, the Court makes the following findings of fact and conclusions of law:[3]

1. At the time of the Hearing, Mr. Ellington (i) did not hold any claims against the Debtor (*see Order Approving Stipulation and Agreed Order Resolving Third Omnibus Objection and Certain Other Claims* [Docket No. 3244]); (ii) was not a Claimant Trust Beneficiary (as that term is defined in Exhibit SE-2); and (iii) because he does not hold claims against the Debtor, could not become a Claimant Trust Beneficiary.
2. Accordingly, Mr. Ellington does not have standing to object to the Motion.
3. Even if Mr. Ellington had standing, the Reorganized Debtor has met its burden of proof under Bankruptcy Rule 9019 that the settlement embodied in the Settlement Agreement

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

(and the exhibits annexed thereto) are fair, reasonable, and in the best interests of the Debtor, its successor(s), and all parties-in-interest.

4. Mr. Daugherty's Proof of Claim No. 67 was superseded by Proof of Claim No. 77, and Proof of Claim No. 77 was superseded by Proof of Claim No. 205, such that Proof of Claim Nos. 67 and 77 shall be disallowed and Proof of Claim No. 205 shall be treated in the manner set forth in the Settlement Agreement.

Based on the foregoing, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.

2. The Ellington Objection is **OVERRULED** in its entirety.

3. The Settlement Agreement is approved in all respects pursuant to Federal Rule of Bankruptcy Procedure 9019.

4. The Reorganized Debtor and Mr. Daugherty are authorized to take any and all actions necessary and desirable to implement the Settlement Agreement without need of further approval or notice.

5. Proofs of Claim Nos. 67 and 77 are **DISALLOWED** with prejudice.

6. Proof of Claim No. 205 is **ALLOWED** in the amounts set forth in the Settlement Agreement.

7. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

PACHULSKI STANG ZIEHL & JONES LLP
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John A. Morris (NY Bar No. 2405397) *(admitted pro hac vice)*
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Counsel for Highland Capital Management, L.P.

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-sgj11
Reorganized Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adv. Proc. No. 25-03055-sgj
	§	
v.	§	
	§	
PATRICK HAGAMAN DAUGHERTY,	§	
	§	
Defendant.	§	

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

DEFENDANT'S EXHIBIT
5
25-03055

HIGHLAND CAPITAL MANAGEMENT, L.P.'S (A) OBJECTION TO PATRICK DAUGHERTY'S MOTION TO DISMISS AND (B) CROSS MOTION FOR RELIEF FROM A FINAL ORDER PURSUANT TO BANKRUPTCY RULE 9024

Highland Capital Management, L.P., the reorganized debtor ("Highland" or the "Debtor" as applicable) in the above-captioned chapter 11 case (the "Bankruptcy Case") and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), files this (*A) Objection to Patrick Daugherty's Motion to Dismiss, and (B) Cross Motion for Relief from a Final Order Pursuant to Bankruptcy Rule 9024* (the "Objection" or the "Cross Motion," as the case may be) in response to the *Motion to Dismiss* [Adv. Pro. Docket No. 5] (the "Motion") filed by Patrick Daugherty ("Daugherty" and together with Highland, the "Parties"). In support of its Objection and Cross Motion, Highland respectfully states as follows:

PRELIMINARY STATEMENT[2]

1. Highland commenced this action to disallow, estimate, and/or subordinate, Daugherty's remaining unliquidated, contingent claim based on an IRS tax refund that Daugherty admittedly received for the 2008 tax year. Daugherty claims that nearly 16 years after receiving his tax refund based on losses related to his Highland Partnership Interests, the Debtor must make him whole if that tax refund is ever successfully challenged by the IRS. In response, relying solely on the Stay Provision, Daugherty moves to dismiss the action as "premature"

[2] Capitalized terms used but not defined in this Preliminary Statement shall have the meanings below or as ascribed in Highland's *Complaint for (1) Disallowance of Claim No. 205 in its Entirety, (2) Estimation of Claim No. 205 for Allowance Purposes, or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty* (Adv. Pro. Docket No. 1) (the "Complaint").

because there has not been a "final determination of the IRS Audit Dispute."[3] The Motion should be denied.

2. Based on available information, Highland believes that the "IRS [made] a final determination with respect to the IRS Audit Dispute" such that the Stay Provision does not apply. Daugherty disagrees, contending that his Reserved Claim cannot be adjudicated until there is a "final determination of the IRS Audit Dispute."[4] In Daugherty's view, a "final determination" will not occur until (at least) all appeals are exhausted.[5]

3. Rather than wade into the thicket of arcane tax regulations, the most efficient path here is for the Court to simply grant Highland's Cross Motion, strike the Stay Provision from the Settlement Agreement pursuant to Rule 60(b)(6), and deny the Motion.[6] Courts have broad discretion under Rule 60(b)(6) to relieve a party from a final order for "any [] reason that justifies relief." In light of unforeseen circumstances, the Court should use its "grand reservoir of equitable power" under Rule 60(b)(6) to achieve justice by striking the Stay Provision from the Court-approved Settlement Agreement.[7]

4. Since the Parties signed the Settlement Agreement in November 2021, Highland has taken substantial steps to implement its Plan, including monetizing assets, resolving general unsecured claims and interests, and making distributions to Claimant Trust Beneficiaries.

[3] Motion ¶7. Daugherty's alternative request that the Court "stay this adversary proceeding until the Debtor's IRS Dispute is fully and finally resolved" (*Id*. ¶18) should be denied because (a) it is conflicts with the Stay Provision, and (b) as discussed below, would cause the Highland Bankruptcy Case to remain open indefinitely.

[4] Motion ¶7.

[5] Motion ¶¶13-14. Daugherty even leaves open the possibility that a "final determination" may not occur "[e]ven at the conclusion of all court proceedings" unless the IRS takes certain action. *Id*. ¶14.

[6] Highland believes that a review of the facts in the context of the thicket of tax regulations would result in a finding that the IRS has made a "final determination with respect to the IRS Audit Dispute." However, Highland makes the Cross Motion in the interests of judicial economy as a far simpler approach and because the relief requested is warranted under the facts and applicable law.

[7] *Seven Elves v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981) ("Rule 60(b) is 'a grand reservoir of equitable power to do justice'") (quoting *Menier v. United States*, 405 F.2 245, 248 (5th Cir. 1968)).

Indeed, Highland has accomplished so much since the Settlement Agreement was signed that it substantially needs only to (a) resolve Daugherty's Reserved Claim, (b) monetize a "limited number of assets," and (c) fix the limited amount of several Class 11 interests before it can begin the dissolution process.[8]

5. No one foresaw more than three and a half years ago that (a) Daugherty's Reserved Claim would remain unresolved at this time, (b) Daugherty would baselessly contend that a "final determination of the IRS Audit Dispute [was] a condition precedent to resolution of" his Claim, or (c) the resolution of Daugherty's Reserved Claim would be among the last things to be done before Highland could commence the dissolution process. The operative Trust Agreements prove as much.[9] Regardless of how the Stay Provision is interpreted, Highland could not and did not agree to leave this Bankruptcy Case open indefinitely, and the Stay Provision was never intended to prevent Highland from dissolving until Daugherty's Reserved Claim was finally determined. Based on unforeseen circumstances, justice requires that the Court use its equitable power to strike the Stay Provision.[10]

6. Daugherty will not be prejudiced by the granting of Highland's Cross-Motion because he will be in the same position he would have been in had Highland objected to his Reserved Claim back in 2021.

---

[8] *See Motion for an Order Further Extending Duration of Trusts*, [Bankr. Docket No. 4213] ("Extension Motion") ¶¶2, 12; *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* [Bankr. Docket No. 4229] ¶12 (acknowledging that Daugherty holds the last remaining unresolved claim against the estate).

[9] The best evidence that no one expected the IRS to need more than five years to make a "final determination," or that the Stay Provision could effectively prevent the commencement of the dissolution process, is Section 9.1 of the Claimant Trust and Litigation Sub-Trust Agreements, both of which contemplate dissolution within five years of the Plan's effective date. Extension Motion ¶9. Pursuant to the Court's recent order, the duration of the Trusts has been extended only until August 11, 2026, five years from the Plan's effective date. Bankr. Docket No. 4298.

[10] Bankruptcy Code section 502(c)(1) expressly authorizes the Court to estimate for allowance purposes "any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, *would unduly delay administration of the estate*." 11 U.S.C. § 502(c)(1) (emphasis added). Granting Highland's Cross Motion will enable the Court to effectuate this statutory provision exactly as intended.

7. Finally, if the Court decides that the IRS has not made a final determination *and* denies the Cross Motion, the Court should grant the Motion and dismiss the Complaint without prejudice, subject to (a) a further extension of the claim objection deadline through February 1, 2026,[11] and (b) Highland's right to re-file the Complaint between January 1, 2026 and January 31, 2026, together with a renewed motion under Rule 60(b)(6) (if necessary) so that they can be adjudicated and Highland's dissolution process can commence before August 11, 2026.

JURISDICTION AND VENUE FOR HIGHLAND'S CROSS MOTION

8. This Court has jurisdiction over Highland's Cross Motion under 28 U.S.C. §§ 157 and 1334 and the retention of jurisdiction provisions of Article XI of the Plan. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. The Parties' Agreement Concerning Daugherty's Reserved Claim

9. Daugherty's operative proof of claim is Claim 205. Claim 205 included a purported tax claim for $1,475,816 of "Compensation Award" plus $1,174,537 of "Estimated Interest", for a total of $2,650,353. Highland and Daugherty later agreed that Highland would reserve Daugherty's asserted amount of $2,650,353, subject to Highland's right to assert any and all defenses as further described below.

10. On December 8, 2021, the Debtor filed the Settlement Motion by which it sought approval of that certain *Settlement Agreement* entered into between Highland and Daugherty (the

[11] Highland's deadline to object to Daugherty's Reserved Claim was extended through June 30, 2025, pursuant to a Tolling Agreement dated as of July 27, 2022, as amended. *See* Bankr. Docket No. 4255, Exhibits 60-63.

"Settlement Agreement"). Morris Exhibit 1.[12] On March 8, 2022, the Court entered the Settlement Order, granting the Settlement Motion and resolving all of Claim 205 other than Mr. Daugherty's claim related to the 2008 IRS Refund that he received (*i.e.*, the Reserved Claim, as defined in the Settlement Agreement).

11. In paragraph 9 of the Settlement Agreement, (a) Highland expressly "reserve[d] the right to assert any and all defenses" to the Reserved Claim, and (b) the parties agreed that "[a]ny litigation by and between the Debtor and Daugherty concerning the validity and amount of the Reserved Claim shall be stayed *until the IRS makes a final determination* with respect to the IRS Audit Dispute." Morris Exhibit 1 ¶9 (the "Stay Provision") (emphasis added).

B. Highland Concludes the IRS Made a "Final Determination"

12. While employed by the Debtor, Daugherty received Partnership Interests in the Debtor and became one of the Debtor's limited partners.[13] As a partner in Highland, Daugherty was allocated partnership gains and losses pursuant to Highland's limited partnership agreement. For tax purposes, as a partner, each year Daugherty received a Schedule K-1 (IRS Form 1065) reflecting the gains and losses allocated to his Partnership Interests for a particular tax year.

13. On February 27, 2009, the Debtor gave Daugherty a *Comprehensive Compensation and Benefits Statement* recapping all earnings, awards, and benefits Daugherty received in connection with his employment by and Partnership Interests in the Debtor during calendar year 2008 (the "2009 Statement").

[12] "Morris Exhibits" refer to the exhibits annexed to the *Declaration of John A. Morris in Support of Highland's (A) Objection to Patrick Daugherty's Motion to Dismiss, and (B) Cross Motion for Relief from a Final Judgment Pursuant to Bankruptcy Rule 9024(b)* being filed contemporaneously with this Objection and Cross Motion.

[13] On October 31, 2011, Daugherty terminated his employment with Highland. Pursuant to the express conditions of his Employment Agreement, Daugherty acknowledged and agreed that the Debtor would "have no further liability or obligation to [Daugherty] under [the Employment Agreement] or in connection with his/her employment of termination."

14. The 2009 Statement included what Highland estimated to be the tax refund Daugherty could expect to receive for tax year 2008 in the amount of $1,475,816 (the "2008 Refund"). That amount purported to be an estimate of the pre-tax equivalent refund that Daugherty should have expected to receive from the IRS on account of the Highland losses attributable to his Partnership Interests for the 2008 tax year. Daugherty recently admitted that the IRS paid him a tax refund "on a net basis of just under $1.2 million."[14]

15. After all of the obligations to Daugherty under the 2009 Statement were satisfied, the IRS began an audit of Highland's 2008 tax return (the "2008 Audit").[15] Highland recently also found information suggesting that the "IRS [made] a final determination with respect to the IRS audit dispute."

16. Specifically, on February 3, 2018, Daugherty was (a) advised that the IRS field examiners had "concluded their audit," (b) informed that his allocable Portfolio income/short term gain was determined to be $1,257,792 (Form 886-Z), representing an adjustment (increase) of $1,231,361 (the "Adjustment"), and (c) given the opportunity to accept the IRS' determination and avoid penalties and further interest. (Form 870-PT). The Adjustment does not represent incremental tax owed, but rather incremental income that would be subject to tax at the applicable tax rate. Morris Exhibits 2-4, respectively.

17. Daugherty apparently decided not to accept the IRS' proposed adjustments and thereby accepted the risk that the IRS might impose penalties and interest on his allocable income/gain.

[14] *See* Transcript from June 25, 2025 hearing filed at Docket No. 4296 at 156.

[15] Strand Advisors, Inc. ("Strand") is the pre-petition debtor's tax matters partner for purposes of defending the 2008 Audit. Control of Strand reverted to James Dondero—the Debtor's ousted founder—in 2021, and the Debtor has had no role in the 2008 Audit since then.

18. Upon information and belief, the Adjustment has not changed since 2018 such that Daugherty's maximum tax underpayment exposure is equal to the highest individual income tax rate at the time (37%) times the income Adjustment, or about $455,000.[16]

19. Daugherty seeks to avoid adjudication of his Reserved Claim by asserting that this action is barred by the Stay Provision since there has not been (and may never be) a "final determination of the IRS Audit Dispute." *See generally* Daugherty's Motion.

C. The Highland Bankruptcy Is Nearly Complete and the Highland Claimant Trust Is Expected to Commence the Dissolution Process Before August 11, 2026

20. Daugherty's quest for an indefinite stay of litigation to finally resolve his Reserved Claim is untenable for at least the following reasons: (a) by its terms, the Stay Provision is tied to the *IRS' final determination* with respect to the Audit Dispute, not the "final determination of the IRS Audit Dispute," as Daugherty contends; (b) Section 9.1 of the Trust Agreements shows that Highland's dissolution was expected to commence within five years of the effective date of the Plan, but can only occur after, among other things, all disputed claims are resolved; and (c) if Daugherty's interpretation of the Stay Provision is correct (and it is not), this case will remain open indefinitely at considerable cost to the Claimant Trust and its stakeholders.

21. It is indisputable Highland substantially needs only to (a) resolve Daugherty's Reserved Claim, (b) monetize a "limited number of assets," and (c) fix the limited amount of several Class 11 interests before it can begin the dissolution process. *See supra* ¶4 and n.7. It is also indisputable that the disputes regarding the IRS Audit are unlikely to be completed for years. *See* Motion ¶1.

[16] This (a) does not take into account Highland's causes of action for disallowance and/or subordination and (b) conflicts with Daugherty's recent testimony that the IRS Audit could result in the imposition of millions of dollars in taxes, penalties, and interest that threaten to leave him bankrupt.

22. Thus, awaiting "a final determination of the IRS Audit" (or even the IRS' final determination if this Court finds that no such determination has yet been made) will unduly delay the administration of the Highland estate, including the anticipated commencement of Highland's dissolution process before August 11, 2026.

RELIEF REQUESTED ON CROSS MOTION

23. Pursuant to Bankruptcy Rule 9024(b)(6) ("Rule 60(b)(6)"), Highland files this Cross Motion and requests that the Court modify the Settlement Order to provide that the Stay Provision is stricken from the Settlement Agreement.

24. Courts have repeatedly observed that Rule 60(b)(6) "should be liberally construed" and that courts have broad discretion to grant relief under that provision to accomplish justice. *See*, *e.g.*, *Celtic Marine Corp. v. James C. Justice Cos.*, 593 F. App'x 300, 303 (5th Cir. 2014) ("Clause (6) is a residual clause used to cover unforeseen contingencies; that is, it is a means for accomplishing justice in exceptional circumstances … the rule should be liberally construed in order to achieve substantial justice") (quoting *Steverson v. GlobalSantaFe Corp.*, 508 F.3d 303 (5th Cir. 2007)); *Lindy Invs. v. Shakertown 1992, Inc.*, 360 F. App'x 510 (5th Cir. 2010) (granting Rule 60(b)(6) motion and observing that "the discretion under 60(b)(6) is said to be especially broad because relief may be granted under it when appropriate to accomplish justice.'") (quoting *Harrell v. DCS Equip. Leasing Corp.*, 951 F.3d 1453, 1458 (5th Cir. 1992); *Seven Elves*, 635 F.2d at 401-02 (Rule 60(b)(6) "should be liberally construed in order to do substantial justice" and is 'a grand reservoir of equitable power to do justice'"); *In re Strudel Holdings LLC*, 656 B.R. 404 (Bankr. S.D. Tex. 2024 (granting Rule 60(b)(6) motion to amend sale order to modify the closing date based on unforeseen circumstances).

25. This is an easy case. Highland's dissolution is intended to commence by August 11, 2026, and was never dependent on the resolution of Daugherty's Reserved Claim the adjudication of which is plainly contemplated by Bankruptcy Code section 502(c). The Court should grant the Cross Motion so as not to indefinitely delay the conclusion of Highland's Bankruptcy Case and dissolution of the Claimant Trust.

CONCLUSION

WHEREFORE, Highland respectfully requests that the Court (a) deny the Motion and grant the Cross Motion; (b) alternatively, grant the Motion and dismiss the Complaint without prejudice, subject to (i) a further extension of the claim objection deadline through February 1, 2026, and (ii) Highland's right to re-file the Complaint between January 1, 2026 and January 31, 2026, together with a renewed motion under Rule 60(b)(6) (if necessary) so that they can be adjudicated and Highland's dissolution process can commence before August 11, 2026; and (c) grant Highland such further and additional relief as it may justly be entitled.

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Dated: July 18, 2025.

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, on July 18, 2025, counsel for Highland, John Morris, conferred with counsel for Daugherty, Drew York, regarding the relief requested in the foregoing Cross Motion. Daugherty is **OPPOSED** to the relief requested in the Cross Motion.

/s/ Zachery Z. Annable
Zachery Z. Annable

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-sgj11
Reorganized Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adv. Proc. No. 25-03055-sgj
	§	
v.	§	
	§	
PATRICK HAGAMAN DAUGHERTY,	§	
	§	
Defendant.	§	

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

ORDER (A) DENYING PATRICK DAUGHERTY'S MOTION TO DISMISS AND (B) GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S CROSS MOTION FOR RELIEF FROM A FINAL ORDER PURSUANT TO BANKRUPTCY RULE 9024

Having considered (i) the *Motion to Dismiss* [Adv. Pro. Docket No. 5] (the "Motion") filed by Patrick Daugherty ("Daugherty") and (ii) the (*A) Objection to Patrick Daugherty's Motion to Dismiss, and (B) Cross Motion for Relief from a Final Order Pursuant to Bankruptcy Rule 9024* (the "Objection" and the "Cross Motion," as appropriate)[2] filed by Highland Capital Management, L.P., the Court finds and concludes that: (i) the Court has jurisdiction to consider the Motion, the Objection, and the Cross Motion under 28 U.S.C. §§ 157 and 1334 and the retention of jurisdiction provisions of Article XI of the Plan; (ii) consideration of the Motion, the Objection, and the Cross Motion is a core proceeding under 28 U.S.C. § 157(b)(2); (iii) venue is proper in this district under 28 U.S.C. §§ 1408 and 1409; and (iv) the legal and factual bases set forth in the Objection and the Cross Motion establish good cause for the relief granted herein. Accordingly, it is hereby **ORDERED THAT**:

1. The Motion is **DENIED** in its entirety.

2. The Cross Motion is **GRANTED** in its entirety.

3. Pursuant to Bankruptcy Rule 9024(b)(6), the Settlement Order is hereby modified to provide that the Stay Provision is stricken from the Settlement Agreement.

4. The Court shall retain exclusive jurisdiction to hear and determine all matters and disputes arising from the interpretation and implementation of this Order.

###End of Order###

[2] Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Objection and Cross Motion.

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COUNSEL FOR PATRICK DAUGHERTY

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

In re:	§	
	§	**CASE NO. 19-34054-SGJ-11**
HIGHLAND CAPITAL MANAGEMENT, L.P	§	
	§	**CHAPTER 11**
	§	
Debtor.	§	

PATRICK HAGAMAN DAUGHERTY'S
MOTION FOR TEMPORARY ALLOWANCE OF CLAIM FOR VOTING PURPOSES PURSUANT TO BANKRUPTCY RULE 3018

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

Patrick Daugherty ("**Daugherty**") by and through his undersigned counsel, submits this motion (the "**Motion**") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Order**"), pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") temporarily allowing Daugherty's claims in full for plan voting purposes *only*. Daugherty also concurrently files his Memorandum of Law and Brief in Support of the Motion (the "**Brief**") and Appendix (the "**Appendix**") in support. In support of the Motion, Daugherty respectfully states as follows:

DEFENDANT'S EXHIBIT
6
25-03055

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

2. On October 16, 2019 (the "**Petition Date**"), the Debtor filed its voluntary petition for bankruptcy under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Delaware Bankruptcy Court**").

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the "**Committee**") was appointed by the United States Trustee for in Delaware.

4. On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring this case to this Court.

5. On April 1, 2020, Daugherty filed Proof of Claim No. 67, in an amount not less than $37,483,876.62, which was later amended on April 6, 2020 as Proof of Claim No. 77.

6. On August 31, 2020, the Debtor filed its Objection to Claim No. 77 of Patrick Hagaman Daugherty and (II) Complaint to Subordinate Claim of Patrick Hagaman Daugherty [Docket No. 1008] (the "**Adversary Complaint**") in this case, initiating *Highland Capital Management, L.P. v. Daugherty*, Adversary No. 20-03107 before this Court (the "**Adversary Proceeding**").

7. On September 21, 2020, the Debtor filed its First Amended Plan of Reorganization [Docket No. 1079] (the "**Plan**") and Disclosure Statement [Docket No. 1080] (the "**Disclosure Statement**"). A hearing on Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of

Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice [Docket No. 1108], filed on September 28, 2020, is currently set for hearing on October 27, 2020 at 10:30 a.m. central.

8. Filed contemporaneously herewith, Daugherty has filed his Motion for Leave to Amend Proof of Claim No. 77 (the "**Motion to Amend POC**"). As explained more fully in the Motion to Amend POC, the proposed amendment to Daugherty's proof of claim does not add any additional bases or claims, but rather provides a definitive amount for one aspect of the claim, and provides further clarity as to other parts of the claim. The proposed amended proof of claim attached to the Motion to Amend POC asserts a claim in the amount of $40,710,819.42.

9. For the reasons identified and explained in the Brief, Daugherty respectfully requests that the Court enter an order allowing his claim, for voting purposes only, in the amount of $40,710,819.42.

WHEREFORE, PREMISES CONSIDERED, Daugherty respectfully requests that the Court enter an order allowing his claim, for voting purposes only, in the amount of $40,710,819.42 and granting such other and further relief to which the Debtor may be justly entitled.

Dated: October 23, 2020.

Respectfully submitted,

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COUNSEL FOR DEFENDANT,
PATRICK HAGAMAN DAUGHERTY

Exhibit A

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

In re:	§	
	§	**CASE NO. 19-34054-SGJ-11**
HIGHLAND CAPITAL MANAGEMENT, L.P	§	
	§	**CHAPTER 11**
	§	
Debtor.	§	

PATRICK HAGAMAN DAUGHERTY'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIM FOR VOTING PURPOSES PURSUANT TO BANKRUPTCY RULE 3018

CAME ON FOR CONSIDERATION the Motion For Temporary Allowance of Claim For Voting Purposes Pursuant To Bankruptcy Rule 3018 (the "**Motion**") filed by Patrick Hagaman Daugherty ("**Daugherty**"), and the Court finds that it has jurisdiction over this matter, that venue is proper, and that sufficient notice of the Motion has been given to all parties requiring notice. The Court has determined that the legal and factual bases set forth in the Motion and the Brief in Support of the Motion establish just cause for the relief granted herein. It is therefore

ORDERED that the Motion is **GRANTED**. It is further

ORDERED that any and all Objections to the Motion are **OVERRULED**. It is further

ORDERED that Patrick Hagaman Daugherty is **ALLOWED,** on a temporary basis and for voting purposes only, a claim in the amount of $40,710,819.42. It is further

ORDERED that Daugherty may to vote to accept or reject the Debtor's First Amended Plan of Reorganization and/or subsequent plan amendments.

END OF ORDER

Submitted by:

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COUNSEL FOR DEFENDANT,
PATRICK HAGAMAN DAUGHERTY

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, November 17, 2020
	1:30 p.m. Docket
Debtor.	
	PATRICK DAUGHERTY'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIM FOR VOTING PURPOSES
	[1281]

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

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DEFENDANT'S EXHIBIT
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25-03055

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

DALLAS, TEXAS - NOVEMBER 17, 2020 - 1:38 P.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good afternoon. Please be seated. We have a setting we'll start now in Highland, Case No. 19-34054. We have a motion of Patrick Daugherty to have his claim allowed for voting purposes under Bankruptcy Rule 3018. For Mr. Daugherty, who do we have appearing? Do we have Mr. Kathman and crew?

MR. KATHMAN: Good afternoon, Your Honor. Jason Kathman on behalf of Mr. Daugherty. I'm also joined today by my co-counsel in Delaware, Tom Uebler and Joe Christensen with the firm McCollum D'Emilio Smith & Uebler, LLC. They've been admitted *pro hac vice* in this case and they're going to be handling the case this morning for our side, Your Honor. We also have on the phone and in the WebEx today Mr. Daugherty as well.

THE COURT: All right. Very good. I see Mr. Morris up there. Are you going to be taking the lead for the Debtor this afternoon?

THE CLERK: He's on mute.

THE COURT: You're on mute, sir.

MR. MORRIS: Thank you very much. Yes, I -- yes, I will, Your Honor. It's John Morris from Pachulski Stang Ziehl

& Jones for the Debtor.

With the agreement of all of the parties, before we begin my partner Mr. Pomerantz would like to just briefly update the Court on certain plan issues, and then we'd like to proceed to the matter on the schedule.

THE COURT: All right. That is fine. So, we'll -- first off, I'm just going to note we have a lot of other participants showing on the video screen. I'm not going to take other appearances. I assume they're just interested observers today. The only pleadings on the contested matter were filed by Daugherty and the Debtor. But certainly if someone at some point has something to say regarding the case generally, I'm happy to hear anything people want to report.

So, with that, Mr. Pomerantz, what would you like to say?

MR. POMERANTZ: So, thank you, Your Honor. As Mr. Morris mentioned, I thought I would give Your Honor a brief update. We haven't been here in a couple of weeks, which has seemed like a lifetime, but I wanted to apprise the Court last Friday night the Debtor filed an amended plan and disclosure statement, pursuant to the Court's prior scheduling order. We also filed the infamous plan supplement, which was discussed in a lot of detail at the last hearing, which contained drafts, advance drafts of the principal plan implementation documents likely to be of interest to the creditors, including the Claimant Trust Agreement, the Liquidating Trust Agreement,

other corporate organizational documents, and a list of retained causes of action under the plan.

And I'm pleased to report that over the last couple of weeks the Debtor and the Committee have made substantial progress in addressing the disputed issues that were forefront at the hearing on October 27th.

Such progress included a resolution of the structure and consideration relating to the releases to be provided under the plan; the identity of the independent board members and the Liquidating Trustee, or Litigation Trustee, excuse me; substantial agreement on the form of the Claimant Trust Agreement and the Litigation Trust agreement; and the inclusion of a protocol to address how disputed claims will be resolved.

While there are a few issues left to be resolved and ironed out between the Debtor and the Committee, (audio gap) can be resolved by Monday. We believe that as it relates to the Committee's issues next week, the hearing will largely be consensual, and we extend the opportunity to other parties who objected, including UBS, who has already reached out to us with a couple of comments they have, as well as we suggest that Mr. Daugherty and HarbourVest also reach out to us in advance of that hearing so that we can work through as many issues.

So, we took Your Honor's comments last week to heart, and

I think the parties have worked cooperatively to streamline to what I think will be a narrow set of issues, if any, that will be up for hearing on Monday, Your Honor.

THE COURT: Okay. That's very good to hear. I'll just check: Is Committee counsel on the line and do you wish to respond to that?

MR. CLEMENTE: Your Honor, it's Matt Clemente at Sidley. Can you hear me?

THE COURT: I can.

MR. CLEMENTE: Oh, hi, yeah, good afternoon, Your Honor. As Mr. Pomerantz I think has accurately captured of the current state of play, so we took the time that Your Honor wisely gave us and I think we worked very, very hard and I think we have come to conclusion on, you know, a variety of the issues that we had. Mr. Pomerantz is correct, there's a hearing full of things that we still need to discuss, Your Honor. But I would expect that either we come to a resolution on those or those are things that, you know, ultimately can be dealt with in connection with plan confirmation itself. But I agree with Mr. Pomerantz's comments.

THE COURT: Okay. Very good. Well, I hope all of you will keep working at it. You've got almost a week until we're here next Monday. So, UBS and the others, I really hope you will accept the invitation of Mr. Pomerantz you heard just now to talk to him and see if you can get your issues worked

out.

All right. Well, we did note that you had filed the documents Friday night, and I think I know what my weekend activity is going to be besides, you know, watching my Longhorns: Reading the Highland disclosure statement and plan supplement. So, anyway, I look forward to doing that, and I will hope for a somewhat smooth hearing Monday, if not an entirely smooth hearing.

All right. Thank you for that report, Mr. Pomerantz.

MR. POMERANTZ: You're very welcome, Your Honor.

THE COURT: Okay. Thank you. All right. Well, let's turn to the matter at hand, the motion. You all have blessed me with lots of papers to read and exhibits for today. We have a two-hour time estimate, so I hope you will do your best to stick with that.

As far as your presentations today, let me tell you that I really don't need you to spend much time, if any, arguing the law, Bankruptcy Rule 3018(a), the case law construing it. I'm pretty familiar. It says such things as the Rule contemplates a summary estimation proceeding, not a full trial on the merits. The Court has a lot of discretion. So please don't argue the 20 or 30 cases that are out there that interpret Rule 3018. I'd really like to focus on the numbers more than anything else.

And so as far as opening statements, I'm going to turn to

-- I don't know if it will be Mr. Uebler or Mr. Christensen -- and ask you right off the bat: Why is the Debtors' suggested compromise of $9,134,019 not a fair resolution, when we all know that you can argue entitlement to every penny in that $40 million plus proof of claim ultimately in the adversary proceeding, in the trial on the proof of claim, but for now, it looks like the Debtor has put out a pretty reasonable olive branch? So let me just put you on the spot and ask you to start there in your opening statement.

MR. UEBLER: Thank you, Your Honor. This is Tom Uebler on behalf of Patrick Daugherty.

While it is a generous offer, it leaves disputed $31 -- approximately $31 million with respect to Mr. Daugherty's claims. The Debtor has agreed to the amount of Mr. Daugherty's 2012 Texas court judgment, plus interest, and the Debtor has also agreed to the unjust enrichment and promissory estoppel damages from the Delaware case in the amount of approximately $5 million. But what the Debtor refuses to agree to or acknowledge any potential liability for are the three other subparts of Mr. Daugherty's claim.

The first of those subparts is what we're calling the Reimbursement Claims, and that includes Mr. Daugherty's claims for contractual indemnification under Highland's partnership agreement. And it includes fees on fees -- at least that's how we refer to it in Delaware -- which are fees expended by

Mr. Daugherty in seeking to establish his indemnification rights in Delaware. And finally, fee shifting, for what we have laid out as a decade pattern of litigation misconduct by Highland against Mr. Daugherty.

The Debtor also disputes Mr. Daugherty's claim for the remaining 80.9 percent of the value of HERA, Highland Employee Retention Assets. That claim is valued at approximately $21.2 million.

And finally, --

THE COURT: Let me stop you. Let me stop you there, because that's obviously a big, big, big chunk of the disparity. Remind me. Either you lost on that in Delaware, or I'm trying to remember, you abandoned it, you somehow had an adverse ruling in Delaware. Remind me real quick what that was.

MR. UEBLER: We did. We had an adverse ruling. We brought claims in Delaware as part of Mr. Daugherty's original pleading in 2017. And those were claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty. Ultimately, Mr. Daugherty was seeking to put back into HERA the millions of dollars that Highland had taken from HERA in 2013 and then to dissolve HERA. And it's Mr. Daugherty's position that he is the 100 percent owner of HERA at this point in time.

The Delaware Court of Chancery dismissed that portion of

Mr. Daugherty's pleading on *laches* grounds, finding that --

THE COURT: Yes.

MR. UEBLER: -- Mr. Daugherty should have filed that claim sooner. We argued that he was excused from the limitations period because there was an open question in the Texas courts about whether Mr. Daugherty remained a unit holder of HERA up through 2016. And that's an argument we plan to pursue on appeal.

To fully respond to your question, I want to note I read a footnote in the Debtors' opposition that said something like we've had a year to seek leave to file an appeal of that dismissal in Delaware. But we don't yet have a final appealable judgment in Delaware to appeal. That dismissal remains an interlocutory order. As Your Honor probably knows, we were in day three of trial on the claims that did survive the Debtors' motion to dismiss when this proceeding was filed. So we have not had an opportunity to appeal the dismissal of what we're calling the HERA 80 Percent Claim, but Mr. Daugherty intends to exercise those appellate rights in wherever the appropriate venue may be as this proceeds.

THE COURT: All right. Well, you know, courts always want to be pragmatic, as you know, in situations like this, 3018 estimation proceedings. And my pragmatic view of things is, while, again, we may have a multi-day trial one day where you convince me on this $21 million plus claim, that

notwithstanding the Delaware court's dismissal of it for *laches*, at the end of the day you ought to get this, it seems like a pragmatic place to draw the line here today for purposes of an estimation hearing. I'm not sure how you could convince me in two hours that this absolutely is likely enough to prevail that you ought to get to vote the claim.

Another area, as long as I'm talking about pragmatic ways to resolve this issue today, is the post-petition interest. I have a feeling that's only a couple of hundred thousand dollars or so. But nevertheless, it's argued here somewhat extensively that Daugherty ought to get to keep accruing post-judgment interest on the HERA judgment post-petition because, you know, it's not really a judgment against the Debtor, it's a judgment against HERA, and the general 502(b)(2) you can't accrue post-petition interest, unmatured interest, if you're an unsecured creditor, ought not to apply. I'm just telling you right now, that would be a nonstarter here for me today. Again, I have a feeling that's only a couple of hundred thousand dollars, right? Maybe it's more than that. It can't be. Right?

MR. UEBLER: That's --

THE COURT: Okay.

MR. UEBLER: That's correct, Your Honor.

THE COURT: So, --

MR. UEBLER: So I won't, I won't address that any

further.

THE COURT: Okay. So we can take that one off the table.

And then the other kind of pragmatic way I view things today is the attorney fee shifting. Now, you might be able to piece this together for me and show me that, contractually, under the indemnification provision, that there is some component of attorneys' fees that ought to be allowable, but, you know, to just generally kind of give a common law bad faith argument here, that I should depart from the *American* Rule -- you know, if there's no contractual entitlement, if there's no statutory entitlement -- that's a heavy lift. Again, you might prevail one day, but for purposes of a summary voting estimation claim context, I just don't see how you get there.

So, does that help narrow the issues today? I had trouble thinking how I'm ever going to get to the $21 million claim in a summary 3018 context, the breakaway from the *American* Rule on attorneys fee shifting, and then the post-petition interest.

So if you carve those away, I don't know how close we are to the $9,134,000 that the Debtor has proposed, but I guess we're still a few million away.

MR. UEBLER: We're getting closer, but let me respond to the pragmatic way of dealing with the HERA 80 Percent

Claim, which is $21 million. We don't view that as at all a nothing amount for purposes of today. I might not convince you that Mr. Daugherty should be entitled to the entire $21 million, and I'm not -- I'm not going to try, because I do recognize that the claim was dismissed and that creates at least a procedural burden for us.

So, one result may be to award Mr. Daugherty a portion of that claim. But let me move on --

THE COURT: Okay.

MR. UEBLER: -- to address the fee issue. These are -- there are 30 different sources of Mr. Daugherty's rights to fee reimbursement, only one of which is the common law exception to the *American* Rule. And my thought was to just briefly outline what it is that we're asking for, break down Mr. Daugherty's claim, and then ask Mr. Daugherty to testify very briefly about how he calculated that amount and what out-of-pocket payments he's actually made throughout the course of this litigation, to give the Court an opportunity to see which of the different buckets the fees may fall into and how you may be able to resolve some or all of those amounts.

THE COURT: All right.

MR. UEBLER: So, the claim for indemnification and fee shifting, as I said, it has -- it has three components. The first, which we focused on in our reply, is the bad-faith fee shifting.

Now, in Mr. Morris's presentation that I expect him to show today, he'll refer to this as a new argument that wasn't in our Delaware complaint and was not in the proof of claim submitted by Mr. Daugherty. That's just not the case. This was an issue that was presented to the Delaware court in August 2019, before trial. We laid out why Mr. Daugherty should be entitled to fee shifting. And that's an issue that would have been addressed post-trial but for this bankruptcy. And that's based on the series of events that we laid out in detail -- probably too much detail for these purposes -- in our papers about shifting positions in litigation; attempts to put Mr. Daugherty in jail, which thankfully the Texas appellate court put a stop to; preventing Mr. Daugherty from collecting compensation that's rightfully his. All of that has cost Mr. Daugherty millions of dollars over the last ten years, and he hasn't recovered a dime.

So, the three legal doctrines are the bad-faith exception to the *American* Rule.

The second is contractual indemnification under Highland Capital's partnership agreement. This is a claim that was fully briefed on cross-motions for summary judgment in Delaware, and it was argued to the Delaware Vice Chancellor and submitted for a decision. The source of Mr. Daugherty's indemnification claim is Section 4.1(h) of Highland's partnership agreement, and that's Exhibit 39 in the papers we

submitted. I'll just read briefly what that provision is.

It states that a partnership -- that is, Highland Capital -- shall indemnify and hold harmless the general partner -- which is a company called Strand -- and any director, officer, employee, agent, or representative of the general partner -- again, Strand -- 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 -- which is Highland -- or in connection with the partnership's business -- which is Highland's business -- including, without limitation, attorney's fees and any amounts expanded in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by Delaware law.

Now, it was undisputed through summary judgment in the Delaware case and going I would say close to three years of litigation that Mr. Daugherty was a covered party under that provision. In other words, he was an officer, agent, representative of Strand who could be entitled to indemnification.

Highland admitted in every version of its answer in the Delaware case that Mr. Daugherty was, in fact, an officer or an agent of Strand through his resignation from Highland in 2011. But in this Court now, we have Highland claiming that Mr. Daugherty ceased being an officer of Strand in 2009.

And, in fact, just a few hours ago I received a few documents from Mr. Morris showing that Mr. Daugherty was not listed as an officer of Strand after 2009. I'm still processing in my own mind why I'm just receiving these documents now, after three years of litigation, why Highland made previous judicial admissions to the contrary, and why we made it through summary judgment without this issue being raised.

But ultimately, it doesn't matter, because Mr. Daugherty will prove, consistent with Highland's prior admissions in the Delaware court, that he is a covered person under this indemnification clause, because, at a minimum, he was an agent and representative of Strand through 2011.

And he'll also prove that all of the Texas litigation and what has happened since the Texas litigation began in 2012 really stems from what Mr. Daugherty did or did not do related to Highland's business. So the nexus requirement under the indemnification agreement is satisfied.

Again, this is an issue that was fully submitted to the Delaware court, but no decision was issued.

The third component of our reimbursement claim is fees on fees and the idea that, to the extent Mr. Daugherty is successful in establishing his contractual indemnification rights, he is also entitled to reimbursement for the cost of proving his entitlement to indemnification.

Now, if you put all of these three buckets together, you're left with $7.8 million. That's not an insignificant amount, and it's -- it's more than the $9 million that Highland has offered. And if any line is going to be drawn today, we submit that that line should be drawn to include this $7.8 million for -- based on the law that we've provided in our papers and based on the facts that we have demonstrated and the exhibits and Mr. Daugherty's declarations and the brief testimony you'll hear today about the litigation that Mr. Daugherty defended and what he's had to deal with for the last ten years.

I'm going to stop there. Do you have any questions at this time about the fee reimbursement portion of the claim, which is $7.8 million?

THE COURT: No questions on that.

MR. UEBLER: Okay. The one aspect of Mr. Daugherty's claim that we did not have an opportunity to talk about yet is what we're calling the 2008 Tax Refund Claim. And that's -- that's an amount of $2.6 million in Mr. Daugherty's proof of claim, and that amount should be allowed in full for voting purposes.

Now, I'm going to let Mr. Daugherty explain the factual background of this claim, but the short version is that Mr. Daugherty received compensation in 2008 from Highland Capital, and he received that compensation as an employee and in the

form of a tax refund. The IRS is still in the process of auditing Highland's tax treatment for 2008, so there's a possibility that in the future the IRS will claw back Mr. Daugherty's 2008 compensation that was approximately $1.4 million. And with that would come interest and penalties that we estimate could total $2.6 million.

So, yes, it's correct that as of today there is no definite liability to the IRS. This is a contingent liability and we don't know what the total amount may be.

Now, if Highland hadn't come out and said in its adversary complaint that it's basically refusing to acknowledge any potential liability for this issue, we might not have a current claim to put before Your Honor today. But the fact that Highland has already come out and said it has no intention of either covering future tax liability or giving Mr. Daugherty substitute employee compensation for 2008 in the event that the IRS were to take that away, we think presents a live claim that Mr. Daugherty has sought to preserve through this proceeding.

He's not seeking a cash payment, ultimately. All he's looking for is some agreement by Highland to assume this liability or to put the money in escrow in the event of a clawback. But for voting purposes, we're asking that the full potential of $2.6 million for this claim be permitted.

And, you know, you asked earlier about why $9 million

isn't enough. It's a matter of degree. Mr. Daugherty is a creditor and he is entitled to a say in the plan, and that's what we're trying to establish today. And we think it's important that Mr. Daugherty have a voice, and that voice carry some weight, to enable Mr. Daugherty to have a seat at the table, have a voice in the plan.

I think the more that this Court would be willing to permit at this summary stage of the proceedings, where there's a presumption in favor of claims, even if they're disputed -- I think that will be my only reference to 3018 law today -- we submit the Court should err on the side of more rather than less.

Mr. Morris and I had discussed doing mutual openings followed by Mr. Daugherty's testimony. I think now would be a good time to turn this over to Mr. Morris before we call Mr. Daugherty, if that works for you.

THE COURT: All right. That works for me. Mr. Morris?

MR. MORRIS: Good afternoon, Your Honor. John Morris; Pachulski Stand Ziehl & Jones, for the Debtor.

I really do appreciate Your Honor's preliminary projections of where we are. I had prepared a rather extensive presentation for the Court that I'm actually going to dispense with because I'd like to focus on the narrow issues that Your Honor has identified.

I want to begin by apologizing to the Court for having to engage in this process. We have tried very hard, I think as Your Honor has perceived, to fully resolve this particular motion. At the outset of the process, the Debtor readily acknowledged the validity of Mr. Daugherty's judgment in the amount of $2.6 million, plus interest, through $3.7 million. That's not an amount in dispute today. That won't be in dispute as a matter of his claim. We have admitted it, we acknowledge it, and it will be allowed in that amount.

We went one step further in the hope that it would resolve this motion by agreeing to allow the maximum amount that Mr. Daugherty's expert was prepared to testify to on the petition date for these promissory estoppel and other related claims. The expert at that time testified to a range of somewhere of four to about $4-1/2, $5-1/2 million, and that's how we arrived at the $9.1 million.

Let me make it clear, Your Honor, that if the parties are unable to resolve this, the Debtor will contest that. But for this purpose, we felt by giving it one hundred percent validity, notwithstanding the fact that we will contest it on the merits if needed, that that was a fair resolution, that that was a very simple way to get this done. Unfortunately, we were not successful.

We're here today not because we like to litigate but because we're doing our best for these estates and its

stakeholders, including all unsecured creditors. Mr. Daugherty is entitled to a seat at the table. We have given him a seat at the table. He now sits with the third largest general unsecured claim that is going to be allowed, and that follows from the settlements with the Crusader and Redeemer Funds and with Acis. At $3.7 million, he's already got the third largest allowed claim. And we're prepared to give him a vote of over $9 million for this purpose. But what we don't do and we don't think our fiduciary duty will allow us to do is give him credit for claims that, in our view, clearly have no merit.

So let me just go through them very quickly. The first is a claim for over $20 million arising from the assertion that somehow he is now entitled to one hundred percent of the HERA assets. Mr. Daugherty -- I don't know Mr. Daugherty. I have no animosity against Mr. Daugherty. One of the things that I and my colleagues and the board have dealt with throughout this case is that there's so much baggage here, Your Honor. And it's -- this has been our burden, this has been our challenge, is to cut through this and try to get to the merits. What's really fair and what's really reasonable? And it's what we try to do in our settlement negotiations and it's the only reason we're here today, because we thought we made a generous offer.

And Mr. Daugherty is well within his rights to say, Not

good enough. But we think, we think we've offered enough. When we think of his claim to a hundred percent of the HERA assets, he will testify, I assume, that when he left he had 19.1 percent. He never thought he had more than 19.1 percent. Nobody ever promised him any more than 19.1 percent. His expert in Delaware was prepared to testify on damages based on 19.1 percent. He actually pursued these claims, Your Honor, not just in Delaware, he actually started in Texas. He knew about this in 2013, right when it happened. It was part of his Texas action, and it was rejected. And you heard -- and we heard Mr. Uebler allude to it, right? So then he goes to -- he goes to Delaware and he tries to bring them again, maybe three years later, in 2017. These are undisputed facts, Your Honor. And they get dismissed.

Now, the interesting thing is, if you look at our Exhibit T, it's the Delaware -- I think it's V, actually. It's the Delaware court's order dismissing the claims. It didn't give a reason. But if you go back to Highland's brief, you'll see there's a multitude of reasons.

And when they use the phrase *laches*, Your Honor, it doesn't mean that Mr. Daugherty was found to have sat on his hands. The Delaware Chancery Court is a court of equity, and so they use equitable principles. What really happened is that the Delaware court found that the claim was barred by the statute of limitations because the cause of action arose in

2013, Mr. Daugherty knew that, and he didn't bring his action until 2017, more than, you know, more than the three-year statute of limitations.

But you'll see in the Debtors' brief, which we've cited, that Highland actually asserted a multitude of reasons why this claim should be barred. And we don't know exactly why the Chancery Court did it, but he's going to have to deal not just with *laches* -- which is the word, the phrase that's used for statute of limitations -- he's going to have to deal with promissory estoppel. He's going to have to -- not promissory estoppel; just estoppel generally. Res judicata. It's all in there. There is no chance he's going to succeed on this claim on appeal. And it's $21 million, and he shouldn't be given the right to vote any portion of it. That's number one.

Number two, with respect to the tax claim, what's really interesting here, Your Honor, is that there is no claim that Highland has breached any duty today. There's no claim that he's breached a contract -- that Highland has breached a contract. There's no claim that Highland has committed any tort.

What happened was, back in 2008, Mr. Daugherty, according to him, was promised $1.475 million as compensation. There was an agreement. That compensation was delivered to him not in cash but in the form of an allocation of losses from the Highland partnership. Mr. Daugherty was a limited partner.

He got over $4 million in losses. Those losses were recorded on a K-1 that's going to be admitted into evidence. And Mr. Daugherty took those losses and shielded his income and his gains in other places in his life, I don't know. But the benefit of that was $1.475 million.

Mr. Daugherty never says that Highland breached its agreement. He never says that Highland failed to perform. He never says that Highland did anything wrong. All that's happened here, Your Honor, is that the IRS is conducting an audit of Highland's 2008 taxes, including these losses. Okay? So, as we sit here today, Highland owes zero. There is no basis to give him any claim for voting purposes. There's just, there's no reason. It may be -- later that he should be getting. And what I would find to be very reasonable is that we are here on the merits and he asked the Court to establish a reserve. I think it's almost what Mr. Uebler asked for, that you establish some type of reserve for a contingent claim. You know, that would make sense. But that's not why we're here today. We're here to say whether or not he's allowed to vote this claim, a claim where Highland today admittedly owes nothing.

So, you know, I think that that dispenses with the tax issue.

The last one is this claim for attorneys' fees. I will tell you, Your Honor, I didn't have a good weekend myself this

past weekend because I had to flip through 2,600 pages of Mr. Daugherty's appendix. I don't have the experience here on (garbled), but I waded all through that stuff. And Mr. Uebler and I have a very cordial relationship, which I'm grateful for, and we were talking on Friday, and he said, Why do you guys say that he resigned from Strand in 2009? And I said, I don't know where I picked it up, but that's what I put in here. And he said, But that's not right. And I asked him, I said, If you have a letter of resignation, you have something, give it to me. And he didn't give me anything.

But last night -- and this is why it came up at the last minute. This is why it came up at the last minute. Last night, they filed a declaration from someone named Mr. Covlin or Colvin, who I hadn't heard of but who apparently was the Highland general counsel back when Mr. Daugherty was at Highland. And you'll see in Paragraph 5 of his declaration he says, I don't have a memory of Mr. Daugherty resigning from the Strand board before he left in 2011. And I said to myself, I don't -- I don't understand why people can't -- there's got to be a letter of resignation, there's got to be something to prove the fact.

And so I called Highland this morning and I said, When did he resign? Do we have anything? I said, I want anything you can find. And we're going to put into evidence, Your Honor, two different exhibits, one of which, ironically, is a

Secretary's Certificate that was signed by Mr. Colvin. And it was signed in early 2009, where he certifies to the Strand board resolutions, which set forth the officers of the company, and Mr. Daugherty is not on it.

The second document, Your Honor, is even more significant. It is a periodic statement of the officers of Strand that are listed by individual with their title and each person signs it. And what the evidence is going to show is that Mr. Daugherty signed his statement as either Secretary or Assistant Secretary every single time from 2006 until about March of 2009. And then in the mid-2009 document, consistent with Mr. Colvin's certificate, Secretary's Certificate, he's no longer there, but Mr. Colvin was still signing all of his papers without Mr. Daugherty.

So I don't really know the record of Delaware. I'm doing the best I can, Your Honor. But I don't think that there's going to be any dispute at the end of all of this that Mr. Daugherty ceased to be a director or an officer of Strand sometime between March and May 2009.

Why is that significant? Because that is what he hangs his hat on in order to establish his claim for indemnification. We don't think there is any claim because he was no longer an officer of Strand after early 2009.

Even if he was, Your Honor, everything that he's seeking indemnification for now arose after he left in 2011. He's

trying to use the indemnification provision in order to recover his attorneys' fees, attorneys' fees that were recovered [sic] after 2011, that were incurred solely for his own personal benefit.

It's not as if he brought a claim derivatively on behalf of Highland. Instead, he pursued litigation where he would recover damages, where he was the plaintiff. In fact, Highland was a defendant, is a defendant in a lot of this litigation. I don't understand how anyone can fairly read an indemnification agreement that requires the indemnitee to act on behalf of the indemnitor, and that somehow suing an indemnitor is consistent with the concept of indemnification. It just, it doesn't make sense. He wasn't there. The fees accrued after the fact. There's just, there's no basis for it.

And fees on fees, that other concept that they're building upon, is fees on top of fees to pursue indemnity. So if the indemnity doesn't work, fees on fees don't work either, Your Honor.

And I'll just very briefly, the fee shifting thing, I heard Your Honor's point. But, again, I bear no ill will toward Mr. Daugherty, but a fair reading of the record says that nobody comes to this, none of those parties come here with unclean hands. Mr. Daugherty was found to have breached his fiduciary duty. The only judgments that have been

rendered by any court so far have him paying Highland 2.8 and Highland paying him 2.6. He complains that so many of Highland's causes of actions were dismissed. We could do a scorecard if you think it's necessary showing that Daugherty's claims and causes of action were dismissed.

I heard Mr. Uebler talk about, you know, the appellate court reversing the criminal issue. But you know what, Your Honor? The trial court actually agreed with Highland there.

So, again, fee shifting is an extreme remedy, the absolute extreme remedy in the United States. And, again, not to cast aspersions against Mr. Daugherty, but nobody comes here with unclean hands. There's no basis to do it in this particular case.

So we think $9.1 million was very fair, Your Honor. We think the undisputed facts are going to show that the balance of these claims are without merit at the merit hearing, but certainly for this purpose, Your Honor. He doesn't -- he doesn't come close to the -- even the low bar that's needed for voting purposes.

Thank you, Your Honor.

THE COURT: All right. Thank you. Mr. Uebler, you can call your witness.

MR. UEBLER: Thank you, Your Honor. Mr. Daugherty, are you available?

MR. DAUGHERTY: Yes. I am here.

THE COURT: All right. Mr. Daugherty, I'm going to swear you in.

PATRICK DAUGHERTY, CREDITOR PATRICK DAUGHERTY'S WITNESS, SWORN

THE COURT: Thank you. You may proceed.

(Note: Witness muffled throughout testimony.)

DIRECT EXAMINATION

BY MR. UEBLER:

Q Good afternoon, Mr. Daugherty.

A Good afternoon.

Q I'd like to begin by asking you a few questions about what we call the fee reimbursement portion of your claim. Would you explain to the Court what out-of-pocket payments are included as components of that claim?

A As far as category or number?

Q What's -- however you'd like to address it. Maybe categories and then number.

A Sure. There's (inaudible) I'm pursuing for the costs incurred pursuant to executing my release under Strand. And just to be clear, Strand reimburses not just for officers and executives, but also for representatives in any case, which is consistent with what Highland said in Delaware on multiple occasions.

Then there are fees on fees, which is, under Delaware law as I understand it, I'm entitled to the fees that I had to incur in order to gain -- in order to get Highland to make

good on its promise in that original partnership agreement with Strand and Highland.

And then, let's see, indemnification, fees on fees. And then there's my claim for the fee-shifting. And I certainly understand the concept of the *American* Rule and the judge's point, and (inaudible), but what you have to remember here is there was a crime fraud finding in Delaware which caused Highland to lose its attorney-client privilege where we discovered that its in-house counsel -- Scott Ellington, Isaac Leventon, Thomas Surgent -- working with outside counsel, basically provided prima facie evidence of a fraud. So this moves far beyond just, you know, two parties going at it. This has been, again, that Highland sued based on, frankly, lying to that very same judge in Dallas County Court that Mr. Morris referred to. And not only the judge, the jury, where we have (inaudible) law from the various outside firms summarizing what these people -- you know, again, I generally refer to them as the cabal. But this just goes far beyond two parties having a good-faith battle with one another. This turns into, frankly, fraud. And I've had -- and by the way, Judge (inaudible) in Delaware Chancery Court, once he made this ruling, said that he sees evidence of fraud going all the way back to December of 2013, when Highland allegedly set up an escrow account on my behalf, and it never happened. And not only did it not happen, but again, they told Judge Hoffman

down in Texas and they told the jury that it did happen. And (inaudible) and everyone else on multiple occasions that (inaudible), only to find out in December of 2016, after all appeals -- the appeal process was exhausted, that most of that money was never put into escrow. Again, they never (inaudible) Dondero (inaudible). And (inaudible), his counsel. But that what any of those assets were there would have been shifting -- and when I say they, I mean Scott Ellington and Isaac Leventon -- while they (inaudible) my house in Dallas, while they were claiming that I had (inaudible) and were seeking turnover in Dallas, while they were terrorizing my family and sending the cops on the house, they had all those assets shifted to themselves, kept quiet about it, and then proceeded to order me to make a $3.1 million (inaudible) for their attorneys' fees.

I don't think a fraud can get more absolute than that. And so that is, you know, that's my quick summary on the nature of those fees. And, again, I know this (inaudible), but this is just a little bit different than your, you know, run-of-the-mill situation.

Q Mr. Daugherty, you mentioned indemnification in your answer. Did Highland or its affiliates assert claims against you in Texas state court based on your conduct as a Highland employee?

A They did. I mean, I was accused of having (inaudible), of

committing securities fraud violations, of not executing my duties to investors, when in fact I was doing just the opposite and (inaudible) protecting them from being defrauded. And some of those investors are on the Creditors' Committee today, as the Crusader and Redeemer Committee, is Eric Felton, (inaudible) Montgomery. Those were the people I was trying to protect from -- and by the way, at the end of the day, I felt like I protected Highland, too, to keep them from doing something stupid that could end us in this -- all of us in the situation where we are today.

So I was executing my duties as a portfolio manager. I was -- and by the way, that carried all the way through to January or February of 2012, after I left, because what Mr. Morris didn't tell you is in Mr. Colvin's affidavit I was enlisted by Highland to come to an exit interview after I had resigned, where they wanted to hear two categories of topics. One, the performance of the individual (inaudible) in the Crusader Fund, because Highland had lied to them (inaudible). They wanted to hear from me what I thought its true value was. One of those investments was Cornerstone, which we're all familiar with.

And then the other category of topics that they wanted to discuss with me was (inaudible) leaving Highland. And that included the timing, (inaudible) efforts. Money was being thrown at me, or offered to me, I should say, directly from

Dondero, from Cornerstone, to pay me a (inaudible) in order to seek releases for Highland.

So, you add all these things up together, and I was performing my duties as their portfolio manager and as a fiduciary that basically superseded any duty that I had to Highland itself when it came to those clients, which was my fund, Crusader, that I managed and that ultimately the beneficiaries, the investors, led by, as I said, one of their UCC members, Eric Felton, (inaudible) at the time, who now leads the Crusader entity.

Q Mr. Daugherty, with that background about the different bases for your theory (inaudible) claim, could you quantify it for us, how you reached $7.8 million?

A Well, the total fund, for the total 7.8, the answer is yes, I could break it down into individual components if it would be helpful to the judge because I believe the -- I believe the indemnification part of that, which the judge seemed to have issues with, was around 1.5, if I remember correctly. The rest of it was fees on fees, and defending myself against false accusations from the Debtor, and executing (inaudible) to defend those investors from -- (inaudible) that they were getting ripped off by Highland, by Dondero.

Q Are there any other components to your -- the amount that's represented in your fee claim?

A It's fees on fees. I think we touched on that. So that's related to the (inaudible).

Q You're -- you're saying that the claim included a reference to IRA penalties and --

A Oh, yeah. So, you know, when you have to proceed like this, and I know I've been presented as this rich greedy person, but there's a reason why Highland was wanting to get garnishment and wanting to seize my assets with the constable, because I got (inaudible) fighting this. And Judge Jernigan, I was in your case on another matter and you asked why there's not counsel, it's because I didn't have the money. And so one of the things I had to do was cash in my IRA, my wife's IRA.

Q What's --

A I had to take a mortgage on my house. I had -- with interest on that. And with penalties on the IRA. I did not (inaudible) -- I did not -- I hate this. I hate talking about this. Is that enough?

Q I want to talk briefly about this tax refund claim for 2008 and the basis for it. What -- what is this tax refund that you received in 2008?

A (inaudible). In 2008, and I put it in a page in my declaration, Highland was in trouble (inaudible) of the crisis, you know, the various -- and we had talked about our credit facility with our banks, led by Bank of America (inaudible), but they were unsecured. So what that's -- the

way it's drafted, and they wanted to get secured. In the process, I was having negotiations, which (inaudible) into 2009. They were concerned that money was being siphoned out of Highland while we were in breach of our credit facility. Initially -- initially, they thought all the partners were taking money out, and after getting their -- after getting their forensic accountants in there from FTI, they discovered that the only people taking money out was Dondero and Okada, under a guise of quote/unquote repaying a loan to themselves.

So, in the heat of all that, there were two things that came from that. One, they shut down all the money going out of Highland and they closed (inaudible). We had to reduce our headcount by 20 percent. We also had to reduce our costs, you know, our outgoing costs, as you would expect when you're in this type of situation.

Well, the problem was there wasn't enough money to pay the cash element of bonuses that were coming due in February of 2009 for the work that we (inaudible), you know, operate for the year 2008. The way it worked at Highland, and still does apparently, the employees work the full year, and then in February of the following year they get a compensation benefits letter that says, Here's what your bonus is. Here's what your tax bonus is going to be. It's going to be paid out in installments, call it February or August, February and August of the subsequent years. And then there would be some

type of deferred compensation and then some type of listing of the value of the (inaudible). So we got lunch generally every day, we had healthcare costs paid for, we had life insurance. And so we (inaudible) out all these things (inaudible).

And I think what you're asking in your question is, Where did the tax refund come in this? Well, historically, we would -- we would have got a cash bonus in that particular, you know, document that I mentioned. But (inaudible) pay cash bonuses beyond a *de minimis* amount. Dondero and, I believe, Mark Patrick in the tax groups and Rick Swadley, and there's another one, Jennifer Blumer, I think, and Michael Collins, they called all of us into the conference room and they said, We're going to pay your cash bonuses, but we're going to have to do it by making this election with the IRS.

And, frankly, none of us really understood what it was. It was very convoluted. But when we got our February 2009 award letter, and I think that's an exhibit in here somewhere, it says very clearly -- in my case, anyway -- (inaudible) tax refund, $1.475 million. And then it says, You're going to get this -- and I'm paraphrasing -- but, You're going to get this amount, but to the extent that you don't get this amount, we will provide you, you know, Highland will provide you substitute compensation.

So it was very important that -- to take the place of what had (inaudible) cash bonus, but it was compensation through

and through. And when you hear Mr. -- Mr. Morris, I'm sorry, go on about me getting $4 million in the loss, well, I did get (inaudible) that had a $4 million loss. As the IRS interpreted it, they only netted, I guess, accepted it, the -- they had the number equivalent at roughly 1.1.

But the point in all this is that was the method that Dondero and the tax team had concocted to generate the funds for Highland, its separate obligation, this is a compensation of benefits letter that I got.

And we understood the situation that Highland was in and we were willing to live with that. Where I think things went bad -- and by the way, this has been dragged out forever, Your Honor. I've talked to Mr. Stewart about it. I informed the IRS, tried to settle it. And I know (inaudible) probably never (inaudible), I'm more than willing to work with the Debtor to get it settled. But what I want, and I don't know how this works in bankruptcy, Your Honor, I -- I've got a claim, so I filed the claim, because if you don't file the claim, you lose it. Right? And then what happens is I'm (inaudible) the Debtor. The Debtor (inaudible) as an adversary, said, We're going to equitably subordinate this because this is equity in nature. And at one time, the method of payment that was concocted by the Debtor (inaudible) was, the compensation agreement is separate and apart from that, and that stands. And neither I nor any of the other guys that

got this are looking for a windfall. And I don't know how you vote it. I mean, if the Debtor had said, We're just going to assume this like a lease contract, I wouldn't be in here asking you to put a number on it. But what I got was an adversary saying, We're not going to pay this. We're going to go equitably subordinate this, even if you're trying to, you know, get it reimbursed through the partnership. So that forced me to bring it to you, Your Honor, and try to put a number on it.

Q Mr. Daugherty, during your time with Highland Capital, did you receive cash distributions from Highland in your capacity as a limited partner of Highland?

A That's a very important point. These K-1's that -- there were two kinds of partners at Highland. There were the real partners, Jim Dondero and Mark Okada, who referred to themselves as founding partners, and then there were the subclass of partners, really, we kind of -- we called ourselves profit centers partners because we had a place in the partnership but we weren't allowed to get any distributions.

So whenever you see a K-1, we didn't get any of that money. All right? That money stayed in the partnership or went to Mark and Jim. What we had was what's called a (inaudible) and a buy-sell agreement that were attached to the partnership which -- that basically we didn't get any

(inaudible) distributions or income from this, but what we got was at the end of that time we could go and terminate it and say, Pay me out now, and at that point it would be valued. And so in my case, when I left, the value that they offered me was $199,000. For all, for all those years of service. And so to answer your question, no, I didn't get any money from it.

Q Thank you. I want to ask you just a few questions about the HERA 80 or 81 Percent Claim that they were referring to. At a high level, what is HERA?

A Well, this goes back to the same situation I was talking about before as it related to this 2008 tax refund. As I mentioned, we were losing employees. People were leaving. I mean, we started the year in 2008 with 22 partners and we were down to I think 11 or 12 at the start of 2009. The banks were just, the banks were furious and they were talking about liquidating us and getting a trustee put in place because they were furious to find out that Dondero and Okada had taken out money. It was around $20 or $30 million.

Once we got through that hurdle, I said, Listen -- because I became, by the way, Your Honor, I became Highland's kind of advisor, restructuring person. I did that for Highland as (inaudible) usually us on the same side of the table as the banks on, you know, I was head of distressed and private equity at Highland, so I -- distressed debt and go and

negotiate at the Debtors' beck and call.

In this position, I moved over to the other side of the table and I was negotiating on behalf of Highland with a lot of my colleagues who were in the distressed community, which I generally refer to as knuckle raps. But they knew me, and I knew them, and we sort of -- and we had trust between each other, especially given what had just happened. And they agreed to set aside HERA, which is an acronym for Highland Employee Retention Assets, and it was a fund where they set aside, I don't know, around $20 to $25 million of assets that would then be used to incent employees to stay. And it had a three-year cliff vesting. And what happened is they didn't have any money left. Well, the employees that remained got reallocated their shares. So, contrary again to what Mr. Morris said, there was an agreement that the ownership interest would go up as we stayed through and helped right-size the ship.

Q Mr. Daugherty, why is it that you contend now that you're the one hundred percent owner of HERA?

A Well, this goes back to bad faith. And I sympathize with the judge, I did give you a ton of information, but this has just been nine years of terrorizing, you know, that I've had to contend with. And if you look back to December of 2012, January of 2013, a gentleman named (inaudible) had sent Dondero an email saying, Here's how you can pay everybody

except for one. And (inaudible) board member on HERA. And on HERA's board, there's affiliates of this guy. Ellington and John (inaudible). It's basically Jim's buddies, Jim Dondero's buddies, not (inaudible). So he sent me this email saying, Here's how you can pay everybody but one. So we get into January 2013, and Highland purports to make an offer to buy out everybody at HERA except me. Well, guess what. In the middle of January, all of the board resigns, without having anyone change the shareholder unit to the LLC and without taking board action that would allow Highland Capital to be an assignee of these units.

There is a reason for this. We go back to why HERA was created. The banks were furious about Mark and Jim taking money and the banks wanted to take a secured interest in all things Highland. So what we agreed is we would put it in a (inaudible), in an entity referred to as HERA, and Mark and Jim and Highland would not be able to participate in it. So they are not recipients of the preferred units, and the only way it can ever become (inaudible) preferred units is for there to be action taken, specific action take to amend the documents, or by the board, if they remain. And in my Texas trial, this issue did come up, and Thomas Surgent said that no such action was taken. Thomas Surgent is Highland's chief compliance officer. (inaudible). I'm getting a little --

Q I'm just going to ask two questions briefly before we turn

this over to Mr. Morris. How did you calculate the value of $21 million for this HERA 80 Percent Claim?

A I took what -- Highland took my own expert report and made it attorneys' eyes only in Delaware. So my lawyers could never sit down with me and explain it to me. So all I could go off of was what I saw at the trial. And it was only the last two or three days where Mr. Morris, he did file the entire expert opinion of my expert where I could see all the components.

So, at the time, I took what my expert was saying was the value of my expert assets, I think as of December 2016. And since I knew that that was based on 19.1 percent, I divided that number by 19.1 percent, came up with a total, and then re-multiplied by 80 -- 80.1 percent, to find out what that delta was.

Q Given that these claims were dismissed on procedural grounds in Delaware, and having heard Judge Jernigan's comments earlier about this claim and its value for voting purpose, what do you as the Claimant believe a fair allocation of this claim is for voting purposes?

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

THE WITNESS: Listen. I've --

THE COURT: Overruled.

THE WITNESS: -- been around Judge Jernigan --

THE COURT: Overruled. You can answer.

THE WITNESS: I've been around Judge Jernigan long enough to know that she means what she says and she says what she means. And I understand her reservations on this, too. But I will say there are some mitigating factors here that Highland, in Texas and all the way through the Texas Court of Appeals, they were saying (inaudible), this is a double counting, this is a double counting. That (inaudible) up for reconsideration in a court -- Texas Court of Appeals (inaudible), and the Court refused to see it that way. Then when we went to Delaware, they(inaudible), they said, Oh, no, we have cures. There's *laches*, statute of limitation is operating against them.

And so my reaction to that was, How am I supposed to be in an action based on my share ownership when you're saying I don't even own my share ownership and it's not determined until December 2016?

It is true that Judge (inaudible) said you should have basically filed a placeholder. As I've learned a little bit about Delaware law, I don't think that is consistent with Delaware law, but it is what it is. And if Judge Jernigan (inaudible) position. So if she's right to say that I could bring these claims over (inaudible) you know, contains, you know, a different item. And so you're asking me whether (inaudible) advice to the judge? I would say that I'm more -- I'm more than agreeable to whatever she decides. I just want

to know -- her to know why I'm here and what this is about, that this is not frivolous, but if it doesn't end with plan voting as she sees it, then I can live with that.

Q Thank you, Mr. Daugherty.

THE COURT: All right. Thank you. Pass the witness. Mr. Morris?

MR. MORRIS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Daugherty.

A Hello.

Q My name is John Morris with Pachulski Stang and I'm here on behalf of the Debtor. We've never spoken before, have we?

A Yeah, we have.

Q Yeah? I don't --

A Yes.

Q I don't recall. But it's --

A You were in in-person court in Judge Jernigan's court in January and February and I think we spoke.

Q Okay. Well, forgive me for not recalling that particular detail. I just wanted -- just a few questions, sir. On the tax issue, according to your testimony you were promised $1.475 million approximately in connection with your 2008 compensation; do I have that right?

A That's correct.

Q And I understand your testimony that it was Highland's idea, but you agreed to the method of compensation in the form of an allocation of Highland's partnership losses, right?
A I would not say that. There was no -- it was dictation, not an offer and acceptance.
Q Well, you did accept -- you did accept the benefit of the allocation of the Highland losses on your 2008 tax returns, right?
A I -- I don't know if accept is the right answer. I sent my K-1 in with my tax return, and as I clearly admit, there's approximately $4 million of losses that are allocated to me via the K-1 that they could use in the computation of my taxes.
Q Okay. So it's fair to say, then, that the manner in which, or I think the word that was used in your papers, the method by which you were compensated was through the allocation of a portion of Highland's losses; is that right?
A That is wrong. I was compensated that said you're going to get 1.475. If you don't get 1.475, we will provide substitute compensation. What you're confusing is the manner in which Highland decided to try and fund the obligation, and I just don't think it's right to conflate the two.
Q Well, Highland did fund the obligation through the allocation of losses to you; isn't that right?
A It is not. As I said, I got the $4 million pass-through

that the IRS determined was approximately $1.1 million, as I recall.

Again, I'm not here to try to capture that missing 3.75. All I want is Highland to basically stay in the shoes if -- or stand by the promise that they made, that they made, sorry, that they made to me, which is if the IRS changes their mind or if Highland (inaudible) and wanted to start to use this (inaudible) argument, that I get sufficient compensation to make me whole.

I mean, at this point, if that -- if we aren't successful, right, on this tax refund issue, then I'm going to get -- not just me. There's about seven or eight other employees who have all also filed claims in this case. We're going to get hammered with penalties and interest that far exceed that amount, and that's not fair.

Q Okay. As of today, Highland doesn't owe you -- that audit is not complete; is that right?

A Well, it's -- the audit took place for two years, and you're probably familiar more than me, I got a letter from Byron Collins in December of 2019, after the Debtor filed for bankruptcy, saying, We've exhausted effectively our negotiations with the IRS. We've now turned this over to some appeals unit in the IRS, and they determined that you don't get -- I'm paraphrasing -- that you don't get to keep this amount.

Now, that basically put me on notice, right, that this is coming to somewhat of a conclusion. (inaudible), I listed it as a claim, I listed it as unliquidated, because I really don't know how to treat it. I guess, I mean, hopefully, the judge makes a decision, and the same kind of category, I don't know how you classify this thing. But when you guys filed an adversary against me and said, You know what, by the way, (inaudible) to me about any of my clients. So when you present to the Court that you engage me and (inaudible) with this guy, you guys didn't talk to me once from the time you filed until October about my claims. You did it just recently, after you filed an adversary. I would have been happy to work with you on this.

MR. MORRIS: Your Honor? Your Honor, I apologize for interrupting. Can I have the question read back? Because I really move to strike. I'll be here all day if we get these answers that really have nothing to do with my question.

THE COURT: Okay.

MR. MORRIS: It's not proper.

THE COURT: Well, I'm going to sustain and strike the narrative answer. I'm going to ask you to just repeat your question at this point.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q The audit is not completed; isn't that correct?

A I don't know. I've been told by you that it's not.
Q Okay. And nobody has told you and you have no information to contradict my assertion that the audit is incomplete today?
A That's correct.
Q And as you sit here today, you don't know how much, if anything, you might owe on account of the tax issue. Is that right?
A That is right.
Q Okay. You first learned about the audit in 2010; isn't that correct?
A I don't know when I first learned about the audit.
Q You learned about the audit before you left Highland; isn't that correct?
A I know that when we filed this, you know, when we filed the returns, we had to file a cover letter that basically notified the IRS, hey, and I'm paraphrasing, we made these elections, you may not agree with these elections, but we're drawing your attention to it right now to put you on notice that we're making these elections. So that's what I know.
Q When is your first recollection of when you learned about the audit?
A I don't recall.
Q Okay. Let's talk about the HERA assets for a moment. When you left in 2011, you owned approximately 19.1 percent of the HERA preferred units; is that right?

A That is right.
Q Okay. And you learned in 2013 of the events that you described earlier with respect to the amendment of the HERA partnership agreement -- limited liability -- limited liability company agreement, the assignment agreement, the expense allocation? All of that occurred in 2013, and you knew it at that time, right?
A Well, if I could clarify that. I believe I was informed that the amendment -- you had a lot of questions in there, so I'll try and break it down. The amendment -- you're talking about 1241, right? I believe I was informed, informed of that either late February or early March 2014.
On the other stuff, we had -- we had sought discovery, and, you know, people have experiences that you don't always get discovery on an expedited basis all the time. We started to take discovery in dribs and drabs in -- early in July, and then a lot more in October and then a lot more in December of 2013. So the (inaudible) that you asked me a question about, we got a lot of it in that time period, and then some of it rolled into 2014.
Q Okay. So, you knew about Highland's purchase of the other holders of the HERA preferred units in 2013, right?
A Yeah, I knew about the purported purchase probably in February 2013.
Q And the purchases were by people who hold -- who held

vested interests in their preferred units in HERA; isn't that right?

A You said it was by them. I think it was from them. But I think (inaudible).

Q If I did, I misspoke, but thank you for the correction. But you'll agree, right, that -- that you knew in 2013 that Highland purchased from the vested holders of the preferred units their interests in -- in the HERA --

A You know, I knew that ultimately that happened. I don't remember if I knew definitively it happened until probably October of 2013.

Q Okay. And you don't bring these claims relating to all of this -- all of these things that happened in 2013 until the summer of 2017 in Delaware; is that right?

A That -- that's generally about right.

Q Okay. And that's more than three years after you learned of them. Is that fair?

A I brought my claims after the Texas Court of Appeals said that I had that shares that your clients said I didn't.

Q Okay.

MR. MORRIS: I'd move to strike.

BY MR. MORRIS:

Q And I ask you to just listen carefully to --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- my question. Okay. Listen carefully to my question. You brought the claims relating to the HERA events of 2013 for the very first time in Delaware in July 2017, right?
A Yes.
Q And it's more than three years after you learned of them; is that fair?
A I'm sorry. More than three years--?
Q More than three years after you learned of those events. You just said that you learned about them in 2013.
A I think that's right, yeah.
Q Okay. And you brought four different claims? I think claim -- Counts 2, 3, 4, and 5 in the original Delaware action were all based on the events of early 2013; is that right?
A I don't know. I don't -- I don't -- frankly, I don't recall my claims (inaudible) that you described.
Q Okay.
MR. MORRIS: Can we please call up Exhibit A to Mr. Daugherty's proof of claim, which I believe has been marked as Exhibit 40?
THE COURT: Okay. Are you going to share the screen or do you want the Court to pull it up?
MR. MORRIS: Yes.
THE COURT: Okay.
MR. MORRIS: I think we'll be able to share the screen. Thank you. And if we could just scroll to the end.

And I apologize, I don't have the page number, but it should be --

THE WITNESS: Could you go back up to the top, just so I know what I'm dealing with here?

BY MR. MORRIS:

Q Yeah. It's Paragraph 82.

A No, I'm looking at the date this was filed. Can you do it to the top? All right. So this is --

Q This is your amended pleading.

A Oh, this -- okay. You mentioned 2017, so I got a little bit thrown off. Okay.

Q So this is the -- this is the document that was attached to your proof of claim. That's why I'm using it. Okay?

A Okay. We've amended our proof of claim. You're talking about the first one?

Q This is the -- this is the one that was attached to your proof of claim, right?

A Well, as I said, we've amended the proof of claim. So are we talking about the one that's amended or the first one?

Q All right. Just take a look,

MR. MORRIS: If you can scroll down to Paragraph -- keep -- no, keep going. Keep going. La Asia, can we scroll down, please? Okay. So go to Paragraph 84 and 85. Okay.

BY MR. MORRIS:

Q Can you read Paragraph 85 into the record, please?

A (inaudible) unit holder of Highland Employee Retention Assets. The purported purchases of units by Highland Capital on January 30th, 2013 using the funds of Highland Employee Retention Assets were -- were invalid transfers.
Q Okay. And that's exactly what you're asking the Court here to find; isn't that right? That you're the sole remaining holder and that the purported purchases by Highland in 2013 were invalid transfers, right?
A Correct.
Q Okay.
A Well, we're not asking her to find that, but we're asking her to find for voting purposes.
Q Okay.
MR. MORRIS: Can you go to Paragraph 89, please?
BY MR. MORRIS:
Q In 89, the relief that you requested is the return to HERA of the funds transferred it and distributed to you as the sole remaining shareholder, right?
A That's correct.
Q And that's specifically one of the claims that the Court dismissed; isn't that right?
A I thought it dismissed the claims for me making ownership of the, you know, the (inaudible) because of the *laches* issue that you described.
Q Sir, sir, this claim was dismissed by the Chancery Court,

right?
A It was dismissed by Judge (inaudible) who's the Chancery Court on *laches* grounds.
Q Okay. How do you know it was on *laches* grounds?
A Because he said so.
Q Okay. Can we just look quickly at Cause of Action No. 3? This was a claim arising out of the exact same conduct against HERA Management and Mr. Dondero; isn't that right?
A I'm not sure I understand your question.
Q Count III was against HERA Management and Mr. Dondero arising out of the same facts, only this claim was for breach of fiduciary duty, right?
A I guess it was breach of fiduciary duty. I don't see -- I guess Mr. Dondero down there in No. 2, but I can't read the whole paragraph.
MR. MORRIS: Can you scroll down a little bit, please?
BY MR. MORRIS:
Q Okay. Right there, Paragraph 93?
A Correct.
Q The adoption of the third amended and restated agreement you allege to be self-dealing and constituting a breach of fiduciary duty, right?
A Correct.
Q And in Paragraph 94, if we can scroll down, you allege

that the execution of the allocation, the expense allocation whereby your interest was reduced to zero was also self-dealing and a breach of duty, right?

A Can you go back there? I can't read it.

Q But you recall making that claim generally?

A (inaudible) You know, give -- ask me the question again about generally what I recall.

Q Do you recall generally making an allegation in the Delaware Chancery Court that there is a breach of fiduciary duty by executing the expense allocation agreement, right?

A Yeah. On behalf of Highland ERA Management.

Q Okay.

MR. MORRIS: Can we go to Paragraph 95, please?

BY MR. MORRIS:

Q You also challenge the assignment agreement, is that right, as an act of self-dealing and breach of fiduciary duty?

A Yeah. I obviously can't read the redacted parts.

Q But this claim was also dismissed, right?

A As I said, these claims were reduced on a *laches* basis, but obviously I plan to appeal. I just (inaudible).

Q Right. And *laches* you understood meant that it was time-barred, right? It was brought beyond the statute of limitations?

A Yeah, as I understood it, yes.

Q Okay.

MR. MORRIS: Can we go to the next cause of action? This will be the last one, Your Honor.

BY MR. MORRIS:

Q This is against the Debtor, Highland Capital. Aiding and abetting breach of fiduciary duty. If you look at Paragraphs 101 and 102 and 103, it's charging Highland with liability for the same conduct, for the execution of the third amended and restated agreement, the receipt of the HERA assets, right, as --

A Correct.

Q -- part of -- and this too was dismissed on statute of limitations grounds, right?

A I believe so.

Q Okay. Thank you.

A You know, I know that Highland is liable for the transfer of promissory stock and the unjust enrichment. I don't know if (inaudible).

Q Okay. Well, we'll leave that alone. Okay? I think that -- that's what we've actually offered to allow your claim for, for all of those claims. Let's --

THE COURT: Mr. Morris, I want to make sure --

MR. MORRIS: Yes, Your Honor.

THE COURT: -- the record is clear about what Mr. Daugherty was testifying about the last five minutes.

MR. MORRIS: Sure.

THE COURT: This is, of course, an attachment to Daugherty's original proof of claim, but it is in the record at Docket Entry #1388, which was collectively all of Daugherty's exhibits for today, and it was at --

MR. MORRIS: Right.

THE COURT: -- Subpart 40, or Exhibit 40 therein, Subpart A of that.

All right. Did you want to offer that or does anyone want to offer that into evidence so that the record will make sense?

MR. MORRIS: Sure. I'll take it upon myself for this specific exhibit, Your Honor.

THE COURT: Okay.

MR. MORRIS: I offer -- I offer PHD Exhibit 40 unto evidence.

THE COURT: Okay. And I assume there's no objection since that was Daugherty's exhibit. It's admitted.

MR. UEBLER: No objection.

THE COURT: Okay.

(Patrick Daugherty's Exhibit 40 is received into evidence.)

BY MR. MORRIS:

Q Mr. Daugherty, let's just talk for a moment as to the timing of your departure from Strand. You were an officer of Strand at one point; isn't that right?

A Yes.
Q Do you have any letter of resignation or any other documentation that shows the date on which you were no longer an officer of Strand?
A I don't recall.
Q Okay.
MR. MORRIS: Can we please call up Exhibit X2? Your Honor, this is one of the two exhibits that I shared with counsel earlier today that are the corporate records that show the officers of Strand at various points in time.
THE COURT: All right. Are they on the docket?
MR. MORRIS: This goes to -- this goes to -- they're not. This goes to the indemnification claim.
THE COURT: Okay.
MR. MORRIS: All right. So if we can get X2 up, please.
(Pause.)
MS. CANTY: I'm sorry, John. One second. The computer's acting a little crazy.
MR. MORRIS: Okay.
(Pause.)
You know, Your Honor, instead of taking the Court's time with this, I don't need to cross-examine Mr. Daugherty with this. What I'd like to do is, because I've shared the documents with Mr. Daugherty's counsel -- oh, here it is.

Okay.

THE COURT: Okay.

MR. MORRIS: So let's just --

THE WITNESS: I see it.

MR. MORRIS: Thank you. Let's just get through this quickly.

BY MR. MORRIS:

Q Do you recall that, when you were an officer of Strand, that from time to time you signed a document that identified all of the officers of that entity?

A No.

Q Okay.

MR. MORRIS: Can you scroll down a little bit here?

BY MR. MORRIS:

Q Do you see that this is --

MR. MORRIS: I'm sorry, just a -- not quite so much. I want to see the first paragraph.

BY MR. MORRIS:

Q It says that "I am the president of Strand Advisors" and that Mr. Dondero was certifying that the people below were duly appointed and qualified to serve as officers of Strand. I'm paraphrasing a bit there. Do you see that?

A I can read it.

Q Okay. And do you see the third line down is you?

A Correct.

Q And that's your signature?
A It appears to be.
Q And did you serve in the capacity as Secretary of Strand?
A I mean, I served in various capacities. So I was agent, I was representative, I was an officer. I never was limited to just being Secretary.
Q Okay. But that's what you signed this document as, right?
A That's what my signature is next to.
Q Okay.
MR. MORRIS: And if you scroll down a little bit, let's just see the date.
BY MR. MORRIS:
Q And so that's August of 2006.
MR. MORRIS: Can we go to the next page, please?
BY MR. MORRIS:
Q You signed the next iteration of this as Secretary. Do you see that?
A I do.
MR. MORRIS: Can we scroll down a few lines to see the date?
BY MR. MORRIS:
Q That's February 27, 2007, okay? And all of these folks were officers at the time, do you recall?
A No.
Q No, you don't recall that?

A Huh-uh. I don't remember Nicky being an officer or Jim (inaudible) or Ron Williams.
Q Okay. It was 13 years ago.
MR. MORRIS: Let's scroll to the next page, please.
BY MR. MORRIS:
Q Do you see --
MR. MORRIS: Scroll down a little further.
BY MR. MORRIS:
Q You're now -- you've now been designated Assistant Secretary. Do you see that?
A Yes.
Q And that's your signature?
A It is.
Q And two lines above that, do you see there's Michael Colvin?
A Colvin, yes.
Q Yeah. And did you understand that he was Secretary of Strand at one point?
A I didn't focus on it one way or the other.
Q He submitted -- Mr. Colvin submitted a declaration last night on your behalf; isn't that right?
A He did.
Q And he said he couldn't recall when you stepped down from your position as an officer of Strand, right?
A Words to that effect, yes.

MR. MORRIS: Can we just show the date of this document? So, this is January 2008. Let's go to the next page. Here, again, if we can scroll down a little further, --

BY MR. MORRIS:

Q -- you have Mr. Colvin signing and you also signing as Assistant Secretary. Do you see that?

A I do.

Q And that's your signature?

A Yes.

MR. MORRIS: Okay. Can we just see the date of this document? This is May 2008. Let's go to the next page.

BY MR. MORRIS:

Q Okay. Again, Mr. Colvin as Secretary and you as Assistant Secretary; is that right?

A Yes.

Q And that's your signature?

A Yes.

Q And it's March 1st, 2009, right?

A That's what it says, yes.

MR. MORRIS: Okay. Let's go to the next page. Stop.

BY MR. MORRIS:

Q You see Mr. Colvin is still there, but you're not, right?

A Correct.

Q And this is dated May 29, 2009, right?

A Correct.

Q So Mr. Colvin, the person who submitted a declaration on your behalf, signed a document where you're no longer listed as an officer of Strand as of May 29, 2009, fair?
A That is correct.
Q Okay.
MR. MORRIS: Let's just keep going.
BY MR. MORRIS:
Q This one is dated January 2010. Again, Mr. Colvin was on and you're not, right?
A Correct.
MR. MORRIS: Next page.
BY MR. MORRIS:
Q Mr. Colvin was here as Secretary and you're not listed as an officer of Strand as of July 1st, 2010, right?
A That's correct.
Q Okay. Does -- does -- do these documents refresh your recollection that you stepped down as an officer of Strand sometime between March and May of 2009?
A No.
Q Okay.
MR. MORRIS: Can we call up the other exhibit, please?
BY MR. MORRIS:
Q This is a document entitled Secretary's Certificate. Do you see that?

A I do.
Q And do you see Mr. Colvin signed it as Secretary?
A I do.
Q And do you see that it was delivered on behalf of Strand Advisors?
A No.
Q Up at the top line.
A Oh, yes.
Q Okay. And Mr. Colvin signed this as of August 4, 2009, right?
A Well, it's --
Q Above his signature?
A Well, Highland had the practice of -- it sort of had the practice where they would put an effective date prior to the actual time that the document was created.
Q So Mr. Colvin, the person and the attorney who submitted a declaration on your behalf, signed this document as of August 4, 2009, right?
A Well, well, it says, The undersigned has executed, so yeah, I'm just going to have to say yes. I'm just not sure -- I don't know, I guess, is my obvious question of when he actually signed it.
Q Okay. Well, he was comfortable signing it as of August 4, 2009, is that fair, based on his signature?
A I mean, you're showing me a document with his signature on

it. That's all I see in front of me. I don't know what he was comfortable with.

Q Okay. And in Paragraph 1, it says that, The resolutions attached as Exhibit A have been duly authorized by the company, by the company's sole director. Do you see that?

A I do.

MR. MORRIS: Let's look at Exhibit A, please, if we can scroll down.

BY MR. MORRIS:

Q And this is the consent of the sole director as of May 29, 2009. Do you see that?

A Yeah. (inaudible) as Treasurer?

Q No, we'll scroll down, sir. No problem.

MR. MORRIS: Let's keep scrolling down. Okay. All right.

BY MR. MORRIS:

Q And there's your list of officers, and you don't appear there, right?

A I don't appear there, no.

Q And so would you agree that Mr. Colvin, the attorney who signed the declaration on your behalf last night, signed a Secretary's Certificate pursuant to which he attested to the accuracy of the resolution, that as of May 29, 2009 the officers were as listed here and it didn't include -- did not include you?

A Okay. I just want to clarify a couple things. One, he signed it on Friday. You know, just so you know, it didn't get created last night. And will you ask me the rest of that question?

Q Sure. I apologize. I just didn't see it until last night, and that's why I'm referring to last night, because I didn't see it until it was filed.

A I think we included it in the exhibit list on Friday.

Q Okay. I know it was on the list. In fact, that's where --

A I pulled it off the Internet from the court site, so they had it.

Q You're not on this list of officers?

A I'm not on this list, no.

Q Okay. And just a few more questions, sir.

THE COURT: I'm going to make sure the record is clear once again. Are you going to offer into evidence these pages you've described as Exhibit X2, so we --

MR. MORRIS: X2 and X1.

THE COURT: X2 and X1?

MR. MORRIS: Yes.

THE COURT: All right.

MR. MORRIS: And we will file -- we will file an amended list for the docket, Your Honor. But again, this just came up a couple of hours before the hearing, because

personally I didn't see the Colvin declaration until I woke up this morning. I asked the question and I got these documents. So these documents are being tendered in response to that very specific declaration.

THE COURT: All right. It was filed at 6:11 p.m. last night, in case -- Central Time.

MR. MORRIS: Right.

THE COURT: Any objection to X1 and X2?

MR. UEBLER: And Your Honor, this is Tom Uebler. For purposes of this summary proceeding, I'm inclined not to object to the document. We've both put a lot of paper before the Court. But we would reserve our right to explore these documents further in discovery on the merits and try to find out why we didn't see them for the last three years in Delaware.

THE COURT: All right. So X1 and X2 will be admitted for today's hearing. And Mr. Morris, you're going to file them later on the docket.

MR. MORRIS: Yes, Your Honor.

(Debtors' Exhibits X1 and X2 received into evidence.)

MR. MORRIS: Yes, Your Honor. Just a few more questions. I know we're almost out of time here.

BY MR. MORRIS:

Q Mr. Daugherty, just quickly, in the Texas action you were found liable for breaching your fiduciary duty to Highland;

isn't that correct?
A Correct.
Q And you were ordered to pay Highland's legal fees of approximately $2.8 million; is that right?
A Correct.
Q The litigation that you -- excuse me. Withdrawn. The claims that you have been pursuing against all of the Highland-related people and entities, you would be the beneficiary of any judgment that you obtained, right?
A I don't know what you mean by that.
Q You are the sole plaintiff in all of these cases?
A On the actions that I brought?
Q Yes.
A I believe so, yeah.
Q Okay. And so any judgment that's rendered will be rendered in your own personal capacity; isn't that right?
A Yes.
Q You didn't bring --
A Well, I'm the plaintiff, I guess is what I'm saying.
Q Yeah. That's fair.
A So, I mean, yeah, the payments will go to me.
Q Okay. You mentioned something about a criminal case being overturned on appeal.
A I didn't. My lawyer did.
Q Okay. Can you just describe for the Court what the

original charge was?

A I don't believe that it's relevant, but there was an injunction put in place that said that -- that prohibited me from retaining Highland's account information. And over the course of, I don't know, from about 2014 to 2018, Highland brought eight different, you know, variations of show cause violations on that injunction against me. Eight times I had to defend. And one of those eight was based on Josh Terry had just been terminated from Highland and I saw him, I think, I saw him in London May of 2016. He got terminated in June. I sent him -- I walked up to his house and handwrote him a letter extending my condolences and --

MR. MORRIS: Your Honor, I'm going to --

THE WITNESS: You asked me a question and I'm trying to answer it.

BY MR. MORRIS:

Q I apologize. I apologize. Let me ask a different question because -- because that wasn't responsive to what I was asking. Were you found in contempt of court?

A No.

Q Okay. What crime were you charged with?

A I was charged with contempt of court violating the injunction. And a three-member panel at the Texas Court of Appeals found unanimously in my favor that there was no evidence that I violated the injunction.

Q But the trial court did in fact not only find that there was evidence, but the trial court is the one who imposed the judgment against you; is that fair?
A That is correct. And he was ordered to vacate that ruling.
Q Okay.
MR. MORRIS: Your Honor, I have no further questions.
THE COURT: All right. Redirect?
MR. UEBLER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. UEBLER:
Q Mr. Daugherty, the fee award that Mr. Morris referred to in Highland's favor, did you pay that?
A I did. I wired approximately $3.1 million to Highland, I want to say, December 13th or 14th, 2016.
Q 2016?
A Yeah.
Q What amount have you received form Highland or any of its affiliates as a result of the judgment you obtained?
A Zero.
Q With respect to Strand Advisors, when did you last serve as an agent of Strand?
A January-February 2012, when Highland enlisted me to meet with the Crusader investors, and I guess one called a Stratus (phonetic) investor, to the Stratus -- as I mentioned, there

was two categories. One, my view on value of various Top 40 portfolio investments, and two, to discuss my reasons for leaving Highland.

Q When did you last serve as a representative of Strand?

A In that January-February 2012 time frame.

Q Were you authorized to sign documents on behalf of Strand Advisors?

A Yes.

Q When did that authority cease?

A When my employment at Highland terminated in October 2011.

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

THE COURT: Any recross?

MR. MORRIS: Mr. Daugherty? Yes, Your Honor.

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Daugherty, did you submit any documentation in support of your contention that you served not as an officer but as an agent or a representative of Strand until the time of your departure in 2011?

A Yes.

Q All right.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Thank you.

Mr. Daugherty, we appreciate your testimony. You're

excused.

THE WITNESS: Thank you, Judge.

THE COURT: All right. Mr. Uebler, do you have any other evidence today?

MR. UEBLER: I don't have any other evidence, Your Honor, just some very brief closing remarks, if that's permitted. And I see we have four minutes left, so I'll defer to the Court.

THE COURT: Well, I won't cut you off cold in four minutes.

Mr. Morris, did the Debtor have any evidence today?

MR. MORRIS: Yes, Your Honor. Does Mr. Daugherty rest?

THE COURT: Yes, they rested. What I understood, they rest.

MR. UEBLER: I -- that's correct. I mean, subject to my comment earlier about submitting the exhibits and the papers as part of our case.

THE COURT: Well, let's make sure we get all of Mr. Daugherty's evidence in before I shift over to Mr. Morris. So what else did you want to offer?

MR. UEBLER: Only the -- the papers we've provided, including Mr. Daugherty's declaration and the exhibits attached to our motion and our reply.

THE COURT: All right. So those were filed as

separate exhibits at Docket Entry No. 1388. I think it's all there, correct?

MR. UEBLER: Correct.

THE COURT: All right. So it looks like it's Exhibits 1 through 42 that appear there.

Any objection, Mr. Morris?

MR. MORRIS: Yes, Your Honor. I object to the admission into evidence of Exhibits 7 through 10, No. 14, and No. 17 through 38, on grounds that they are irrelevant in light of the fact that the Debtor has conceded for purposes of voting the $9.1 million in claims, and on the separate ground under Rule of Evidence 403 that any probative value of this material is greatly outweighed by the waste of time and the irrelevance of the subject matter.

I will point out just some examples, Your Honor. And this is why the Debtor really doesn't put this stuff in the record, because it is so irrelevant to these claims. But he's got things in there, the Court of Appeals decision on his criminal case. He's got a Crusader presentation. Actually, I -- we also object to that one, which is Exhibit 5. We've got, you know, appellate decisions, the escrow correspondence. We've got a Court of Appeals mandate. We've got correspondence relating to the escrow at Exhibit 30. We've got a transcript on an argument on a motion to compel. We've got motions for the argument.

If you look at these documents, Your Honor, they really have nothing to do with the claims that are being made here. Certainly, in light of the Defendant -- in light of the Debtor's concessions that we've made, we don't think that the record should include any of the documents that I've identified.

THE COURT: All right. Mr. Uebler, it's 2,619 pages in all. And what do you say to that objection?

MR. UEBLER: I agree they are prejudicial documents, Your Honor, but that doesn't make them inadmissible. They're prejudicial documents because they establish Mr. Daugherty's right to fee shifting under the bad-faith exception to the *American* Rule.

This is not, as Mr. Morris said earlier, a case where both sides' hands are dirty. This is a case where the Delaware court found the crime fraud exception applied. Based on my research, that was the second time that has happened in Delaware. That's a big deal.

And the transcripts that we put in, the motions for re-argument, the history we have presented in those 2,000 pages supports Mr. Daugherty's claim. It's directly relevant to an issue that I think Mr. Morris referred to as frivolous earlier, but I don't want to put words in his mouth. It's directly relevant, and that relevance by far outweighs any prejudice to Highland, or at least prejudice that wasn't of

its own making.

So it should all be submitted at a minimum for the purpose of considering Mr. Daugherty's request for fees.

THE COURT: Okay. I overrule the objection. I'll admit Exhibits 1 through 42.

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

THE COURT: All right. So you rest at this point?

MR. UEBLER: Yes. Thank you, Your Honor.

THE COURT: All right. Mr. Morris?

MR. MORRIS: Yeah, just one clarification there, Your Honor. Is Mr. Daugherty attempting to offer into evidence Mr. Colvin's declaration?

THE COURT: I did not hear him offer that.

MR. UEBLER: I believe that's No. 42, Your Honor, so the answer is yes. And Mr. Morris had ample opportunity to question Mr. Daugherty about the substance of the declaration.

MR. MORRIS: Your Honor, it's --

THE COURT: Oh, okay. I had misunderstood.

MR. MORRIS: Okay.

THE COURT: It is Exhibit 42, even though it was just filed separately on the docket last night. So did you have an objection, Mr. Morris?

MR. MORRIS: I do. It's hearsay, Your Honor. It's being offered for the truth of the matter asserted by a

witness who is not available to be cross-examined.

THE COURT: Okay. I sustain --

MR. UEBLER: Your Honor, --

THE COURT: I sustain that objection. 42 will not be admitted. All right.

(Admission of exhibits revised to exclude Patrick Daugherty's Exhibit 42.)

THE COURT: Mr. Morris, you have evidence?

MR. MORRIS: Yeah. So the Debtor offers into evidence Exhibits A through -- Exhibits A through V. And I guess Exhibits X1 and X2 have already been admitted.

THE COURT: All right. Let's be clear there. Those appear --

MR. KATHMAN: Your Honor? Your Honor, this is Jason Kathman. And I just wanted to -- on Exhibit 42, we talked with Mr. Morris, and maybe I had a misunderstanding, but my understanding is that we were going to present witnesses via declarations in that manner. And there had been some discussion about -- and giving him the opportunity to cross-examine Mr. Daugherty. So if I misunderstood the agreement, that's on me, but there was -- we had I believe it was in two phone calls, and I think he's had more (inaudible), about how testimony and witnesses would be presented for this hearing. And if Mr. Colvin is outside of that, again, maybe I'm misunderstanding, but I at least wanted to raise that issue.

MR. MORRIS: Your Honor, respectfully, I have great respect for Mr. Kathman, but he is misunderstanding. I would never, ever permit a declaration to come into evidence in a matter like this without the ability to cross-examine. I can describe for the Court what the offer was, but it was not that.

THE COURT: Okay. Well, I regret there was a misunderstanding, but just pulling this up, while it's only a one-and-a-half page declaration, it has 57 pages of attachments, or approximately 57 pages of just all kinds of things that I can presume the Debtor might want to cross-examine Mr. Colvin on. So I again sustain the objection. 42 will not come in.

All right. Mr. Morris, your evidence. Where do Exhibits A through V appear on the docket? I need to refresh my memory.

MR. MORRIS: Your Honor, just to let you know what happened last night, because we were working with Mr. Daugherty's counsels on redaction, and I think Mr. Anabel, with your Court's permission, allowed us to email the documents to you, and we had emailed them to Mr. Daugherty because we weren't sure at the late moment as to where we were going to be with the redactions. We can certainly file everything now. But Your Honor has those documents.

THE COURT: Okay. I do have those. I knew that

there were several emails that they were attached to. I just didn't know if they were separately on the docket. So, again, let me pull those up. It's A through V?

MR. MORRIS: Yes.

THE COURT: Any objections by Daugherty's counsel?

MR. UEBLER: Your Honor, as I said, for this summary proceeding, we're not going to object to A through V. But with the exclusion of Daugherty 42, the Colvin declaration, it seems that X1 and X2 have no relevance anymore and should be excluded. Mr. Morris stated earlier that those two documents were submitted expressly in response to the Colvin declaration. With that out, Exhibits X1 and X2 should be out as well.

THE COURT: Okay. Your response, Mr. Morris?

MR. MORRIS: Yeah, very briefly. Number one, I used them to cross-examine his witness. I offered them into evidence. There was no objection. They've already been admitted into court. So I think this issue is moot.

But number two, when Mr. Daugherty said that he didn't -- I don't remember exactly what his testimony was, but suffice it to say that he wouldn't agree that he had resigned sometime between March 3rd and -- between March and May of 2009, I certainly could have used them as impeachment documents under any circumstance.

THE COURT: All right. I overrule the objection. X1

and X2 are in.

(Debtors' Exhibits X1 and X2 are again received into evidence.

THE COURT: Again, I think not only were they admitted without objection earlier, but they do, I guess you would say, contradict some of the testimony of Mr. Daugherty. His position, as I hear it, is he was still an agent, or he was an agent at least of Strand beyond the May 2009 time period. And these are documents that arguably impeach that testimony.

All right. So A through V and X1 and X2 are admitted.

(Debtors' Exhibits A through V and X1 and X2 received into evidence.)

THE COURT: If I could just ask, Mr. Morris, that you all later submit on the docket these exhibits, all of them, so we don't have to go back and print out the email attachments and do it the old-fashioned way.

MR. MORRIS: Sure.

THE COURT: All right. Any other evidence?

MR. MORRIS: No, Your Honor. The Debtor rests.

THE COURT: All right. I'll hear brief closing arguments. Mr. Uebler, you first. (Pause.) Mr. Uebler, you're on mute, sir. Mr. Uebler?

CLOSING ARGUMENT ON BEHALF OF CREDITOR PATRICK DAUGHERTY

MR. UEBLER: Thank you. Let me try that again. I

want to start by responding to one of Mr. Morris's questions of Mr. Daugherty, which was, Did you submit any papers in this case that would establish that you were either an officer or an agent of Strand through resignation in 2011? That's Exhibit 2. It is, in fact, Highland's answer in the Delaware case at Paragraph 66, where Defendants admit that Daugherty served as an officer and agent of Strand from 2004 until he resigned from Highland in 2011. So I think that should answer Mr. Morris's question.

Let me just conclude by some comments that James Seery recently made in a deposition. He said, Equally, on the other side, you could say that the man's life was ripped out from him, that his position was taken away, that he got an arbitration award that arguably the Debtor and the Debtors' management at the time stripped away all the assets and pretty patently denuded it to try to leave him with no recovery. Then when he sought a recovery, they sought to sue him in every jurisdiction in the world and basically ruin the guy's life and put him in a position where, while to some it might seem a windfall, to him it might seem just.

Mr. Seery was talking about Josh Terry, not Mr. Daugherty. But Highland's blueprint for ruining a guy's life originated from its treatment of Mr. Daugherty.

We've given you reasons today to permit the full amount of the three remaining disputed issues for voting purposes for

Mr. Daugherty's claim. Allowing that full amount will protect Mr. Daugherty as a creditor, give him his appropriate say in any plan that's presented, and would hopefully bring these parties at least one step closer to resolution.

Thank you for your time today.

THE COURT: Thank you, Mr. Uebler. Mr. Morris?

CLOSING ARGUMENT ON BEHALF OF THE DEBTORS

MR. MORRIS: Yeah. Very briefly, I'll just borrow Mr. Uebler's phraseology and say that it would not be just to give to Mr. Daugherty anything on account of a $21 million claim that has already been dismissed and that his testimony just established will be time-barred. We don't believe that it would be just to give him anything on account of a tax claim that is completely contingent, unliquidated, and where the Debtor admittedly owes absolutely nothing to Mr. Daugherty today.

I can't imagine what it's been like to go through this litigation, just like I couldn't imagine from Mr. Terry's perspective, from Mr. Dondero's perspective. These people have been at this for a decade. That's not what -- that's, you know, it's not anything I can get my arms around. What I'm here to do is to protect the Debtors' estate and its stakeholders, including its general unsecured creditors.

Mr. Daugherty is going to have a very meaningful claim if the Court allows his claim for voting purposes at $9 million.

It's going to be the third biggest claim, at least at this point, of anybody. So that's just. It's just that he has a seat at the table. We're offering him a seat at the table. But he shouldn't get anything on account of the claims that really have little to no merit.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Well, I thank you for your thoroughness, your professional courtesy that was very visible here today.

As I started out with today, Bankruptcy Rule 3018(a) is what guides us. That rule is a provision that states, quote, Notwithstanding an objection to a claim, the Court may temporarily allow a claim for voting purposes in such amount the Court deems proper, after notice and a hearing.

There are many cases that have attempted to kind of impose a legal framework for analysis on that rule because, as you've just heard, the rule doesn't give much detail. The cases all sort of sing the same tune, that the rule contemplates only a summary estimation proceeding, not a full trial on the merits. The Court has great discretion to employ whatever method is best-suited to the circumstances of the case in determining what amount should be allowed for voting purposes. The Court should consider things like whether there's a last-minute objection to strategically prevent a creditor from voting who might vote no and the objection might be frivolous, that sort

of thing. And all decisions are reviewed for abuse of discretion, should there be any appeal.

So that is the rule and the case law interpreting the rule. Based on that, I will note that we start out here with an amended proof of claim filed by Mr. Daugherty in the amount of $40,710,819.42. And I studied hard before coming out here today the addendum to that proof of claim filed by Mr. Daugherty. It had a description of the claim that was done in the form of a chart. I'm holding it up here -- I don't know if it picks up on camera -- what I'm looking at. But it appears at Docket Entry 1280-2. It was part of the appendix to the motion to estimate claim.

So the amount is broken down into components. If you're looking at that chart -- again, which was most helpful -- I note that in the claim of Daugherty for HERA units, there are different line items that total approximately $26 million and some change. So that's the issue we've talked about a lot today. Is it correct, is it reasonable to assume that Daugherty might be entitled to a hundred percent of the value or a hundred percent of the HERA units? So, I found that, based on the evidence and the argument, to be a problematic assumption. Again, one day we will have a trial on the adversary, a trial on the proof of claim. I will hear every bit of relevant evidence that the parties choose to put in on that issue. But for our purposes today, under Rule 3018, I

just found considerable doubt that that would be an appropriate damage calculation here.

So, again, using my discretion, I found that, at a minimum, you should reduce that $26 million-plus component of the Daugherty proof of claim by the roughly 81 percent, because it was 19.1 percent, I think, that Daugherty would have been entitled to of the HERA units. So that's a roughly $5 million amount, or a $19 million reduction that -- excuse me. I did my math wrong. That's a $21 million reduction that I think would be reasonable for estimation purposes under 3018.

Further looking at the chart that breaks down Daugherty's claim -- we discussed this today in testimony -- there is an attorney fee component that aggregates to $7,854,752.31, and that's the indemnification, it's the interest on indemnification award, it's the fee shifting fees on fee award. And once again, looking at this through the lens of 3018(a), I do not think it's appropriate to assume I'm going to get there, if you will, on this attorneys' fee award. There have been *bona fide* issues, if you will, raised on whether the indemnification provision that was cited would entitle Mr. Daugherty to these fees. Section 4.1(h) of the partnership agreement would be that indemnification provision.

Moreover, the deviation from the *American* Rule, if that indemnification provision does not apply, is a big hurdle to

achieve. It's very deeply rooted in our law that if you don't have a contract provision and you don't have a statute that entitles you to attorneys' fees, it's quite a high hurdle to get there, whether it be Rule 11, the vexatious litigation statute, or some common law argument of bad faith.

So, again, looking through the lens I'm looking through today, I just cannot get there under 3018.

So, doing my math, I'll go backwards. I've just said that I can't there on $7,854,750.31 of Mr. Daugherty's $40-plus million claim. I've said I can't get there on $21 million of his $40.7 million proof of claim because of the HERA, the 81 percent interest in the HERA units. So what else in that chart gives me pause? The tax refund, the 2008 tax refund component. We have $1,475,816 plus estimated interest on that of $1.174537 [million]. It's very clear that at this point this is, at best, contingent. And again, down the road we may get to a point where it's not contingent, the IRS has finished doing what it's going to do, and we may get to a point where we think a result is appropriate. I don't know. There may be, even if we get there, a subordination argument. The point is, there are *bona fide* arguments today that do not allow me to get to the point I feel like I need to get at an estimation hearing to allow this claim, these components of the claim.

So when you subtract $7.854 million and $1.475 million and $1.174 million and $21 million, that's about $32 million that

I would -- I was thinking about, before I even heard the evidence, deducting out of the claim that I would estimate for voting purposes.

That, I will tell you, is why I came out here at the very beginning today and said, Jeez, the Debtors' suggested voting claim of $9,134,019, which the Debtor came at a different way as far as the math, that sounded darn reasonable to me.

So I am going to allow a voting claim for Mr. Daugherty at $9,134,019.

Now, let me say a couple of more words why I fall back on that number. A, it's pretty close to the direction I was leaning, but B, I want Mr. Daugherty, if he's still on the line, to understand. I hope it doesn't seem like I'm giving Highland every benefit of the doubt here today and reducing your claim by every argument they made and just going at it that way. I do feel like I am obviously giving you some benefits of the doubt here. Primarily, the benefits of the doubt I'm giving you are, number one, the HERA judgment was obviously a HERA judgment. I mean, it was a judgment awarded to Mr. Daugherty against HERA, not Highland per se, right? I didn't misunderstand that. So I am assuming you have got darn good arguments, Mr. Daugherty, to hold Highland liable for that HERA award, plus the pre-judgment and post-judgment interest, up to the bankruptcy petition date of October 16th, 2019.

So I'm giving you the benefit of the doubt there, and on -- well, I do want to make one more point on the attorneys' fees. Again, that was a huge component of your proof of claim. And I certainly well understand the bad faith arguments and your many ways you think you will have of getting attorneys' fees at the end of the day. But I'm sitting here today looking at the fact that the Texas state court actually awarded Highland attorneys' fees against you. Now, I understand, or I think I understand, that was somewhat of a discrete issue with regard to the breach of fiduciary duty arguments in sharing information or taking files or information. And you might argue, well, that was very discrete, and obviously you paid it. But all this to say there are lots of a *bona fide* disputes here, I think. And again, the rule doesn't use that term, *bona fide* disputes, but, again, I have lots of discretion here, and I think, at the end of the day, a roughly $9 million voting claim is very reasonable.

I know the point I ended up making. I've also given you the benefit of the doubt, Mr. Daugherty, on the roughly $5 million claim I'm giving you for the 19 percent of the HERA assets. And I understand there were things about the Texas state court judgment that left that a little ambiguous, whether you could get that or whether that would be double-counting. But again, I just, I want you to know that I

haven't weighed every benefit of the doubt in favor of Highland here. I've weighed a couple of these doubts in your favor.

All right. So, $9,134,019 is the voting claim of Mr. Daugherty. Again, this is without prejudice or waiver of any arguments at a later trial on the claim for distribution purposes.

Are there any questions?

MR. DAUGHERTY: Just, you asked if I was on. I just wanted to let you know I got back on. I took my (inaudible). But I heard every word and I appreciate your comments.

THE COURT: All right. Thank you, Mr. Daugherty.

Mr. Morris, would you be the scrivener on this order? And of course, run it by Mr. Uebler and Kathman.

MR. MORRIS: Of course, Your Honor.

MR. KATHMAN: Your Honor? Your Honor, this is Jason Kathman. We have just one housekeeping issue. We had filed, when we filed our motion to -- this 3018 motion at Docket No. 1280, actually, we filed a motion for leave to amend our proof of claim, which is the -- actually, the chart that I think Your Honor was looking at was the chart that we attached to our amended proof of claim. We filed that with negative notice, and that negative notice actually ran yesterday. So we'll upload a certificate of no objection. But just, while we're here on the record, I wanted to ask for the Court to

approve that motion for leave to file an amended proof of claim.

THE COURT: Okay. So I neglected to note that detail. I was of the impression it wasn't contested, and in fact, the objection deadline has run. So I will accept your order on that. Okay?

MR. KATHMAN: Thank you, Your Honor.

THE COURT: All right. Thank you all. We stand adjourned.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 3:59 p.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling **11/18/2020**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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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.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

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

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DEFENDANT'S EXHIBIT
8
25-03055

[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, direct and indirect majority-owned subsidiaries, and the Managed Funds, (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 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

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 equal to the amount of such Allowed Priority Tax Claim, (b) 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. Under section 510 of the Bankruptcy Code, 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 Trust[2]

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 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

[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.

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 Clamant 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 Effective 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) and any applicable parties in Section VII.A of this Plan, 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 nay 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.

[Remainder of Page Intentionally Blank]

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:

PACHULSKI STANG ZIEHL & JONES LLP
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Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Docket #1943 Date Filed: 02/22/2021

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 February 22, 2021

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-sgj11
Debtor.	)	

ORDER (I) CONFIRMING THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

[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.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

DEFENDANT'S EXHIBIT
9
25-03055

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Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor's Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing);

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").** This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC ("Acis").** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch ("UBS").** UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta-E Discovery ("Meta-E").** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour,* 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain)**. Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund)* [Docket No. 1670];

c. A *Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC)* [Docket No. 1673]; and

e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank)* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). 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 all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to 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. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorganized Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3))**. The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, 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 Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See Notice of Withdrawal of James Dondero's Objection Debtor's Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan 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. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co*., 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll*) 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour,* 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P'Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall.* The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(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.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this 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 the 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.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. 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 the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the 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 the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-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.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. 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 deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership 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. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. 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.

L. Transfer of Assets to Claimant Trust. 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 such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, 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 Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however,* that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. 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 the Plan or this Confirmation Order, all consideration distributed under the 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 the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this 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.

Y. Exculpation. Subject in all respects to Article XII.D of the 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)-(v);

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. The Plan's 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 the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. 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.

AA. Injunction. Upon entry of this 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, this 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 in the Plan and this Confirmation Order 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 of the Plan, 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 of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this 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 Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each 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* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, 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 the 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.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25,2021* [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. 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). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. 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, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

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-sgj11
Debtor.	)	

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 Trust[2]

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 Clamant 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 nay 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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Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of _____ , 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 [____] as Delaware trustee (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 _____, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (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 Beneficiaries[2] in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

[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.

DEFENDANT'S EXHIBIT
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25-03055

(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 5.3(b) hereof.

(yy) "Trustees" means collectively the Claimant Trustee and Delaware 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:[_____].

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(c), 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 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. The Delaware Trustee shall have the 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 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 as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; 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.

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 3.7 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 forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, 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 X 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 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than 90 days 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 specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

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 4.11.

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 wright 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), Delaware Trustee, 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, misconduct, or 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, 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.

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 Clamant 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 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"). 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.

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 **[insert contact info for Claimant Trustee]**

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)

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

SECOND AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

THE PARTNERSHIP INTERESTS REPRESENTED BY THIS LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OP 1933 OR UNDER ANY STATE SECURITIES ACTS IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE PARTNERSHIP INTERESTS IS PROHIBITED UNLESS THAT SALE OR DISPOSITION IS MADE IN COMPLIANCE WITH ALL SUCH APPLICABLE ACTS. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE PARTNERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.

SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

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Attachments:

Exhibit A
Exhibit B

SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into on this 31st day of December, 2004, to be effective as of February 29, 2004, by and among Strand Advisors, Inc., a Delaware corporation ("*Strand*"), as General Partner, and any Person hereinafter admitted as a Limited Partner.

Certain terms used in this Agreement are defined in Article 2.

WITNESSETH:

WHEREAS, on July 7, 1997, Strand and Protective Asset Management, L.L.C. ("*PAM*") formed Ranger Asset Management, L.P. (the "*Partnership*"), pursuant to the Agreement of Limited Partnership of Ranger Asset Management, L.P. (the "*Original Agreement*");

WHEREAS, subsequent to the date of the formation of the Partnership, PAM and the Partnership merged, with the Partnership being the surviving entity;

WHEREAS, the Partners amended and restated the Original Agreement to reflect the transactions described above and to make certain other changes to the Original Agreement (the "*Amended Agreement*");

WHEREAS, on July 7, 1998, the Partnership filed a Certificate of Amendment of Certificate of Limited Partnership of Ranger Asset Management, L.P., changing its name from Ranger Asset Management, L.P. to Highland Capital Management, L.P.;

WHEREAS, James D. Dondero Transferred: (i) a 7% interest as a Limited Partner to The Get Good Trust on June 29, 2001; (ii) a 5% interest as a Limited Partner to The Get Good Trust on January 31, 2002; (iii) a 52% interest as a Limited Partner to The Get Better Trust on June 10, 2002; and (iv) a 10% interest as a Limited Partner to Canis Minor Trust on November 29, 2002;

WHEREAS, The Get Better Trust Transferred a 5% interest as a Limited Partner to James D. Dondero on September 25, 2003;

WHEREAS, Mark K. Okada Transferred: (i) a 7% interest as a Limited Partner to The Mark and Pamela Okada Family Trust—Exempt Trust #1 on June 30, 2000, and (ii) a 3% interest as a Limited Partner to The Mark and Pamela Okada Family Trust—Exempt Trust #2 on June 30, 2000;

WHEREAS, on February 29, 2004, the Partnership issued the following Partnership Interests that are treated as "profits interests" for federal income tax purposes to the following Persons who agreed to provide services to the Partnership: (i) a 0.303% interest as a Limited Partner to Bradford Borud; (ii) a 0.608% interest as a Limited Partner to Patrick Daugherty; (iii) a 0.544% interest as a Limited Partner to David Deadman; (iv) a 0.549% interest as a Limited Partner to R. Joseph Dougherty; (v) a 0.390% interest as a Limited Partner to Paul Kauffman; (vi) a 0.281% interest as a Limited Partner to John Morgan; (vii) a 0.426% interest as a Limited Partner to Kurtis Plumer; (viii) a 0.624% interest as a Limited Partner to Todd A. Travers; (ix) a 0.203% interest as a Limited Partner to David Walls; and (x) a 0.407% interest as a Limited Partner to John Yang; (collectively, the "*Profits Interest Partners*");

WHEREAS, on May 27, 2004, the Partnership, James D. Dondero, Mark K. Okada and their Affiliates entered into the Buy-Sell and Redemption Agreement to promote their mutual best interests by providing for certain obligations concerning the purchase of Partnership Interests by and among James D. Dondero, Mark K. Okada and their Affiliates upon the occurrence of certain events (the "*Original Buy-Sell and Redemption Agreement*");

WHEREAS, on December 31, 2004, the Partnership, James D. Dondero, Mark K. Okada and their Affiliates amended and restated the Original Buy-Sell and Redemption Agreement to include the Profits Interest Partners as parties to that agreement and to make certain other changes, all of which shall be effective as of February 29, 2004 (the "*Amended Buy-Sell and Redemption Agreement*");

WHEREAS, the Partners desire to amend and restate the Amended Agreement to (i) incorporate the February 29, 2004, admission of the Profits Interest Partners to the Partnership; (ii) incorporate the Amended Buy-Sell and Redemption Agreement; and (iii) to make certain other changes to the Amended Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby agree as follows:

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 Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, 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 Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240. 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 Second Amended and Restated Agreement of Limited Partnership, as it may be amended, supplemented, or restated from time to time.

"*Amended Buy-Sell and Redemption Agreement*" means that certain Amended and Restated Buy-Sell and Redemption Agreement, dated December 31, 2004, to be effective as of February 29, 2004, by and between the Partnership and its Partners, as 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.

"*Code*" means the Internal Revenue Code of 1986, as amended and in effect from time to time.

"*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.

"*Fiscal Year*" has the meaning set forth in Section 3.11(b).

"*Founding Partner Group*" means, collectively, Strand Advisors, Inc., Canis Minor Trust, James D. Dondero, The Get Good Trust, The Get Better Trust, Mark K. Okada, The Mark and Pamela Okada Family Trust-Exempt #1, and The Mark and Pamela Okada Family Trust-Exempt #2.

"*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.

"*HCM Plan*" means the Second Amended and Restated HCM Services Long-Term Incentive Plan, established by Highland Capital Management Services, Inc., a Delaware corporation, as it may be amended, supplemented, or restated from time to time.

"*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 Limited Partners.

"*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).

"*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, as determined by the General Partner in its sole and unfettered discretion.

"*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.

"*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, (i) Bradford Borud, Patrick Daugherty, David Deadman, R. Joseph Dougherty, Paul Kauffman, John Morgan, Kurtis Plumer, Todd A. Travers, David Walls, and John Yang; and (ii) any other Person who is issued a Partnership Interest that is treated as a "profits interest" for federal income tax purposes.

"*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.

"*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 Partners 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.

(iii) Any Additional Capital Contribution (of more than a *de minimis* amount) shall cause a revaluation of the Partnership as set forth in Section 3.7(f).

(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.

Notwithstanding the foregoing, the General Partner, in its sole and unfettered discretion, may allocate up to ten percent (10%) of the Profits for each Fiscal Year among the Profits Interest Partners in any manner it deems appropriate (the "***Reallocation Amount***"). The General Partner shall make such allocation by April 1 of the succeeding Fiscal Year. The General Partner shall have the authority to allocate taxable items under this Article 3 in any manner it deems appropriate to account for these allocations of the Reallocation Amount.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be 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; 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 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 between the transferor and the transferee as follows: (i) for the months before the Transfer, to the transferor; (ii) for the months after the Transfer, to the transferee; and (iii) for the month of the Transfer, to the transferee if the Transfer occurs on or before the fifteenth (15th) day of the month and to the transferor if the Transfer occurs thereafter. For purposes of the above allocation, taxable items of the Partnership shall be allocated

equally among the months of the Fiscal Year without regard to the operations of the Partnership during those months. Distributions of assets of the Partnership with respect to a Partnership Interest shall be made only to the Persons who, according to the records of the Partnership, are the owners, on the actual date of distribution, of the Partnership Interests with respect to which the distributions are made. No liability shall result from making distributions in accordance with the provisions of the preceding sentence, whether or not the General Partner or the Partnership has knowledge or notice of a Transfer or purported Transfer of ownership of a Partnership Interest.

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.

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 only with respect to allocations pursuant to Section 3.4(g) to the extent that it can reasonably be determined that those allocations will otherwise be inconsistent with the economic agreement among the parties to this Agreement.

3.6. **Allocations of Built-in Items.** In accordance with Code Sections 704(b) and 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property actually or constructively contributed to the capital of the Partnership (for example, as set forth in Section 3.7(f)) 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) and in accordance with the provisions set forth in this Section 3.7; *provided, however*, the General Partner shall "book-up" or "book-down" the Capital Accounts of the Partners in accordance with Section 3.7(f).

(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 General Partner shall "book-up" or "book-down" the Capital Accounts of the Partners to their fair market values, regardless of the rules set forth in Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f), at the following times: (i) immediately prior to (A) a Capital Contribution (of more than a *de minimis* amount) to the Partnership by a new or existing Partner as consideration for a Partnership Interest, (B) the liquidation of the Partnership or a distribution of property (of more than a *de minimis* amount) by the Partnership to a retiring or continuing Partner as consideration for a Partnership Interest, or (C) the issuance of a new Partnership Interest (other than a *de minimis* amount) as consideration of the provision of services to or for the benefit of the Partnership by an existing Partner acting in a Partner capacity or by a new Partner acting in a partner capacity or in anticipation of being a Partner, and (ii) on January 1 of each Fiscal Year. The resulting increase or decrease in the Capital Accounts of each Partner shall be treated as a Code Section 704(c) item.

(g) Capital Accounts as of February 29, 2004. The Partners hereby acknowledge that, on February 29, 2004, after the Partnership's issuance of Partnership Interests to Profits Interest Partners:

(i) The Partnership "booked-up" the Capital Account of each Partner that is a member of the Founding Partner Group to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner that is a member of the Founding Partner Group was treated as a Code Section 704(c) item. On February 29, 2004, the "book" Capital Account for each Partner that is a member of the Founding Partner Group is set forth below:

Strand Advisors, Inc.	$1,250,000
Canis Minor Trust	$12,500,000
James D. Dondero	$6,250,000
The Get Good Trust	$15,000,000
The Get Better Trust	$58,750,000
The Mark and Pamela Okada Family Trust-Exempt #1	$8,750,000
The Mark and Pamela Okada Family Trust-Exempt #2	$3,750,000
Mark K. Okada	$18,750,000
TOTAL	$125,000,000

(ii) On February 29, 2004, each Profits Interest Partner had a Capital Account balance of zero (0).

3.8 **Distributive Share for Tax Purposes.** Items of Partnership gain or loss recognized for federal income tax purposes and arising from Securities will be allocated among the Partners in accordance with the methods set forth in Treasury Regulations Section 1.704-3(e)(3) promulgated under Code Section 704(c). All other items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated amount 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 will (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 shall review the Partnership's accounts at the end of each calendar quarter to determine whether distributions are appropriate. The General Partner may make such 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. 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. Except to the extent Sections 5.3 or 5.4 are applicable, all distributions pursuant to this Section 3.9 shall generally be made in proportion to the Partners' Capital Accounts; *provided, however*, the General Partner may, in its

sole and unfettered discretion, make a disproportionate distribution to a Partner to the extent that Partner has (or is anticipated to have by the end of the current Fiscal Year) a sufficient positive balance in his/her/its Capital Account therefor; *provided, further*, the maximum amount per Fiscal Year that the General Partner may distribute to a member of the Founding Partner Group in a disproportionate distribution is ten percent (10%) of Partnership Capital.

(b) Tax Distributions. The General Partner shall promptly 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*"). To satisfy this requirement, the Partnership shall pay to each Partner on or before April 14 of each Fiscal Year, an amount at least equal to the product of (i) the sum of the Partnership's positive taxable income attributed to that Partner during the prior Fiscal Year (including without limitation, the taxable income attributable to the special allocation of Profits constituting the Reallocation Amount) multiplied by (ii) the sum of the highest federal and state individual income tax rates imposed on any Partner in effect that prior Fiscal Year. Any Tax Distribution to a Partner shall reduce the amount that Partner is otherwise entitled to receive on its next distribution pursuant to Section 3.9(a).

(c) 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.

(d) 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.

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.

(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.

(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) Reports.

(i) As soon as reasonably practicable after the end of each Fiscal Year, the General Partner shall cause to be mailed to each Partner reports containing financial statements of the Partnership for that Fiscal Year, presented on cash or accrual basis, including a balance sheet and statement of income and, if the General Partner shall so determine, in its sole and unfettered discretion, such statements may be audited by a firm of independent public accountants selected by the General Partner.

(ii) As soon as reasonably practicable after the end of each fiscal quarter of the Partnership, the General Partner shall, if it shall so determine in its sole and unfettered discretion, cause to be mailed to each Partner a report containing such financial information for that calendar quarter as the General Partner deems appropriate.

(d) 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.

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, hyphothecation, 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 teens 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 assess 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, on 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.

(ii) The Partnership may loan funds to the General Partner and any Affiliate thereof; *provided, however*, if the amount of that proposed loan exceeds twenty percent (20%) of the aggregate Capital Account balances of the General Partner and its Affiliates, then any Limited Partner may elect to borrow his/her/its pro rata portion of the sum of (a) the amount of the proposed loan minus (b) twenty percent (20%) of the aggregate Capital Account balances of the General Partner and its Affiliates, on the same terms and conditions as the General Partner and/or its Affiliate, as appropriate, and such loan shall be secured by only that Limited Partner's Partnership Interest.

(iii) 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.

(iv) 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.

(v) If requested by a Profits Interest Partner, the Partnership shall lend funds to that Profits Interest Partner in an amount up to the excess of (a) the aggregate amount that would have been distributed to that Profits Interest Partner pursuant to Section 3.9 since first becoming a Profits Interest Partner, if each such distribution made by the Partnership pursuant to Section 3.9 since first becoming a Profits Interest Partner were made in accordance with Percentage Interests in effect at the time of each such distribution over (ii) the aggregate amount actually distributed to such Profits Interest Partner pursuant to Section 3.9 since first becoming a Profits Interest Partner (for this purpose, not taking into account distributions attributable to the special allocations with respect to the Reallocation Amounts). Each such loan shall be recourse to the Profits Interest Partner and shall be secured by his/her Partnership Interest. Each such loan shall bear interest at the Applicable Federal Mid-Term Rate in effect at the time such loan is made and shall have a term of one (1) year; *provided, however*, the loan must be repaid earlier in the case of that Profits Interest Partner's termination of employment from the Partnership or any Affiliate thereof for any reason, with repayment due in four (4) quarterly payments beginning the July 31st after the termination of his/her employment. Notwithstanding the preceding, the maximum loan amount available to any Profits Interest Partner under this Section 4.1(e)(v) shall be the amount specified on Exhibit C.

(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) Limitation on Authority. The General Partner shall have no authority to undertake any of the following actions without the consent of the Limited Partners holding ninety-six percent (96%) of the Percentage Interests:

(i) Do any act which would make it impossible to carry on the ordinary business of the Partnership (excluding the liquidation of the Partnership);

(ii) Possess Partnership property or assign any rights in specific Partnership property for other than a Partnership purpose; and

(iii) Require any Limited Partner to make any contribution to the capital of the Partnership that is not otherwise provided for in this Agreement.

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) Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Amended Buy-Sell and Redemption Agreement. The admission of the Profits Interest Partners into the Partnership was contingent upon their execution of the Amended Buy-Sell and Redemption Agreement.

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 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 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. 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 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 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. All distributions 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.

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. Upon the admission of any Additional Limited Partner, the Percentage Interest of the existing Limited Partners shall be diluted proportionately. 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 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 Interest of all existing Limited Partners shall be diluted proportionately; *provided, however*, only the Percentage Interests of the members of the Founding Partner Group shall be diluted when the General Partner issues an additional Partnership Interest to an existing Profits Interest Partner in accordance with the terms of the HCM Plan upon the vesting of that Profits Interest Partner's "Long-Term Incentive Units" (as defined in that Plan) granted to

him/her prior to the date hereof. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the 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.

(c) Capital Contribution. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), its successor shall, at the effective date of its admission to the Partnership, contribute to the capital of the Partnership cash or property or other consideration such that its Capital Account, after giving effect to that contribution, shall be equal to one percent (1%) of the total Capital Account balances at that date.

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 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 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.

4.7 **Business Opportunities.**

(a) In the event that the Partnership recapitalizes, distributes or otherwise transfers any of its business units, business interests or assets to a new entity that will be primarily owned by one or more members of the Founding Partner Group, each of the Limited Partners shall receive a proportionate share of that entity, subject to identical terms and conditions as are provided to the members of the Founding Partner Group, unless that Limited Partner agrees to receive a different percentage interest in that entity; *provided, however*, this Section 4.7(a) shall not apply to any disproportionate distribution made to a member of the Founding Partner Group as long as such disproportionate distribution does not exceed ten percent (10%) of Partnership Capital.

(b) In the event that one or more members of the Founding Partner Group establishes a new business venture (i) whose business operations will be substantially related to, or otherwise operated substantially in connection with, the Partnership, or (ii) that James D. Dondero and/or Mark K. Okada directly or indirectly control and that is an entity whose business operations are substantially related to, or otherwise operated substantially in connection with, the Partnership, the members of the Founding Partner Group agree to use their reasonable best efforts to ensure that (a) the total ownership interest of the members of the Founding Partner Group in that entity shall not exceed their total percentage ownership interest in the Partnership; and (b) each of the Non-Founding Limited Partners shall be permitted to acquire an ownership interest in that entity, subject to identical terms and conditions as the members of the Founding Partner Group; *provided, however*, the members of the Founding Partner Group may elect to limit the amount of such ownership interest for any particular Non-Founding Limited Partner. With regard to investments referenced in clause (b) of the preceding sentence, if a Limited Partner declines to make an investment in a new business entity, the members of the Founding Partner Group shall allocate the opportunity to make that investment to one or more of the remaining Limited Partners (including James D. Dondero and Mark K. Okada).

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 Amended Buy-Sell and Redemption Agreement;

(c) Any other event that, under the Delaware Act, would cause its dissolution; or

(d) A sale of all or substantially all of the assets of the Partnership that results in the liquidation of operating assets, the material shrinking of operations and personnel and the failure to redeploy the proceeds within twelve (12) months into other activities and investments.

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 fled 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 Limited Partners unanimously 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 seventy percent (70%) of the Percentage Interests owned by Limited Partners;

(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.

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.

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Signature Page Follows.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above to be effective as of February 29, 2004.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

_____
BRADFORD BORUD

CANIS MINOR TRUST

By: _____
James D. Dondero,
Trustee

_____
PATRICK DAUGHERTY

_____
DAVIS DEADMAN

_____
JAMES D. DONDERO

_____
R. JOSEPH DOUGHERTY

Signatures Continued on Next Page.

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

TODD A. TRAVERS

DAVID WALLS

JOEN YANG

End of Signatures.

TODD A. TRAVERS

DAVID WALLS

JOHN YANG

End of Signatures.

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JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

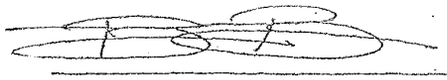
Signatures Continued on Next Page.

SPOUSE'S AGREEMENT

Reference is made to that certain Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of the Partnership's allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:



BRADFORD BORUD

SPOUSE OF PARTNER:

ALTHEA BORUD

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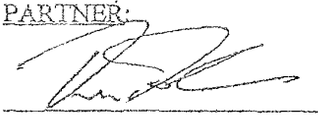

DAVIS DEADMAN

SPOUSE OF PARTNER:

N/A

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PARTNER:

JAMES D. DONDERO

SPOUSE OF PARTNER:

N/A

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PARTNER:

R. JOSEPH DOUGHERTY

SPOUSE OF PARTNER:

N/A

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PARTNER:

PAUL KAUFFMAN

SPOUSE OF PARTNER:

AMY KAUFFMAN

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PARTNER:

PAUL KAUFFMAN

SPOUSE OF PARTNER:

AMY KAUFFMAN

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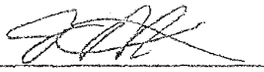

JOHN MORGAN

SPOUSE OF PARTNER:

DEBRA MORGAN

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PARTNER:

MARK K. OKADA

SPOUSE OF PARTNER:

PAMELA OKADA

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SPOUSE OF PARTNER:

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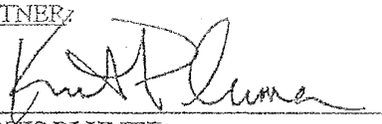

KURTIS PLUMER

SPOUSE OF PARTNER:

KRISTI PLUMER

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PARTNER:

TODD A. TRAVERS

SPOUSE OF PARTNER:

KIMBERLY TRAVERS

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PARTNER:

TODD A. TRAVERS

SPOUSE OF PARTNER:

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SPOUSE'S AGREEMENT

Reference is made to that certain Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of the Partnership's allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:

DAVID WALLS

SPOUSE OF PARTNER:

CARI WALLS

SPOUSE'S AGREEMENT

Reference is made to that certain Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of the Partnership's allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:

DAVID WALLS

SPOUSE OF PARTNER:

CARI WALLS

D-DAL_1266754_8 (2).DOC

SPOUSE'S AGREEMENT

Reference is made to that certain Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of the Partnership's allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:

JOHN YANG

SPOUSE OF PARTNER:

JOYCE YANG

SPOUSE'S AGREEMENT

Reference is made to that certain Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of the Partnership's allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:

PATRICK DAUGHERTY

SPOUSE OF PARTNER:

KIMBERLY DAUGHERTY

EXHIBIT A

Partnership Percentage Interests

GENERAL PARTNER:	Percentage Interest
Strand Advisors, Inc.	0.95665%
LIMITED PARTNERS:	
Bradford Borud	0.303%
Canis Minor Trust	9.5665%
Patrick Daugherty	0.608%
Davis Deadman	0.544%
James D. Dondero	4.78325%
R. Joseph Dougherty	0.549%
The Get Good Trust	11.4798%
The Get Better Trust	44.96255%
Paul Kauffman	0.390%
The Mark and Pamela Okada Family Trust-Exempt #1	6.69655%
The Mark and Pamela Okada Family Trust-Exempt #2	2.86995%
John Morgan	0.281%
Mark K. Okada	14.34975%
Kurtis Plumer	0.426%
Todd A. Travers	0.624%
David Walls	0.203%
John Yang	0.407%
TOTAL	100.0%

EXHIBIT B

ADDENDUM
TO THE
SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS ADDENDUM (this "*Addendum*") to that certain Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 31, 2004, to be effective as of February 29, 2004, as amended from time to time (the "*Agreement*"), is made and entered into as of the ____ day of _____, 20___, by and between Strand Advisors, Inc., as the sole General Partner (the "*General Partner*") of Highland Capital Management, L.P. (the "*Partnership*") and _____ ("_____") (except as otherwise provided herein, all capitalized terms used herein shall have the meanings set forth in the Agreement).

RECITALS:

WHEREAS, the General Partner, in its sole and unfettered discretion, and without the consent of any Limited Partner, has the authority under (i) Section 4.4 of the Agreement to admit Additional Limited Partners, (ii) Section 4.6 of the Agreement to admit Substitute Limited Partners and (iii) Section 6.1 of the Agreement to amend the Agreement;

WHEREAS, the General Partner desires to admit _____ as a Limited Partner holding a _____% Percentage Interest in the Partnership as of the date hereof;

WHEREAS, _____ desires to become a Limited Partner and be bound by the terms and conditions of the Agreement; and

WHEREAS, the General Partner desires to amend the Agreement to add _____ as a party thereto.

AGREEMENT:

RESOLVED, as a condition to receiving a Partnership Interest in the Partnership, _____ _____ acknowledges and agrees that he/she/it (i) has received and read a copy of the Agreement, (ii) shall be bound by the terms and conditions of the Agreement; and (iii) shall promptly execute an addendum to the Amended Buy-Sell and Redemption Agreement; and be it

FURTHER RESOLVED, the General Partner hereby amends the Agreement to add _____ as a Limited Partner, and the General Partner shall attached this Addendum to the Agreement and make it a part thereof; and be it

FURTHER RESOLVED, this Addendum may be executed in any number of counterparts, all of which together shall constitute one Addendum binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____
Name: _____
Title: _____

NEW LIMITED PARTNER:

[_____]

AGREED AND ACCEPTED:

In consideration of the terms of this Addendum and the Agreement, in consideration of the Partnership's allowing the above signed Person to become a Limited Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms and conditions of the Agreement as though a party thereto.

SPOUSE OF NEW LIMITED PARTNER:

[_____]

EXHIBIT C

Maximum Available Loan Amounts to Profits Interest Partners Pursuant to Section 4.1(e)(v)

Profits Interest Partner:	Maximum Loan Amount
Bradford Borud	
Patrick Daugherty	
Davis Deadman	
R. Joseph Dougherty	
Paul Kauffman	
John Morgan	
Kurtis Plumer	
Todd A. Travers	
David Walls	
John Yang	

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

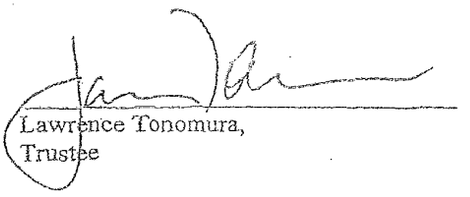
THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tonomura,
Trustee

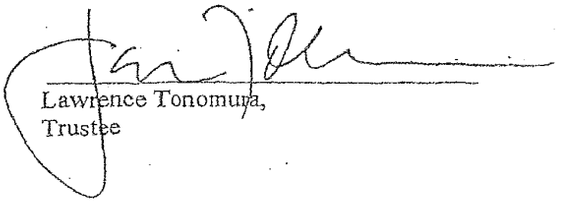
THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: 
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: 
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF HIGHLAND CAPITAL MANAGEMENT, L.P.
A Delaware Limited Partnership

This First Amendment to the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., a Delaware limited partnership (this "***Amendment***") is made and entered into to be effective as of the 15th day of April, 2006 (the "***Effective Date***"), by the General Partner of Highland Capital Management, L.P.

WITNESSETH:

WHEREAS, the General Partner of Highland Capital Management, L.P., a Delaware limited partnership (the "***Partnership***") acting pursuant to that Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated to be effective as of February 29, 2004, as amended (the "***Agreement***"), desires to amend the Agreement as set forth herein (except as otherwise provided herein, all capitalized terms used herein shall have the meaning set forth in the Agreement);

WHEREAS, pursuant to Section 3.7(f) of the Agreement, the General Partner "booked-up" the Capital Accounts of the Partners as of January 1, 2006, and the General Partner desires to make certain other revisions to the Agreement associated therewith;

WHEREAS, pursuant to Section 4.4(a) and 4.4(b) of the Agreement, the General Partner has the right to authorize the issuance of Partnership Interests to new and existing Limited Partners, and on February 28, 2005, the Partnership issued the following Partnership Interests that are treated as "profits interests" for federal income tax purposes to the following Persons who agreed to provide services to the Partnership: (i) a 0.071% interest as a Limited Partner to Bradford Borud; (ii) a 0.109% interest as a Limited Partner to Patrick Daugherty; (iii) a 0.089% interest as a Limited Partner to David Deadman; (iv) a 0.103% interest as a Limited Partner to R. Joseph Dougherty; (v) a 0.100% interest as a Limited Partner to Paul Kauffman; (vi) a 0.095% interest as a Limited Partner to John Morgan; (vii) a 0.077% interest as a Limited Partner to Kurtis Plumer; (viii) a 0.174% interest as a Limited Partner to James Pope; (ix) a 0.131% interest as a Limited Partner to Todd A. Travers; (x) a 0.072% interest as a Limited Partner to David Walls; and (xi) a 0.0370% interest as a Limited Partner to John Yang;

WHEREAS, pursuant to Section 19 of the Amended and Restated Buy-Sell and Redemption Agreement among the Partnership and its Limited Partners, dated December 31, 2004, as amended, the General Partner has the authority to cause the Partnership to redeem the Partnership Interests of certain Limited Partners, and effective July 15, 2005, the Partnership desires to redeem a portion of the Partnership Interests of certain Limited Partners as follows: (i) a 0.037% interest as a Limited Partner from Bradford Borud; (ii) 0.127% interest as a Limited Partner from David Deadman; (iii) a 0.075% interest as a Limited Partner from John Morgan; (iv) 0.101% interest as a Limited Partner from Kurtis Plumer, (v) a 0.038% interest as a Limited Partner from Todd Travers, and (vi) a 0.041% interest as a Limited Partner from David Walls;

WHEREAS, on February 28, 2006, the Partnership issued the following Partnership Interests that are treated as "profits interests" for federal income tax purposes to the following Persons who agreed to provide services to the Partnership: (i) a 0.032% interest as a Limited Partner to Bradford Borud; (ii) a 0.053% interest as a Limited Partner to Patrick Daugherty; (iii) a 0.007% interest as a Limited Partner to David Deadman; (iv) a 0.038% interest as a Limited Partner to R. Joseph Dougherty; (v) a 0.027% interest as a Limited Partner to Paul Kauffman; (vi) a 0.077% interest as a Limited Partner to John Morgan; (vii) a 0.045% interest as a Limited Partner to Kurtis Plumer; (viii) a 0.078% interest as a Limited Partner to James Pope; (ix) a 0.070%

interest as a Limited Partner to Todd A. Travers; (x) a 0.068% interest as a Limited Partner to David Walls; and (xi) a 0.383% interest as a Limited Partner to John Yang;

WHEREAS, the Partnership shall continue under the terms of the Agreement as amended pursuant to this Amendment.

NOW, THEREFORE, BE IT RESOLVED, the parties hereto hereby agree as follows:

1. The following new Section 3.7(h) shall be added:

"(h) Capital Accounts for Each Partner

(i) The Partners hereby acknowledge that, on February 28, 2005, the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of February 28, 2005, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$4,357,636
Brad Borud	$1,014,920
The Canis Minor Trust	$43,576,358
Patrick Daugherty	$2,037,360
Davis Deadman	$1,825,134
James D. Dondero	$37,432,237
R. Joseph Dougherty	$1,842,317
The Get Good Trust	$52,291,629
The Get Better Trust	$189,164,823
Paul Kauffman	$1,306,761
The Mark and Pamela Okada Family Trust-Exempt #1	$30,503,450
The Mark and Pamela Okada Family Trust-Exempt #2	$13,072,907
John Morgan	$942,659
Mark K. Okada	$65,064,537
Kurtis Plumer	$1,427,214
Todd A. Travers	$2,092,963
David Walls	$681,060
John Yang	$1,366,035
TOTAL	$450,000,000

(ii) The Partners hereby acknowledge that, on January 1, 2006 (after the Partnership's issuance of Partnership Interests to Profits Interest Partners on February 29, 2005 and after the redemption of a portion of the Partnership Interests of certain Limited Partners on July 15, 2005), the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of January 1, 2006, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$6,474,644
Brad Borud	$1,682,961
The Canis Minor Trust	$63,511,297
The Canis Major Trust	$65,519,123
Patrick Daugherty	$3,722,129
Davis Deadman	$2,585,996
R. Joseph Dougherty	$3,379,045
The Get Good Trust	$76,095,479
The Get Better Trust	$264,739,621
Paul Kauffman	$2,463,611
The Mark and Pamela Okada Family Trust-Exempt #1	$45,496,463
The Mark and Pamela Okada Family Trust-Exempt #2	$18,812,770
John Morgan	$1,401,385
Mark K. Okada	$94,515,006
Kurtis Plumer	$2,032,323
James Pope	$434,852
Todd A. Travers	$3,655,883
David Walls	$1,095,944
John Yang	$2,381,469
TOTAL	$660,000,000

(iii) The Partners hereby acknowledge that, on April 15, 2006 (after the Partnership issued additional Partnership Interests to each Partner on February 28, 2006 and made a tax distribution to each Partner on April 15, 2006), the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of April 15, 2006, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$6,469,952
Brad Borud	$1,712,501
The Canis Minor Trust	$63,464,379
The Canis Major Trust	$65,471,054
Patrick Daugherty	$3,783,851
Davis Deadman	$2,627,169
R. Joseph Dougherty	$3,434,436
The Get Good Trust	$76,039,177
The Get Better Trust	$264,543,714
Paul Kauffman	$2,505,001
The Mark and Pamela Okada Family Trust-Exempt #1	$45,463,620
The Mark and Pamela Okada Family Trust-Exempt #2	$18,798,694
John Morgan	$1,431,629
Mark K. Okada	$94,444,628
Kurtis Plumer	$2,068,191
James Pope	$455,042
Todd A. Travers	$3,719,004
David Walls	$1,120,141
John Yang	$2,447,819
TOTAL	$660,000,000

2. Section 3.2(b)(ii) shall be deleted in it entirety and replaced with the following:

"(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 be deemed to first reduce amounts that were last allocated to the Capital Accounts of the Partners; and"

3. The following proviso shall be added in the ninth line of Section 3.9(a), immediately before the "provided, however":

"(and such distributions shall be allocated against increases in Capital Accounts in proportion in which they occurred)"

4. The following sentence shall be added at the end of Section 3.9(a):

"Distributions shall be deemed to first reduce amounts that were first added to the Capital Accounts of the Partners (i.e., a first-in, first-out approach)."

5. The following new Section 4.1(l) shall be added:

"The General Partner may, from time to time, designate one or more Persons to be officers of the Company. 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."

6. Section 4.4(a) shall be deleted in its entirety. The following new Section 4.4(a) shall be added:

(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. Upon the admission of any Additional Limited Partner, the Percentage Interest of the members of the Founding Partner Group shall be diluted proportionately. 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 Amended Buy-Sell and Redemption Agreement.

7. Section 4.4(b) shall be deleted in its entirety. The following new Section 4.4(b) shall be added:

(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 Amended Buy-Sell and Redemption Agreement.

8. Exhibit A and Exhibit C of the Agreement shall be deleted in their entirety and replaced with the attached Exhibit A and Exhibit C.

9. Except to the extent modified or amended by this Amendment, all terms and provisions of the Agreement shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

10. Any required notices, meetings or consents that are necessary to make an amendment to the Agreement are hereby waived or satisfied.

11. Each party hereto shall take whatever other action is required to give full effect to the provisions of this Amendment, including the acquisition by any Partner of any consent to the action provided for herein.

12. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same Amendment, and any parties to this Amendment may execute this Amendment by signing any one of the counterparts. Any counterpart of this Amendment may be executed via facsimile transmission.

Remainder of Page Intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

EXHIBIT A

Partnership Percentage Interests

GENERAL PARTNER:	Percentage Interest
Strand Advisors, Inc.	0.941%
LIMITED PARTNERS:	
Bradford Borud	0.368%
Canis Minor Trust	9.415%
Canis Major Trust	9.646%
Patrick Daugherty	0.770%
Davis Deadman	0.513%
R. Joseph Dougherty	0.691%
The Get Good Trust	11.298%
The Get Better Trust	39.312%
Paul Kauffman	0.516%
The Mark and Pamela Okada Family Trust-Exempt #1	6.590%
The Mark and Pamela Okada Family Trust-Exempt #2	2.824%
John Morgan	0.377%
Mark K. Okada	14.122%
Kurtis Plumer	0.447%
James Pope	0.252%
Todd A. Travers	0.787%
David Walls	0.302%
John Yang	0.828%
TOTAL	100.0%

EXHIBIT C

Maximum Available Loan Amounts to Profits Interest Partners Pursuant to Section 4.1(e)(v)

Profits Interest Partner:	Maximum Loan Amount
Bradford Borud	
Patrick Daugherty	
Davis Deadman	
R. Joseph Dougherty	
Paul Kauffman	
John Morgan	
Kurtis Plumer	
James Pope	
Todd A. Travers	
David Walls	
John Yang	
James Pope	

**SECOND AMENDMENT TO THE
SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.
A Delaware Limited Partnership**

This Second Amendment to the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., a Delaware limited partnership (this "***Amendment***") is made and entered into to be effective as of the 15th day of April, 2007 (the "***Effective Date***"), by the General Partner of Highland Capital Management, L.P.

WITNESSETH:

WHEREAS, the General Partner of Highland Capital Management, L.P., a Delaware limited partnership (the "***Partnership***") acting pursuant to that Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated to be effective as of February 29, 2004, as amended (the "***Agreement***"), desires to amend the Agreement as set forth herein (except as otherwise provided herein, all capitalized terms used herein shall have the meaning set forth in the Agreement);

WHEREAS, pursuant to Section 3.7(f) of the Agreement, the General Partner "booked-up" the Capital Accounts of the Partners of the Partnership on each of the following dates: October 15, 2006, February 28, 2007, and April 15, 2007 and the General Partner desires to make revisions to the Agreement associated therewith;

WHEREAS, pursuant to Section 4.4(a) and 4.4(b) of the Agreement, the General Partner has the right to authorize the issuance of Partnership Interests to new and existing Limited Partners, and on February 28, 2007, the Partnership issued the following Partnership Interests that are treated as "profits interests" for federal income tax purposes to the following Persons who agreed to provide services to the Partnership: (i) a 0.028% interest as a Limited Partner to Bradford Borud; (ii) a 0.013% interest as a Limited Partner to Patrick Daugherty; (iii) a 0.007% interest as a Limited Partner to Davis Deadman; (iv) a 0.013% interest as a Limited Partner to R. Joseph Dougherty; (v) a 0.007% interest as a Limited Partner to Paul Kauffman; (vi) a 0.022% interest as a Limited Partner to John Morgan; (vii) a 0.027% interest as a Limited Partner to Kurtis Plumer; (viii) a 0.047% interest as a Limited Partner to James Pope; (ix) a 0.020% interest as a Limited Partner to Todd A. Travers; (x) a 0.043% interest as a Limited Partner to David Walls; (xi) a 0.104% interest as a Limited Partner to John Yang; (xii) a 0.029% interest as a Limited Partner to John Honis; and (xiii) a 0.021% interest as a Limited Partner to Patrick Conner;

WHEREAS, the Partnership shall continue under the terms of the Agreement as amended pursuant to this Amendment.

NOW, THEREFORE, BE IT RESOLVED, the parties hereto hereby agree as follows:

1. The following new Section 3.7(h) shall be added:

"(h) Capital Accounts for Each Partner

(i) The Partners hereby acknowledge that, on October 15, 2006, the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code

DEFENDANT'S EXHIBIT
13
25-03055

Section 704(c) item. As of October 15, 2006, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$7,791,791.83
Brad Borud	$2,237,521.56
The Canis Minor Trust	$76,682,775.09
The Canis Major Trust	$79,013,648.93
Patrick Daugherty	$4,880,808.00
Davis Deadman	$3,358,856.13
R. Joseph Dougherty	$4,418,857.51
The Get Good Trust	$91,901,252.32
The Get Better Trust	$319,311,373.17
Paul Kauffman	$3,240,581.48
The Mark and Pamela Okada Family Trust-Exempt #1	$54,856,497.76
The Mark and Pamela Okada Family Trust-Exempt #2	$22,824,213.33
John Morgan	$1,969,229.67
Mark K. Okada	$114,072,222.65
Kurtis Plumer	$2,705,675.90
Todd A. Travers	$4,840,844.11
David Walls	$1,550,276.80
John Yang	$3,529,594.20
James Pope	$813,979.56
TOTAL	**$800,000,000.00**

(ii) The Partners hereby acknowledge that, on February 28, 2007 (after the Partnership issued additional Partnership Interests to certain Partners on February 28, 2007), the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of February 28, 2007, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$12,672,773.96
Brad Borud	$4,245,939.16
The Canis Minor Trust	$125,492,596.34
The Canis Major Trust	$129,020,389.43
Patrick Daugherty	$9,077,119.71
Davis Deadman	$6,157,861.10
R. Joseph Dougherty	$8,184,672.84
The Get Good Trust	$150,473,037.82
The Get Better Trust	$523,115,703.17
Paul Kauffman	$6,054,480.42
The Mark and Pamela Okada Family Trust-Exempt #1	$89,023,372.64
The Mark and Pamela Okada Family Trust-Exempt #2	$37,467,159.71
John Morgan	$4,025,773.35
Mark K. Okada	$187,286,954.53
Kurtis Plumer	$5,144,318.54
Todd A. Travers	$9,132,344.01
David Walls	$3,195,721.96
John Yang	$8,042,719.43

James Pope $2,187,061.87

TOTAL $1,320,000,000.00

(iii) The Partners hereby acknowledge that, on April 15, 2007 (after the Partnership made distributions to certain Partners on April 15, 2007), the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of April 15, 2007, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc. $12,661,116.60
Brad Borud $4,320,072.91
The Canis Minor Trust $125,376,022.75
The Canis Major Trust $128,919,134.88
Patrick Daugherty $9,195,662.97
Davis Deadman $6,235,129.25
R. Joseph Dougherty $8,292,161.75
The Get Good Trust $150,333,149.51
The Get Better Trust $522,610,775.06
Paul Kauffman $6,132,131.02
The Mark and Pamela Okada Family Trust-Exempt #1 ..... $88,941,771.13
The Mark and Pamela Okada Family Trust-Exempt #2 ..... $37,432,187.63
John Morgan $4,096,114.89
Mark K. Okada $187,112,094.14
Kurtis Plumer $5,228,857.28
Todd A. Travers $9,258,726.39
David Walls $3,273,040.54
John Yang $8,242,527.88
James Pope $2,259,961.09
John Honis $23,296.08
Patrick Conner $56,066.25

TOTAL $1,320,000,000.00

2. Exhibit A and Exhibit C of the Agreement shall be deleted in their entirety and replaced with the attached Exhibit A and Exhibit C.

3. Except to the extent modified or amended by this Amendment, all terms and provisions of the Agreement shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

4. Any required notices, meetings or consents that are necessary to make an amendment to the Agreement are hereby waived or satisfied.

5. Each party hereto shall take whatever other action is required to give full effect to the provisions of this Amendment, including the acquisition by any Partner of any consent to the action provided for herein.

6. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same Amendment, and any parties to this Amendment may execute this Amendment by signing any one of the counterparts. Any counterpart of this Amendment may be executed via facsimile transmission.

Remainder of Page Intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

EXHIBIT A

Partnership Percentage Interests

GENERAL PARTNER:	Percentage Interest
Strand Advisors, Inc.	0.937%
LIMITED PARTNERS:	
Bradford Borud	0.396%
Canis Minor Trust	9.372%
Canis Major Trust	9.624%
Patrick Daugherty	0.783%
Davis Deadman	0.520%
R. Joseph Dougherty	0.704%
The Get Good Trust	11.246%
The Get Better Trust	39.110%
Paul Kauffman	0.523%
The Mark and Pamela Okada Family Trust-Exempt #1	6.560%
The Mark and Pamela Okada Family Trust-Exempt #2	2.812%
John Morgan	0.399%
Mark K. Okada	14.058%
Kurtis Plumer	0.474%
James Pope	0.298%
Todd A. Travers	0.807%
David Walls	0.345%
John Yang	0.931%
John Honis	0.029%
Patrick Conner	0.069%
TOTAL	**100.0%**

EXHIBIT C

Maximum Available Loan Amounts to Profits Interest Partners Pursuant to Section 4.1(e)(v)

Profits Interest Partner:	Maximum Loan Amount
Bradford Borud	
Patrick Daugherty	
Davis Deadman	
R. Joseph Dougherty	
Paul Kauffman	
John Morgan	
Kurtis Plumer	
James Pope	
Todd A. Travers	
David Walls	
John Yang	
James Pope	
John Honis	
Patrick Conner	

PAT DAUGHERTY
Date of Hire: 4/3/1998
Comprehensive Compensation and Benefits Statement
February 27, 2009

EARNINGS AND AWARDS

2008 Base Salary, as of 12/31/08	$ 250,000
2009 Base Salary, effective March 1, 2009 : $ 250,000	
2008 Tax Refund	$ 1,475,816

Refund is an estimated amount. If actual refund deviates materially from estimate, other compensation will be fairly adjusted. Refund is expected to be received in approximately 4 months.

Loan Forgiven in 2009 as part of bonus:	$ 500,000
2008 Other Awards	
• 401K Match	$ 4,000
• Defined Benefit	$ 64,320
2008 Deferred Compensation	
• Retention Award	$ 1,300,000

Highland's Hedge Funds and Private Equity funds, for a variety of reasons, largely preclude redemptions and Highland Capital Management, L.P. may or may not be in a position to provide a cash equivalent upon triggering of any employee specific monetization. Therefore for this deferred compensation award and any previous awards of Option IT and STIP, Employee agrees to accept payment in kind settlement of any monetization if necessary. _____ (*Please Initial*)

2008 Total Earnings and Awards	**$ 3,594,136**

HIGHLAND PAID BENEFITS

Medical	$ 16,141
Dental	$ 1,230
Basic and Dependent Life Insurance/AD&D	$ 598
Short Term Disability and Long Term Disability	$ 435
Executive LTD	$ 956
Daily Catered Lunches	$ 3,240
Blackberry	$ 1,440
Parking	$ 1,200
2008 Estimated Total Value of Highland Paid Benefits	**$ 25,240**

TOTAL COMPENSATION PACKAGE $ 3,619,376

Waiver and Release Payments in 2008	$ 75,000

ACCEPTED AND AGREED:

Cause No DC-12-04006
Highland Parties' Trial Exhibit
32

_____ _____
Patrick Daugherty **Date**

DEFENDANT'S EXHIBIT
14
25-03055

DAUGHERTY 001363

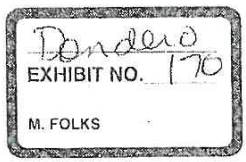
Date: 9/28/11
To: Jim Dondero

I very much appreciate the opportunity to have worked with you and at Highland for the last 13 ½ years. After careful and deliberate consideration, I have decided to move on to the next chapter in my life and am giving my 30 notice of resignation effective today. I wish you and the firm all the best and am available to assist in an appropriate transition.

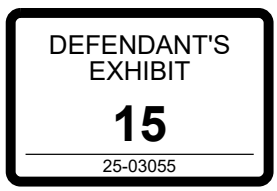
Sincerely,

Patrick H. Daugherty

cc Patrick Boyce



DAUGHERTY 001043



HIGHLAND CAPITAL MANAGEMENT

February 3, 2018

By Mail and Electronic Mail

Patrick Daugherty
3621 Cornell Ave
Dallas, TX 75205
phdaugherty@gmail.com

Re: Field Examiners' Proposed Tax Adjustments – 2008 Tax Year
Highland Capital Management, L.P.

Dear Patrick,

As previously advised, a team of IRS field examiners ("Exam") conducted an audit of the 2008 partnership tax return filed on behalf of Highland Capital Management, L.P. ("Highland"). Exam concluded their audit and have proposed an adjustment to the 2008 return.

We have enclosed with this letter the following items: (a) IRS Form 886-Z except -A, and (b) IRS Form 870-PT. *At this time, no action on your part is required with respect to these documents unless you wish to agree to Exam's proposed adjustments – which we do not recommend.*

Exam has scheduled a closing conference on March 2, 2018. You do not need to attend the closing conference. Please let us know by the close of business on February 15, 2018 if you wish to attend. Highland will handle the closing conference (unless waived) and appeal the proposed adjustment to the IRS Appeals Office after the conference.

Please contact me at 972-419-4438 if you have any questions.

Regards,

Brian Collins
Director of Human Resources
Highland Capital Management, L.P.

Enclosures

300 Crescent Court, Suite 700 • Dallas, TX 75201 • office: 972.628.4100 • fax: 972.628.4147
www.highlandcapital.com

DEFENDANT'S EXHIBIT
16
25-03055

PD - Exhibit 17 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 18 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 19 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 20 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 21 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 22 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 23 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 24 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 25 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 26 Slipsheet

(Subject to Motion to Seal and Protective Order)

Form **4605-A**

Department of the Treasury — Internal Revenue Service

Examination Changes - Partnerships, Fiduciaries, S Corporations, and Interest Charge Domestic International Sales Corporations (Unagreed and Excepted Agreed)

Name and address	Employer Identification Number	Form Number
Highland Capital Management 300 Crescent Court, Suite 700 (Prev. Two Galleria Tower 13455 Noc Dallas,, Texas 75201	75-2716725	1065

Person Examination Changes Were Discussed With	Name Highland Capital Management
	Title Taxpayer

1. Adjustments to ordinary, distributable net, or taxable income.	Period End: 12/31/2008	Period End:	Period End:
a.			
b.			
c.			
d.			
e.			
f.			
g.			
2. Total adjustments to ordinary, distributable net, or taxable income.			
3. Ordinary, distributable net, or taxable income as reported.	(546,177,906.00)		
4. Corrected ordinary, distributable net, or taxable income.	(546,177,906.00)		
5. Other adjustments			
a. Portfolio income (loss) net short-term gain (loss)			
(1) Adjustment	166,332,713.00		
(2) As Reported	3,570,236.00		
(3) Corrected	169,902,949.00		
b.			
(1) Adjustment			
(2) As Reported			
(3) Corrected			

Remarks
This form only reflects Schedule K items adjusted by this report.

Examiner's Signature:	Employee ID:	Area Office:	Date:
Name Linda Yao	1001554452	Farmers Branch, TX	12/8/2017

DEFENDANT'S EXHIBIT 27 25-03055

Form 886-Z (June 2016)	Department of the Treasury - Internal Revenue Service **TEFRA Partners' Shares of Income**	Schedule Number 1065

Name of Partnership	TIN of Partnership	Taxable Year Ended
Highland Capital Management	75-2716725	12/31/2008

Name and Address of Each Partner (1)	TIN of Partner (2)	Percentage of Profit (3)	Portfolio income (loss) net short-term gain (loss) (4)	(5)
[redacted]				

Continuation

TIN of Partner (6)	(7)	(8)	(9)	(10)	(11)
[redacted]					
Totals					

This form only reflects Schedule K-1 items adjusted by the report dated: _____

DEFENDANT'S EXHIBIT
28
25-03055

Form 886-Z (June 2016)	Department of the Treasury - Internal Revenue Service **TEFRA Partners' Shares of Income**	Schedule Number 1065

Name of Partnership	TIN of Partnership	Taxable Year Ended
Highland Capital Management	75-2716725	12/31/2008

Name and Address of Each Partner (1)	TIN of Partner (2)	Percentage of Profit (3)	Portfolio income (loss) net short-term gain (loss) (4)	(5)
[redacted]				
Daugherty, Patrick 3621 Cornell Ave. Dallas, TX 75205	452-94-7373	0.74030000%	1,257,792.00	
[redacted]				
Continuation				
[redacted]				
Totals				

This form only reflects Schedule K-1 items adjusted by the report dated: _____

Form 886-Z (June 2016)	Department of the Treasury - Internal Revenue Service **TEFRA Partners' Shares of Income**	Schedule Number 1065
Name of Partnership: Highland Capital Management	TIN of Partnership: 75-2716725	Taxable Year Ended: 12/31/2008

Name and Address of Each Partner (1)	TIN of Partner (2)	Percentage of Profit (3)	Portfolio income (loss) net short-term gain (loss) (4)	(5)
[redacted]				
Continuation				
[redacted]				
Totals				

This form only reflects Schedule K-1 items adjusted by the report dated: _____

Form 886-Z (June 2016)	Department of the Treasury - Internal Revenue Service **TEFRA Partners' Shares of Income**	Schedule Number 1065

Name of Partnership	TIN of Partnership	Taxable Year Ended
Highland Capital Management	75-2716725	12/31/2008

Name and Address of Each Partner (1)	TIN of Partner (2)	Percentage of Profit (3)	Portfolio Income (loss) net short-term gain (loss) (4)	(5)
[redacted]				
Totals		100.00000000%	169,902,949.00	

Continuation

[redacted]

This form only reflects Schedule K-1 items adjusted by the report dated: _____

Form **870-PT** (Rev. 4-2012) For partnership taxable years ending after August 5, 1997	Department of the Treasury — Internal Revenue Service **Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts**	IN REPLY REFER TO:

Taxpayer(s) name(s), address and zip code:	Name of Partnership:	Tax Year(s) Ended:
Daugherty, Patrick 3621 Cornell Ave. Dallas, TX 75205	Highland Capital Management EIN: 75-2716725	12/31/2008
TIN: 452-94-7373	Name of Tax Matters Partner: Strand Advisors, Inc.	

Offer of Agreement to Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts & Waiver of Restrictions on Assessment for Partnership Items, Penalties, Additions to Tax, and Additional Amounts

Under the provisions of sections 6224(c) and 7121 of the Internal Revenue Code (IRC), the Commissioner of the Internal Revenue Service and the undersigned taxpayer(s) agree to the determination of partnership items and partnership level determinations as to penalties, additions to tax, and additional amounts that relate to adjustments to partnership items as shown on the attached Schedule of Adjustments.

The undersigned taxpayer(s), in accordance with IRC sections 6224(b) and 6213(d), also waive(s) the restrictions provided by IRC sections 6225(a) and 6213(a) and consent(s) to the assessment and collection of any deficiency attributable to partnership items, penalties, additions to tax, and additional amounts that relate to partnership items, as set forth in the attached Schedule of Adjustments (plus any interest provided by law). IRC Section 6651 late filing penalty applies to any late filed (or non-filed) returns that are required to report the partnership item adjustments.

This agreement is conditional and will not become effective or final until this agreement form is returned to the Commissioner and is signed on his or her behalf. The one-year extension of the period of limitations on assessments under IRC section 6229(f) will not begin to run until the date the Commissioner's representative signs this form on the Commissioner's behalf. If this is a partial agreement, the period of limitations for assessing any tax attributable to the settled items shall be determined as if this agreement had not been entered into.

If this part of this agreement form is signed for the Commissioner, the treatment of partnership items and partnership level determinations as to penalties, additions to tax and additional amounts that relate to adjustments to partnership items under this agreement will not be reopened in the absence of fraud, malfeasance, or misrepresentation of fact. In addition, no claim for an adjustment of partnership items, refund or credit based on any change in the treatment of partnership items or partnership level determinations as to penalties, additions to tax, and additional amounts may be filed or prosecuted.

Once the taxpayer signs such a waiver and it is countersigned by the Commissioner, the taxpayer cannot file an Administrative Adjustment Request (AAR) on any partnership items for the related TEFRA entity. This includes partnership items not specifically addressed on the attached Schedule of Adjustments.

Signature of Taxpayer	Date Signed	Phone Number
Signature of Taxpayer	Date Signed	Phone Number
By (Signature and Title)	Date Signed	Phone Number

FOR INTERNAL REVENUE USE ONLY	Date accepted for Commissioner	Signature
	Office	Title

INSTRUCTIONS FOR SIGNING FORM 870-PT

1. Sign the agreement if you wish to agree to the partnership items *and partnership level determinations as to penalties, additions to tax, and additional amounts*, as shown on the attached Schedule of Adjustments. The execution and filing of this offer will expedite the adjustment of tax liability.

2. If a JOINT RETURN OF A HUSBAND AND WIFE was filed and both spouses intend to agree, both spouses should sign Form 870-PT. One spouse may sign as agent for the other if acting under a power of attorney, which, if not previously filed, must accompany this form. The IRS may accept the signature of only one spouse at its discretion. However, the agreement will only be binding on the signing spouse.

3. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature and title of the officer authorized to sign Form 870-PT.

4. Your attorney or agent may sign for you if this action is specifically authorized by a power of attorney, which if not previously filed, must accompany this form.

5. If this offer is signed by a trust, the agreement must be signed with the trust name, followed by the signature and title of the person authorized to sign on behalf of the trust. If the trustee is signing this agreement on behalf of the trust and all beneficiaries, a Form 56 must be signed by the trustee. If an individual beneficiary is signing the agreement to bind themselves to the agreement, no Form 56 is needed.

6. If the partner is an LLC, the agreement should be signed by the manager of the LLC or other authority as authorized by State law. The signature line should show: [Name of LLC], by [Name of Manager], Followed by the title [Manager].

7. For a partner who is a subsidiary corporation in a consolidated group:

   - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning before June 28, 2002, the agreement should be signed by a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for the relevant consolidated return year(s). The common parent corporation signs the agreement in its own name. The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should be displayed in the signature block. See Treas. Reg. § 1.1502-77A(a).

   - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning on or after June 28, 2002, then a currently authorized officer of the subsidiary corporation should sign the agreement and should do so in the name of the subsidiary corporation. See Treas. Reg. § 1.1502-77(a)(6)(iii). The signature and title of a current officer of the subsidiary corporation, who is authorized to bind the corporation, should be displayed in the signature block. The agreement should also be signed by a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for the relevant consolidated return year(s). The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should also be displayed in the signature block.

8. For a partner who is the common parent corporation of a consolidated group, a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for such consolidated return year(s) should sign the agreement in the name of the common parent corporation. See Treas. Reg. § 1.1502-77(a).

9. If the Tax Matters Partner signs this offer, please include the title with the signature.

10. If the Tax Matters Partner is a subsidiary corporation in a consolidated group:

    - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning before June 28, 2002, then a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for such consolidated return year should sign the agreement on behalf of the Tax Matters Partner. The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should be displayed in the signature block. See Treas. Reg. § 1.1502-77A(a). An authorized officer for the subsidiary corporation should also sign if it, as the Tax Matters Partner, is binding non-notice partners under the agreement. The signature and title of a current officer of the subsidiary corporation, who is authorized to bind the corporation, should be displayed in the signature block

    - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning on or after June 28, 2002, then a currently authorized officer of the subsidiary corporation should sign the agreement in the name of the subsidiary corporation. See Treas. Reg. § 1.1502-77(a)(3)(v). The agreement should also be signed by a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for the relevant consolidated return year(s). The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should also be displayed in the signature block.

NOTE: The submission of this offer by you and the acceptance of the offer for the Commissioner may result in an additional tax liability to you plus interest as provided by law. If the result is a decrease in tax, the amount of the decrease will be sent to you with interest as provided by law.

Department of the Treasury — Internal Revenue Service

Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts

SCHEDULE OF ADJUSTMENTS

NAME OF PARTNERSHIP: Highland Capital Management EIN: 75-2716725	TAX YEAR(S) ENDED 12/31/2008		
DETAIL OF ADJUSTMENTS TO ORDINARY INCOME:			
a.			
b.			
c.			
d.			
e.			
f.			
g.			
TOTAL ADJUSTMENTS TO ORDINARY INCOME			
OTHER ADJUSTMENTS			
A. Portfolio income (loss) net short-term gain (loss)			
(1) ADJUSTMENT	166,332,713.00		
(2) AS REPORTED	3,570,236.00		
(3) CORRECTED	169,902,949.00		
(1) ADJUSTMENT			
(2) AS REPORTED			
(3) CORRECTED			

REMARKS:

PD - Exhibit 29 Slipsheet

(Subject to Motion to Seal and Protective Order)

Pat Daugherty

From: Jim Dondero
Sent: Tuesday, September 27, 2011 5:54 PM
To: Pat Daugherty
Cc: Patrick Boyce
Subject: Re: What do you stand for? This retrade is unfair and unjust.

Its not a retrade, we were clarifying a general understanding. You will trust or you will leave; you will get no agreement in writing. You will stop pushing and wasting my time. You will contribute and be rewarded and when u feel unfairly treated you can go elsewhere but I won't deal with this much distraction, disrespect or disruption.

From: Pat Daugherty
Sent: Tuesday, September 27, 2011 02:04 PM
To: Jim Dondero
Subject: RE: What do you stand for? This retrade is unfair and unjust.

You are the one who told me to "f@ck myself", not the other way around. For the record, the agreement always expressly noted that I would have to be employed at Highland in order to get any payment of bonus (as has always been the case). As for Tunstall, we had already negotiated that agreement which clearly states the nature of my interest and your interest. The nature of the Restoration economic interest will be as agreed subject to investor approval as they are going to have their own views of how my, yours and the teams comp should be structured. I have never tried to skim you and I am not trying to now. That said, it is reasonable to get the nature of my compensation in writing so that everyone is clear. Every other Company in the universe commits their economic relationships with their managers to writing so that there can be no confusion down the road. To insist that I do otherwise is flat out wrong and you know it.

If you don't want me to give a damn about you personally then I guess I'll do my best to comply. That said, I have been by your side thru a whole lot of sh@t and it is so refreshing to get your boot up my a$$ now that you are back on your feet. I'm glad to see you are back to the point where you can tell those closest to you to "f@ck themselves".

Patrick H. Daugherty, Esq.
Partner, Head of Distressed, Special Situations and Private Equity
Highland Capital Management, L.P.
13455 Noel Road, Suite 800
Dallas, TX 75240
972-628-4100 (phone)
972-628-4147 (fax)
pdaugherty@hcmlp.com

From: Jim Dondero
Sent: Tuesday, September 27, 2011 1:27 PM
To: Pat Daugherty
Cc: Patrick Boyce
Subject: Re: What do you stand for? This retrade is unfair and unjust.

Dondero
EXHIBIT NO. 160
M. FOLKS

Cause No DC-12-04005
Highland Parties' Trial Exhibit
160

DAUGHERTY 001349

DEFENDANT'S EXHIBIT
30
25-03055

PDADV_004224

I won't take you speaking with me like that. "Big brother u never wanted" doesn't allow u to be that disrespectful. I'm not willing to make that indicative letter a contract. There are things that need to be corrected such as bonus amounts of 750k feb aug need to both be described as retention, in-good-standing to receive. 25% interest in funstall and RCP need to be described as LP interests not a fee skim. Re REIT you will be treated fairly re a transaction that may or may not happen and if the anticipated deal occurs as expected you can expect approx 15% but its too lose to define and you will have to trust me. You have been treated more than fair in a value proposition that is always shift. If you believe I have been untrustworthy you should move on.
Re my personal life, its not relevant except to say I will tolerate the individual, passions and peculiarities, to a point. Beyond that point it becomes too unpleasant and I'd rather start over alone. You need to stop pushing me.

From: Pat Daugherty
Sent: Tuesday, September 27, 2011 09:48 AM
To: Jim Dondero
Subject: What do you stand for? This retrade is unfair and unjust.

Patrick H. Daugherty, Esq.
Partner, Head of Distressed, Special Situations and Private Equity
Highland Capital Management, L.P.
13455 Noel Road, Suite 800
Dallas, TX 75240
972-628-4100 (phone)
972-628-4147 (fax)
pdaugherty@hcmlp.com

From: **Brian Collins** BCollins@HighlandCapital.com
Subject: 60-Day Letter – 2008 HCMLP Tax Year (Daugherty)
Date: July 3, 2018 at 10:45 AM
To: Patrick Daugherty phdaugherty@gmail.com

BC

Pat,

As a limited partner in Highland Capital Management, L.P. ("Highland") in 2008, you may have recently received a copy of the 60-Day Letter that was sent to the Tax Matters Partner (TMP) of Highland. The 60-Day Letter relates to the audit of Highland's 2008 partnership tax return and the proposed adjustment by the IRS.

As we indicated in our previous correspondence, Highland (through its TMP) will timely appeal the proposed adjustment. Thereafter, the matter will proceed to the IRS Appeals Office. **At this time, you do not need to take any action.**

We may reach a settlement regarding the 2008 adjustment in IRS Appeals. If so, you will have an opportunity to accept the settlement as to your pro rata share or individually dispute the IRS adjustment in judicial proceedings.

Brian C. Collins | DIRECTOR OF HUMAN RESOURCES

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.419.4438 | F: 972.628.4137
bcollins@highlandcapital.com | www.highlandcapital.com

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DEFENDANT'S EXHIBIT
31
25-03055

From: **Brian Collins** BCollins@HighlandCapital.com
Subject: Status of Field Examiners' Proposed Tax Adjustments – 2008 Tax Year
Date: December 9, 2019 at 8:31 AM
To: phdaugherty@gmail.com

BC

Dear Pat,

As previously advised, a team of Internal Revenue Service ("IRS") field examiners ("Exam") conducted an audit of the 2008 partnership tax return filed on behalf of Highland Capital Management, L.P. ("Highland"). By letter dated December 8, 2017, Exam indicated that they had concluded their audit and provided a summary report proposing certain adjustments to the 2008 return.

After Exam issued its audit report and the closing conference, Highland formally disagreed with the adjustments proposed by Exam. Exam then transferred the matter to its TEFRA unit for formal processing of Highland's appeal. **The matter recently was transferred to the IRS Office of Appeals.** The Appeals Office is an independent division of the IRS that has the authority to resolve tax disputes such as this one, without litigation, in a fair and impartial manner to the taxpayer.

Highland will continue to defend against the proposed adjustments by Exam and prosecute the appeal of those adjustments in the Appeals Office. At this time, we have no further information regarding when the Appeals Office will review Highland's appeal or when a resolution may be made.

Brian C. Collins | DIRECTOR OF HUMAN RESOURCES

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.419.4438 | F: 972.628.4137
bcollins@highlandcapital.com | www.highlandcapital.com

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DEFENDANT'S EXHIBIT
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25-03055

From: "John A. Morris" <jmorris@pszjlaw.com>
Date: May 5, 2022 at 8:29:08 PM GMT+1
To: Thomas Surgent <TSurgent@highlandcapital.com>
Cc: jpseeryjr@gmail.com, "Gregory V. Demo" <GDemo@pszjlaw.com>
Subject: FW: Highland: HERA and ERA Books and Records

See below.

I won't re-send the other two zip files, but they have also been produced.

Please let me know if you identify anything else.

Thanks so much, Thomas.

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
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Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

---

From: John A. Morris
Sent: Thursday, May 5, 2022 3:26 PM
To: 'Thomas Uebler' <tuebler@mdsulaw.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>
Subject: Highland: HERA and ERA Books and Records

DEFENDANT'S EXHIBIT
33
25-03055

Tom,

Following up on your email of earlier this week, below is a link to certain of the HERA/ERA books and records.

I will send you two (2) further e-mails with zip files that contain additional tax-related documents and other business records.

We believe this production completes HCMLP's obligations under paragraph 8 of the Settlement Agreement, although Highland is making a final review to be certain and will produce any additional records it may identify.

Please let me know if you have any questions or if you have any difficulty accessing any of the books and records.

Regards,

John

John A. Morris
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jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

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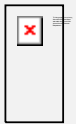
Link expires May 31, 2022



You have shared 1 file.

1 file

•

38.9 MB total

•

Shared on 05/04/2022 UTC

Your files have been delivered to the following recipient:

lsc@pszjlaw.com

HERA and ERA Books and Records.zip

ZIP 38.9 MB

VIEW ALL FILES

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Powered By Hightail

From: James Seery <jpseeryjr@gmail.com>
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
CC: David Klos <dklos@highlandcapital.com>, Thomas Surgent <tsurgent@highlandcapital.com>
Bcc: jmorris@pszjlaw.com
Subject: Daugherty Settlement Agreement Follow-Up
Date: Wed, 19 Oct 2022 17:23:06 +0000

Pat,

To follow-up on your recent request for additional information pertaining to the HERA/ERA entities, members of the Highland team have worked to gather further documentation for you. We previously provided corporate documents to you as well as the Quickbooks accounting file to your accountants using their file sharing system.

If acceptable to you, we propose to deliver this new large document delivery (400+ files) via DSI's Sharefile system. Use is straight forward and allows you to download all of the files in an orderly manner. Otherwise, please let me know if there is a different way you would prefer to receive these additional electronic files.

Under our settlement agreement, HCMLP agreed to "transfer its interests in HERA and ERA" to you, and that transfer "include[s] the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system." The transfers are without any liability or material cost to HCMLP. HCMLP also agreed to provide reasonable assistance to you in the preparation of HERA K-1s for 2021.

HCMLP previously made these entity and record transfers and provided books and records information through summarized financial statements and general ledger detail in excel spreadsheets, historical tax returns, governing documents, the raw Quickbooks file containing the historical accounting data, and a spreadsheet detailing the amounts charged by HCMLP to HERA down to the invoice level. HCMLP also prepared and signed the 2021 HERA tax returns with your (and your accountants) input and approval.

While we believe the information already provided satisfied HCMLP's undertakings under the settlement agreement, we nevertheless understand your request for additional HERA and ERA information and have been able to gather the further documentation broken down as follows (some of which may be duplicative to certain documents you've already received, but we are re-including regardless):

HERA

- Governing documents
- Amendments
- Assignments
- Correspondence
- Director resignations
- Expense allocations (resolutions + allocation agreement)
    - Actual copies of invoices (330+ individual invoices across 36 different vendors or law firms tracked down and will be transmitted; <10% couldn't be located and are therefore not included)
- Other resolutions
- Transfer agreements

ERA

- Governing documents

There is less documentation regarding ERA because it was solely a management entity. It did not have any economic activity, did not generate financials, and was a disregarded entity for tax purposes.

At your request, we also included excel tracking spreadsheets summarizing the assets of HERA from 2009 to May 2012 as well as the individual unit holder's respective interests in HERA. This file was maintained by HCMLP and appears to be an HCMLP business record tracking "The Vessel" (as HERA was sometimes known) and the interests of HCMLP employees in The Vessel.

We have also included certain additional HERA records that we have found relating to HERA assets and distributions to vested HERA participants. These records include: (i) miscellaneous spreadsheets reflecting various items, including actual cash distributions to vested participants; (ii) Smith Barney statements reflecting cash of HERA and ownership of NHF; and (iii) RCP Statements reflecting HERA interests.

Upon transmission of the information described above, HCMLP will have satisfied all of its obligations under the settlement agreement, and our involvement in HERA/ERA (your entities) will be complete. Of course, to the extent one-off questions come up, you're always welcome to contact me. Best of luck with these entities.

And again, as requested above please let us know how you would like us to deliver these files.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

DEFENDANT'S EXHIBIT
35
25-03055

From: John A. Morris
Sent: Friday, May 24, 2024 1:50 PM
To: mbobo@mwblawyer.com
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>
Subject: HERA

Bo:

Thank you for you e-mail and supporting documentation. Please copy my partner, Jeff Pomerantz (copied here), on all written communications going forward.

Initially, we note that—intentionally or mistakenly—you misquoted the operative provision of the settlement agreement. Section 8, provides, in pertinent part, that the transfer would "include HERA and ERA books and records (spreadsheet) maintained on HMCLP's system." As Mr. Daugherty knows, the highlighted language you omitted is material and tracks the discussions between Mr. Seery and Mr. Daugherty concerning the limited nature of the books and records.

On the merits, your assertions concerning the emails are wrong. Again, HERA had no employees or URL nor did it have a repository of e-mails that it owned or controlled. Your contention that HERA had a "shared services" agreement with

Highland is also wrong; if your clients want to rely on the supposed veracity of Ellington and Leventon's ambiguous (but false) statements, so be it (you refer to testimony from Dondero, but I did not see that among the documents included in your e-mail). Based on our experience, we suspect Judge Jernigan is already familiar with these issues.

Finally, there is nothing "ironic" or "enlightening" about an e-mail subject line referring to HERA's "books and records" in reaction to an apparent demand letter sent by Mr. Daugherty for HERA documents over eleven years ago. Highland doesn't dispute that HERA had "books and records." Highland provided them—and more—to your client long ago. Nothing in the e-mails you provided states, suggests, or even implies that anyone ever believed that HERA owned or possessed emails and that such emails were part of its "books and records."

Highland has taken all reasonable steps to fulfill its obligations to provide HERA's books and records to Pat. While it would be an unfortunate turn, if your clients honestly believe otherwise, a judicial order bringing finality to these matters would—ironically—be helpful.

Highland reserves all rights and claims at law and in equity.

Regards,

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
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From: mbobo@mwblawyer.com <mbobo@mwblawyer.com>
Sent: Friday, May 10, 2024 9:44 AM
To: John A. Morris <jmorris@pszjlaw.com>
Cc: mbobo@mwblawyer.com
Subject: HERA

Dear John,

Please be advised I represent Highland Employee Retention Assets, LLC ("HERA"). I have reviewed the correspondence between you and Drew York at Grey Reed earlier this year regarding obtaining HERA's books and records from Highland Capital Management, L.P. ("Highland") and I find your response severely lacking. The November 22, 2021 Settlement Agreement between HERA and Highland is explicitly clear "HMCLP will transfer its interests in HERA and ERA to Daugherty. Such transfer will include HERA and ERA books and records maintained on HMCLP's system." See attached November 21, 2021 Settlement Agreement, page 10 Paragraph 8. This language is neither ambiguous nor confusing and includes all books and records that Highland has related to HERA without caveats or exclusions.

First, your position that emails do not constitute books and records is simply wrong. The Delaware Supreme Court (and almost ever other supreme court in the country) has held that emails constitute books and records of a corporation. *KT4 Partners LLC v. Palantir Techs., Inc.*, 203 A.3d 738 (Del. 2019). The KT4 court went on to hold "[R]ather, it follows from one earlier recognized at common law, before email became a dominant mode of written communication, when stockholders were granted the right to inspect a variety of corporate "papers," often including letters and memoranda among officers and directors. Today, emails and other electronic communications do much of the work of the paper correspondence of yore." *Id*. Even more to the point at hand, this was a stockholders rights case to inspect corporate books and records, with certainty a court would hold that emails related to a corporation's operations are included in the "variety of corporate 'papers'". We are especially confident the Bankruptcy Court will find the emails previously requested, and requested again below, are part of HERA's books and records as required by the Settlement Agreement to be turned over.

Second, your position that "(a) HERA and ERA had no employees; (b) no person used an e-mail address with HERA or ERA URL; (c) neither HERA or ERA ever had a shared services agreement with HCMLP and (d) HCMLP's emails are not now and never were, HERA and ERA's property" is here again not only wrong but disingenuous at best.

Whether or not HERA had employees has no bearing on any analysis as to what constitutes HERA's books and records. Further, the URL address is irrelevant if persons were acting on behalf of HERA, which the evidence shows Highland clearly was. Abrams & Bayliss was outside counsel selected solely to represent HERA and yet took direction from Highland and its affiliates. Highland in house legal team members, including but not limited to, Thomas Surgent, Ted Demaris and Scott Ellington, along with Highland's outside counsel, including but not limited to, Mark Katz, Paul Lackey and Michael Hurst worked directly with Abrams & Bayliss (Steven Hough, Kevin Abrams) to create legal documents, coordinate strategy, and transfer assets on behalf of HERA. Please see the attached pdf labeled HERA legal team emails. It is enlightening, if not ironic, that the subject line of those emails is Books and Records [HERA].

Your assertion that Highland and its affiliates never had a shared services agreement with HERA is shocking in light of the record evidence. I appreciate the fact that you and your firm were not retained as bankruptcy counsel until late September 2019; however, I am hopeful the attached will clarify this issue. Please see attached sworn deposition testimony of Ellington whereby he verifies that he, while also serving as Highland's General Counsel and others including Leventon, while also serving as Highland Chief Legal Counsel, were performing legal services on behalf of HERA. Throughout his deposition Ellington testifies there was a "shared services" agreement with Highland as the manager (and Advisor under the 1940 Securities Act- aka the Registered Investment Advisor Act or RIA). Further, see attached sworn deposition testimony of Leventon where he testifies that Andrews Kurth provided legal services to HERA under a "Joint Defense Agreement". Moreover, see attached sworn trial testimony of Dondero where he testifies he performed work on behalf of HERA pursuant to a shared services agreement. I do not think I need to belabor this point further.

Your assertion that Highland's emails are not now and never were, HERA and ERA's property, while I will not quibble the details, as shown above and pursuant to the Settlement Agreement, they are clearly books and records "maintained on Highlands systems" and thus clearly need to be produced.

In light of the foregoing I am asking that Highland and its affiliates turn over the following within fourteen days:

- All original Word, Excel and PowerPoint documents concerning HERA. This request includes originally created documents and drafts, as well as modified or amended versions of the same.
- All email correspondence concerning HERA.
- All documents related to the transfer of HERA assets.
- All documents related to expenses of HERA assets.
- All email and documents concerning HERA assets, legal communications, tax issues, or unit holder communications.
- All email and documents by Highland in house legal team members, Highland outside counsel and HERA's outside legal counsel related to HERA
- All email and documents by and between HERA board members and with either in house or outside counsel or other service providers at Highland.

As previously requested, all of these requested documents, files and communications should include the corresponding metadata. I am happy to discuss with you what metadata should be included with the load file for the production. Finally, I recommend Highland utilize an outside vendor to collect and produce these requested documents, files and communications due to the sensitive nature of the information, as well as any potential for a conflict of interest among any existing Highland employees that are asked to participate in the collection and production efforts.

HERA has an absolute right to its books and records pursuant to the explicit terms of the Settlement Agreement and you (Highland) are in possession of those books and records. I am hopeful that you will agree to produce those books and records to us. Rest assured your continued refusal to comply with the Settlement Agreement will result in our seeking enforcement of same with the Bankruptcy Court. I look forward to your response.

Best regards,
Bo

Best regards,
Bo

Matthew W. Bobo
Law Office of Matthew Bobo, PLLC
4916 Camp Bowie Blvd.
Fort Worth, Texas 76107
Telephone: (817) 529-0774
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, November 17, 2020
	1:30 p.m. Docket
Debtor.	
	PATRICK DAUGHERTY'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIM FOR VOTING PURPOSES
	[1281]

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

WEBEX APPEARANCES:

For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Debtor:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For Patrick Daugherty:	Jason Patrick Kathman PRONSKE & KATHMAN, P.C. 2701 Dallas Parkway, Suite 590 Plano, TX 75093 (214) 658-6500
For Patrick Daugherty:	Thomas A. Uebler Joseph L. Christensen MCCOLLOM D'EMILIO SMITH UEBLER, LLC Little Falls Centre Two 2751 Centerville Road, Suite 401 Wilmington, Delaware 19808 (302) 468-5960

DEFENDANT'S EXHIBIT
36
25-03055

For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Chicago, IL 60603 (312) 853-7539
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

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

DALLAS, TEXAS - NOVEMBER 17, 2020 - 1:38 P.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good afternoon. Please be seated. We have a setting we'll start now in Highland, Case No. 19-34054. We have a motion of Patrick Daugherty to have his claim allowed for voting purposes under Bankruptcy Rule 3018. For Mr. Daugherty, who do we have appearing? Do we have Mr. Kathman and crew?

MR. KATHMAN: Good afternoon, Your Honor. Jason Kathman on behalf of Mr. Daugherty. I'm also joined today by my co-counsel in Delaware, Tom Uebler and Joe Christensen with the firm McCollum D'Emilio Smith & Uebler, LLC. They've been admitted *pro hac vice* in this case and they're going to be handling the case this morning for our side, Your Honor. We also have on the phone and in the WebEx today Mr. Daugherty as well.

THE COURT: All right. Very good. I see Mr. Morris up there. Are you going to be taking the lead for the Debtor this afternoon?

THE CLERK: He's on mute.

THE COURT: You're on mute, sir.

MR. MORRIS: Thank you very much. Yes, I -- yes, I will, Your Honor. It's John Morris from Pachulski Stang Ziehl

& Jones for the Debtor.

With the agreement of all of the parties, before we begin my partner Mr. Pomerantz would like to just briefly update the Court on certain plan issues, and then we'd like to proceed to the matter on the schedule.

THE COURT: All right. That is fine. So, we'll -- first off, I'm just going to note we have a lot of other participants showing on the video screen. I'm not going to take other appearances. I assume they're just interested observers today. The only pleadings on the contested matter were filed by Daugherty and the Debtor. But certainly if someone at some point has something to say regarding the case generally, I'm happy to hear anything people want to report.

So, with that, Mr. Pomerantz, what would you like to say?

MR. POMERANTZ: So, thank you, Your Honor. As Mr. Morris mentioned, I thought I would give Your Honor a brief update. We haven't been here in a couple of weeks, which has seemed like a lifetime, but I wanted to apprise the Court last Friday night the Debtor filed an amended plan and disclosure statement, pursuant to the Court's prior scheduling order. We also filed the infamous plan supplement, which was discussed in a lot of detail at the last hearing, which contained drafts, advance drafts of the principal plan implementation documents likely to be of interest to the creditors, including the Claimant Trust Agreement, the Liquidating Trust Agreement,

other corporate organizational documents, and a list of retained causes of action under the plan.

And I'm pleased to report that over the last couple of weeks the Debtor and the Committee have made substantial progress in addressing the disputed issues that were forefront at the hearing on October 27th.

Such progress included a resolution of the structure and consideration relating to the releases to be provided under the plan; the identity of the independent board members and the Liquidating Trustee, or Litigation Trustee, excuse me; substantial agreement on the form of the Claimant Trust Agreement and the Litigation Trust agreement; and the inclusion of a protocol to address how disputed claims will be resolved.

While there are a few issues left to be resolved and ironed out between the Debtor and the Committee, (audio gap) can be resolved by Monday. We believe that as it relates to the Committee's issues next week, the hearing will largely be consensual, and we extend the opportunity to other parties who objected, including UBS, who has already reached out to us with a couple of comments they have, as well as we suggest that Mr. Daugherty and HarbourVest also reach out to us in advance of that hearing so that we can work through as many issues.

So, we took Your Honor's comments last week to heart, and

I think the parties have worked cooperatively to streamline to what I think will be a narrow set of issues, if any, that will be up for hearing on Monday, Your Honor.

THE COURT: Okay. That's very good to hear. I'll just check: Is Committee counsel on the line and do you wish to respond to that?

MR. CLEMENTE: Your Honor, it's Matt Clemente at Sidley. Can you hear me?

THE COURT: I can.

MR. CLEMENTE: Oh, hi, yeah, good afternoon, Your Honor. As Mr. Pomerantz I think has accurately captured of the current state of play, so we took the time that Your Honor wisely gave us and I think we worked very, very hard and I think we have come to conclusion on, you know, a variety of the issues that we had. Mr. Pomerantz is correct, there's a hearing full of things that we still need to discuss, Your Honor. But I would expect that either we come to a resolution on those or those are things that, you know, ultimately can be dealt with in connection with plan confirmation itself. But I agree with Mr. Pomerantz's comments.

THE COURT: Okay. Very good. Well, I hope all of you will keep working at it. You've got almost a week until we're here next Monday. So, UBS and the others, I really hope you will accept the invitation of Mr. Pomerantz you heard just now to talk to him and see if you can get your issues worked

out.

All right. Well, we did note that you had filed the documents Friday night, and I think I know what my weekend activity is going to be besides, you know, watching my Longhorns: Reading the Highland disclosure statement and plan supplement. So, anyway, I look forward to doing that, and I will hope for a somewhat smooth hearing Monday, if not an entirely smooth hearing.

All right. Thank you for that report, Mr. Pomerantz.

MR. POMERANTZ: You're very welcome, Your Honor.

THE COURT: Okay. Thank you. All right. Well, let's turn to the matter at hand, the motion. You all have blessed me with lots of papers to read and exhibits for today. We have a two-hour time estimate, so I hope you will do your best to stick with that.

As far as your presentations today, let me tell you that I really don't need you to spend much time, if any, arguing the law, Bankruptcy Rule 3018(a), the case law construing it. I'm pretty familiar. It says such things as the Rule contemplates a summary estimation proceeding, not a full trial on the merits. The Court has a lot of discretion. So please don't argue the 20 or 30 cases that are out there that interpret Rule 3018. I'd really like to focus on the numbers more than anything else.

And so as far as opening statements, I'm going to turn to

-- I don't know if it will be Mr. Uebler or Mr. Christensen -- and ask you right off the bat: Why is the Debtors' suggested compromise of $9,134,019 not a fair resolution, when we all know that you can argue entitlement to every penny in that $40 million plus proof of claim ultimately in the adversary proceeding, in the trial on the proof of claim, but for now, it looks like the Debtor has put out a pretty reasonable olive branch? So let me just put you on the spot and ask you to start there in your opening statement.

MR. UEBLER: Thank you, Your Honor. This is Tom Uebler on behalf of Patrick Daugherty.

While it is a generous offer, it leaves disputed $31 -- approximately $31 million with respect to Mr. Daugherty's claims. The Debtor has agreed to the amount of Mr. Daugherty's 2012 Texas court judgment, plus interest, and the Debtor has also agreed to the unjust enrichment and promissory estoppel damages from the Delaware case in the amount of approximately $5 million. But what the Debtor refuses to agree to or acknowledge any potential liability for are the three other subparts of Mr. Daugherty's claim.

The first of those subparts is what we're calling the Reimbursement Claims, and that includes Mr. Daugherty's claims for contractual indemnification under Highland's partnership agreement. And it includes fees on fees -- at least that's how we refer to it in Delaware -- which are fees expended by

Mr. Daugherty in seeking to establish his indemnification rights in Delaware. And finally, fee shifting, for what we have laid out as a decade pattern of litigation misconduct by Highland against Mr. Daugherty.

The Debtor also disputes Mr. Daugherty's claim for the remaining 80.9 percent of the value of HERA, Highland Employee Retention Assets. That claim is valued at approximately $21.2 million.

And finally, --

THE COURT: Let me stop you. Let me stop you there, because that's obviously a big, big, big chunk of the disparity. Remind me. Either you lost on that in Delaware, or I'm trying to remember, you abandoned it, you somehow had an adverse ruling in Delaware. Remind me real quick what that was.

MR. UEBLER: We did. We had an adverse ruling. We brought claims in Delaware as part of Mr. Daugherty's original pleading in 2017. And those were claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty. Ultimately, Mr. Daugherty was seeking to put back into HERA the millions of dollars that Highland had taken from HERA in 2013 and then to dissolve HERA. And it's Mr. Daugherty's position that he is the 100 percent owner of HERA at this point in time.

The Delaware Court of Chancery dismissed that portion of

Mr. Daugherty's pleading on *laches* grounds, finding that --

THE COURT: Yes.

MR. UEBLER: -- Mr. Daugherty should have filed that claim sooner. We argued that he was excused from the limitations period because there was an open question in the Texas courts about whether Mr. Daugherty remained a unit holder of HERA up through 2016. And that's an argument we plan to pursue on appeal.

To fully respond to your question, I want to note I read a footnote in the Debtors' opposition that said something like we've had a year to seek leave to file an appeal of that dismissal in Delaware. But we don't yet have a final appealable judgment in Delaware to appeal. That dismissal remains an interlocutory order. As Your Honor probably knows, we were in day three of trial on the claims that did survive the Debtors' motion to dismiss when this proceeding was filed. So we have not had an opportunity to appeal the dismissal of what we're calling the HERA 80 Percent Claim, but Mr. Daugherty intends to exercise those appellate rights in wherever the appropriate venue may be as this proceeds.

THE COURT: All right. Well, you know, courts always want to be pragmatic, as you know, in situations like this, 3018 estimation proceedings. And my pragmatic view of things is, while, again, we may have a multi-day trial one day where you convince me on this $21 million plus claim, that

notwithstanding the Delaware court's dismissal of it for *laches*, at the end of the day you ought to get this, it seems like a pragmatic place to draw the line here today for purposes of an estimation hearing. I'm not sure how you could convince me in two hours that this absolutely is likely enough to prevail that you ought to get to vote the claim.

Another area, as long as I'm talking about pragmatic ways to resolve this issue today, is the post-petition interest. I have a feeling that's only a couple of hundred thousand dollars or so. But nevertheless, it's argued here somewhat extensively that Daugherty ought to get to keep accruing post-judgment interest on the HERA judgment post-petition because, you know, it's not really a judgment against the Debtor, it's a judgment against HERA, and the general 502(b)(2) you can't accrue post-petition interest, unmatured interest, if you're an unsecured creditor, ought not to apply. I'm just telling you right now, that would be a nonstarter here for me today. Again, I have a feeling that's only a couple of hundred thousand dollars, right? Maybe it's more than that. It can't be. Right?

MR. UEBLER: That's --

THE COURT: Okay.

MR. UEBLER: That's correct, Your Honor.

THE COURT: So, --

MR. UEBLER: So I won't, I won't address that any

further.

THE COURT: Okay. So we can take that one off the table.

And then the other kind of pragmatic way I view things today is the attorney fee shifting. Now, you might be able to piece this together for me and show me that, contractually, under the indemnification provision, that there is some component of attorneys' fees that ought to be allowable, but, you know, to just generally kind of give a common law bad faith argument here, that I should depart from the *American* Rule -- you know, if there's no contractual entitlement, if there's no statutory entitlement -- that's a heavy lift. Again, you might prevail one day, but for purposes of a summary voting estimation claim context, I just don't see how you get there.

So, does that help narrow the issues today? I had trouble thinking how I'm ever going to get to the $21 million claim in a summary 3018 context, the breakaway from the *American* Rule on attorneys fee shifting, and then the post-petition interest.

So if you carve those away, I don't know how close we are to the $9,134,000 that the Debtor has proposed, but I guess we're still a few million away.

MR. UEBLER: We're getting closer, but let me respond to the pragmatic way of dealing with the HERA 80 Percent

Claim, which is $21 million. We don't view that as at all a nothing amount for purposes of today. I might not convince you that Mr. Daugherty should be entitled to the entire $21 million, and I'm not -- I'm not going to try, because I do recognize that the claim was dismissed and that creates at least a procedural burden for us.

So, one result may be to award Mr. Daugherty a portion of that claim. But let me move on --

THE COURT: Okay.

MR. UEBLER: -- to address the fee issue. These are -- there are 30 different sources of Mr. Daugherty's rights to fee reimbursement, only one of which is the common law exception to the *American* Rule. And my thought was to just briefly outline what it is that we're asking for, break down Mr. Daugherty's claim, and then ask Mr. Daugherty to testify very briefly about how he calculated that amount and what out-of-pocket payments he's actually made throughout the course of this litigation, to give the Court an opportunity to see which of the different buckets the fees may fall into and how you may be able to resolve some or all of those amounts.

THE COURT: All right.

MR. UEBLER: So, the claim for indemnification and fee shifting, as I said, it has -- it has three components. The first, which we focused on in our reply, is the bad-faith fee shifting.

Now, in Mr. Morris's presentation that I expect him to show today, he'll refer to this as a new argument that wasn't in our Delaware complaint and was not in the proof of claim submitted by Mr. Daugherty. That's just not the case. This was an issue that was presented to the Delaware court in August 2019, before trial. We laid out why Mr. Daugherty should be entitled to fee shifting. And that's an issue that would have been addressed post-trial but for this bankruptcy. And that's based on the series of events that we laid out in detail -- probably too much detail for these purposes -- in our papers about shifting positions in litigation; attempts to put Mr. Daugherty in jail, which thankfully the Texas appellate court put a stop to; preventing Mr. Daugherty from collecting compensation that's rightfully his. All of that has cost Mr. Daugherty millions of dollars over the last ten years, and he hasn't recovered a dime.

So, the three legal doctrines are the bad-faith exception to the *American* Rule.

The second is contractual indemnification under Highland Capital's partnership agreement. This is a claim that was fully briefed on cross-motions for summary judgment in Delaware, and it was argued to the Delaware Vice Chancellor and submitted for a decision. The source of Mr. Daugherty's indemnification claim is Section 4.1(h) of Highland's partnership agreement, and that's Exhibit 39 in the papers we

submitted. I'll just read briefly what that provision is.

It states that a partnership -- that is, Highland Capital -- shall indemnify and hold harmless the general partner -- which is a company called Strand -- and any director, officer, employee, agent, or representative of the general partner -- again, Strand -- 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 -- which is Highland -- or in connection with the partnership's business -- which is Highland's business -- including, without limitation, attorney's fees and any amounts expanded in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by Delaware law.

Now, it was undisputed through summary judgment in the Delaware case and going I would say close to three years of litigation that Mr. Daugherty was a covered party under that provision. In other words, he was an officer, agent, representative of Strand who could be entitled to indemnification.

Highland admitted in every version of its answer in the Delaware case that Mr. Daugherty was, in fact, an officer or an agent of Strand through his resignation from Highland in 2011. But in this Court now, we have Highland claiming that Mr. Daugherty ceased being an officer of Strand in 2009.

And, in fact, just a few hours ago I received a few documents from Mr. Morris showing that Mr. Daugherty was not listed as an officer of Strand after 2009. I'm still processing in my own mind why I'm just receiving these documents now, after three years of litigation, why Highland made previous judicial admissions to the contrary, and why we made it through summary judgment without this issue being raised.

But ultimately, it doesn't matter, because Mr. Daugherty will prove, consistent with Highland's prior admissions in the Delaware court, that he is a covered person under this indemnification clause, because, at a minimum, he was an agent and representative of Strand through 2011.

And he'll also prove that all of the Texas litigation and what has happened since the Texas litigation began in 2012 really stems from what Mr. Daugherty did or did not do related to Highland's business. So the nexus requirement under the indemnification agreement is satisfied.

Again, this is an issue that was fully submitted to the Delaware court, but no decision was issued.

The third component of our reimbursement claim is fees on fees and the idea that, to the extent Mr. Daugherty is successful in establishing his contractual indemnification rights, he is also entitled to reimbursement for the cost of proving his entitlement to indemnification.

Now, if you put all of these three buckets together, you're left with $7.8 million. That's not an insignificant amount, and it's -- it's more than the $9 million that Highland has offered. And if any line is going to be drawn today, we submit that that line should be drawn to include this $7.8 million for -- based on the law that we've provided in our papers and based on the facts that we have demonstrated and the exhibits and Mr. Daugherty's declarations and the brief testimony you'll hear today about the litigation that Mr. Daugherty defended and what he's had to deal with for the last ten years.

I'm going to stop there. Do you have any questions at this time about the fee reimbursement portion of the claim, which is $7.8 million?

THE COURT: No questions on that.

MR. UEBLER: Okay. The one aspect of Mr. Daugherty's claim that we did not have an opportunity to talk about yet is what we're calling the 2008 Tax Refund Claim. And that's -- that's an amount of $2.6 million in Mr. Daugherty's proof of claim, and that amount should be allowed in full for voting purposes.

Now, I'm going to let Mr. Daugherty explain the factual background of this claim, but the short version is that Mr. Daugherty received compensation in 2008 from Highland Capital, and he received that compensation as an employee and in the

form of a tax refund. The IRS is still in the process of auditing Highland's tax treatment for 2008, so there's a possibility that in the future the IRS will claw back Mr. Daugherty's 2008 compensation that was approximately $1.4 million. And with that would come interest and penalties that we estimate could total $2.6 million.

So, yes, it's correct that as of today there is no definite liability to the IRS. This is a contingent liability and we don't know what the total amount may be.

Now, if Highland hadn't come out and said in its adversary complaint that it's basically refusing to acknowledge any potential liability for this issue, we might not have a current claim to put before Your Honor today. But the fact that Highland has already come out and said it has no intention of either covering future tax liability or giving Mr. Daugherty substitute employee compensation for 2008 in the event that the IRS were to take that away, we think presents a live claim that Mr. Daugherty has sought to preserve through this proceeding.

He's not seeking a cash payment, ultimately. All he's looking for is some agreement by Highland to assume this liability or to put the money in escrow in the event of a clawback. But for voting purposes, we're asking that the full potential of $2.6 million for this claim be permitted.

And, you know, you asked earlier about why $9 million

isn't enough. It's a matter of degree. Mr. Daugherty is a creditor and he is entitled to a say in the plan, and that's what we're trying to establish today. And we think it's important that Mr. Daugherty have a voice, and that voice carry some weight, to enable Mr. Daugherty to have a seat at the table, have a voice in the plan.

I think the more that this Court would be willing to permit at this summary stage of the proceedings, where there's a presumption in favor of claims, even if they're disputed -- I think that will be my only reference to 3018 law today -- we submit the Court should err on the side of more rather than less.

Mr. Morris and I had discussed doing mutual openings followed by Mr. Daugherty's testimony. I think now would be a good time to turn this over to Mr. Morris before we call Mr. Daugherty, if that works for you.

THE COURT: All right. That works for me. Mr. Morris?

MR. MORRIS: Good afternoon, Your Honor. John Morris; Pachulski Stand Ziehl & Jones, for the Debtor.

I really do appreciate Your Honor's preliminary projections of where we are. I had prepared a rather extensive presentation for the Court that I'm actually going to dispense with because I'd like to focus on the narrow issues that Your Honor has identified.

I want to begin by apologizing to the Court for having to engage in this process. We have tried very hard, I think as Your Honor has perceived, to fully resolve this particular motion. At the outset of the process, the Debtor readily acknowledged the validity of Mr. Daugherty's judgment in the amount of $2.6 million, plus interest, through $3.7 million. That's not an amount in dispute today. That won't be in dispute as a matter of his claim. We have admitted it, we acknowledge it, and it will be allowed in that amount.

We went one step further in the hope that it would resolve this motion by agreeing to allow the maximum amount that Mr. Daugherty's expert was prepared to testify to on the petition date for these promissory estoppel and other related claims. The expert at that time testified to a range of somewhere of four to about $4-1/2, $5-1/2 million, and that's how we arrived at the $9.1 million.

Let me make it clear, Your Honor, that if the parties are unable to resolve this, the Debtor will contest that. But for this purpose, we felt by giving it one hundred percent validity, notwithstanding the fact that we will contest it on the merits if needed, that that was a fair resolution, that that was a very simple way to get this done. Unfortunately, we were not successful.

We're here today not because we like to litigate but because we're doing our best for these estates and its

stakeholders, including all unsecured creditors. Mr. Daugherty is entitled to a seat at the table. We have given him a seat at the table. He now sits with the third largest general unsecured claim that is going to be allowed, and that follows from the settlements with the Crusader and Redeemer Funds and with Acis. At $3.7 million, he's already got the third largest allowed claim. And we're prepared to give him a vote of over $9 million for this purpose. But what we don't do and we don't think our fiduciary duty will allow us to do is give him credit for claims that, in our view, clearly have no merit.

So let me just go through them very quickly. The first is a claim for over $20 million arising from the assertion that somehow he is now entitled to one hundred percent of the HERA assets. Mr. Daugherty -- I don't know Mr. Daugherty. I have no animosity against Mr. Daugherty. One of the things that I and my colleagues and the board have dealt with throughout this case is that there's so much baggage here, Your Honor. And it's -- this has been our burden, this has been our challenge, is to cut through this and try to get to the merits. What's really fair and what's really reasonable? And it's what we try to do in our settlement negotiations and it's the only reason we're here today, because we thought we made a generous offer.

And Mr. Daugherty is well within his rights to say, Not

good enough. But we think, we think we've offered enough. When we think of his claim to a hundred percent of the HERA assets, he will testify, I assume, that when he left he had 19.1 percent. He never thought he had more than 19.1 percent. Nobody ever promised him any more than 19.1 percent. His expert in Delaware was prepared to testify on damages based on 19.1 percent. He actually pursued these claims, Your Honor, not just in Delaware, he actually started in Texas. He knew about this in 2013, right when it happened. It was part of his Texas action, and it was rejected. And you heard -- and we heard Mr. Uebler allude to it, right? So then he goes to -- he goes to Delaware and he tries to bring them again, maybe three years later, in 2017. These are undisputed facts, Your Honor. And they get dismissed.

Now, the interesting thing is, if you look at our Exhibit T, it's the Delaware -- I think it's V, actually. It's the Delaware court's order dismissing the claims. It didn't give a reason. But if you go back to Highland's brief, you'll see there's a multitude of reasons.

And when they use the phrase *laches*, Your Honor, it doesn't mean that Mr. Daugherty was found to have sat on his hands. The Delaware Chancery Court is a court of equity, and so they use equitable principles. What really happened is that the Delaware court found that the claim was barred by the statute of limitations because the cause of action arose in

2013, Mr. Daugherty knew that, and he didn't bring his action until 2017, more than, you know, more than the three-year statute of limitations.

But you'll see in the Debtors' brief, which we've cited, that Highland actually asserted a multitude of reasons why this claim should be barred. And we don't know exactly why the Chancery Court did it, but he's going to have to deal not just with *laches* -- which is the word, the phrase that's used for statute of limitations -- he's going to have to deal with promissory estoppel. He's going to have to -- not promissory estoppel; just estoppel generally. Res judicata. It's all in there. There is no chance he's going to succeed on this claim on appeal. And it's $21 million, and he shouldn't be given the right to vote any portion of it. That's number one.

Number two, with respect to the tax claim, what's really interesting here, Your Honor, is that there is no claim that Highland has breached any duty today. There's no claim that he's breached a contract -- that Highland has breached a contract. There's no claim that Highland has committed any tort.

What happened was, back in 2008, Mr. Daugherty, according to him, was promised $1.475 million as compensation. There was an agreement. That compensation was delivered to him not in cash but in the form of an allocation of losses from the Highland partnership. Mr. Daugherty was a limited partner.

He got over $4 million in losses. Those losses were recorded on a K-1 that's going to be admitted into evidence. And Mr. Daugherty took those losses and shielded his income and his gains in other places in his life, I don't know. But the benefit of that was $1.475 million.

Mr. Daugherty never says that Highland breached its agreement. He never says that Highland failed to perform. He never says that Highland did anything wrong. All that's happened here, Your Honor, is that the IRS is conducting an audit of Highland's 2008 taxes, including these losses. Okay? So, as we sit here today, Highland owes zero. There is no basis to give him any claim for voting purposes. There's just, there's no reason. It may be -- later that he should be getting. And what I would find to be very reasonable is that we are here on the merits and he asked the Court to establish a reserve. I think it's almost what Mr. Uebler asked for, that you establish some type of reserve for a contingent claim. You know, that would make sense. But that's not why we're here today. We're here to say whether or not he's allowed to vote this claim, a claim where Highland today admittedly owes nothing.

So, you know, I think that that dispenses with the tax issue.

The last one is this claim for attorneys' fees. I will tell you, Your Honor, I didn't have a good weekend myself this

past weekend because I had to flip through 2,600 pages of Mr. Daugherty's appendix. I don't have the experience here on (garbled), but I waded all through that stuff. And Mr. Uebler and I have a very cordial relationship, which I'm grateful for, and we were talking on Friday, and he said, Why do you guys say that he resigned from Strand in 2009? And I said, I don't know where I picked it up, but that's what I put in here. And he said, But that's not right. And I asked him, I said, If you have a letter of resignation, you have something, give it to me. And he didn't give me anything.

But last night -- and this is why it came up at the last minute. This is why it came up at the last minute. Last night, they filed a declaration from someone named Mr. Covlin or Colvin, who I hadn't heard of but who apparently was the Highland general counsel back when Mr. Daugherty was at Highland. And you'll see in Paragraph 5 of his declaration he says, I don't have a memory of Mr. Daugherty resigning from the Strand board before he left in 2011. And I said to myself, I don't -- I don't understand why people can't -- there's got to be a letter of resignation, there's got to be something to prove the fact.

And so I called Highland this morning and I said, When did he resign? Do we have anything? I said, I want anything you can find. And we're going to put into evidence, Your Honor, two different exhibits, one of which, ironically, is a

Secretary's Certificate that was signed by Mr. Colvin. And it was signed in early 2009, where he certifies to the Strand board resolutions, which set forth the officers of the company, and Mr. Daugherty is not on it.

The second document, Your Honor, is even more significant. It is a periodic statement of the officers of Strand that are listed by individual with their title and each person signs it. And what the evidence is going to show is that Mr. Daugherty signed his statement as either Secretary or Assistant Secretary every single time from 2006 until about March of 2009. And then in the mid-2009 document, consistent with Mr. Colvin's certificate, Secretary's Certificate, he's no longer there, but Mr. Colvin was still signing all of his papers without Mr. Daugherty.

So I don't really know the record of Delaware. I'm doing the best I can, Your Honor. But I don't think that there's going to be any dispute at the end of all of this that Mr. Daugherty ceased to be a director or an officer of Strand sometime between March and May 2009.

Why is that significant? Because that is what he hangs his hat on in order to establish his claim for indemnification. We don't think there is any claim because he was no longer an officer of Strand after early 2009.

Even if he was, Your Honor, everything that he's seeking indemnification for now arose after he left in 2011. He's

trying to use the indemnification provision in order to recover his attorneys' fees, attorneys' fees that were recovered [sic] after 2011, that were incurred solely for his own personal benefit.

It's not as if he brought a claim derivatively on behalf of Highland. Instead, he pursued litigation where he would recover damages, where he was the plaintiff. In fact, Highland was a defendant, is a defendant in a lot of this litigation. I don't understand how anyone can fairly read an indemnification agreement that requires the indemnitee to act on behalf of the indemnitor, and that somehow suing an indemnitor is consistent with the concept of indemnification. It just, it doesn't make sense. He wasn't there. The fees accrued after the fact. There's just, there's no basis for it.

And fees on fees, that other concept that they're building upon, is fees on top of fees to pursue indemnity. So if the indemnity doesn't work, fees on fees don't work either, Your Honor.

And I'll just very briefly, the fee shifting thing, I heard Your Honor's point. But, again, I bear no ill will toward Mr. Daugherty, but a fair reading of the record says that nobody comes to this, none of those parties come here with unclean hands. Mr. Daugherty was found to have breached his fiduciary duty. The only judgments that have been

rendered by any court so far have him paying Highland 2.8 and Highland paying him 2.6. He complains that so many of Highland's causes of actions were dismissed. We could do a scorecard if you think it's necessary showing that Daugherty's claims and causes of action were dismissed.

I heard Mr. Uebler talk about, you know, the appellate court reversing the criminal issue. But you know what, Your Honor? The trial court actually agreed with Highland there.

So, again, fee shifting is an extreme remedy, the absolute extreme remedy in the United States. And, again, not to cast aspersions against Mr. Daugherty, but nobody comes here with unclean hands. There's no basis to do it in this particular case.

So we think $9.1 million was very fair, Your Honor. We think the undisputed facts are going to show that the balance of these claims are without merit at the merit hearing, but certainly for this purpose, Your Honor. He doesn't -- he doesn't come close to the -- even the low bar that's needed for voting purposes.

Thank you, Your Honor.

THE COURT: All right. Thank you. Mr. Uebler, you can call your witness.

MR. UEBLER: Thank you, Your Honor. Mr. Daugherty, are you available?

MR. DAUGHERTY: Yes. I am here.

THE COURT: All right. Mr. Daugherty, I'm going to swear you in.

PATRICK DAUGHERTY, CREDITOR PATRICK DAUGHERTY'S WITNESS, SWORN

THE COURT: Thank you. You may proceed.

(Note: Witness muffled throughout testimony.)

DIRECT EXAMINATION

BY MR. UEBLER:

Q Good afternoon, Mr. Daugherty.

A Good afternoon.

Q I'd like to begin by asking you a few questions about what we call the fee reimbursement portion of your claim. Would you explain to the Court what out-of-pocket payments are included as components of that claim?

A As far as category or number?

Q What's -- however you'd like to address it. Maybe categories and then number.

A Sure. There's (inaudible) I'm pursuing for the costs incurred pursuant to executing my release under Strand. And just to be clear, Strand reimburses not just for officers and executives, but also for representatives in any case, which is consistent with what Highland said in Delaware on multiple occasions.

Then there are fees on fees, which is, under Delaware law as I understand it, I'm entitled to the fees that I had to incur in order to gain -- in order to get Highland to make

good on its promise in that original partnership agreement with Strand and Highland.

And then, let's see, indemnification, fees on fees. And then there's my claim for the fee-shifting. And I certainly understand the concept of the *American* Rule and the judge's point, and (inaudible), but what you have to remember here is there was a crime fraud finding in Delaware which caused Highland to lose its attorney-client privilege where we discovered that its in-house counsel -- Scott Ellington, Isaac Leventon, Thomas Surgent -- working with outside counsel, basically provided prima facie evidence of a fraud. So this moves far beyond just, you know, two parties going at it. This has been, again, that Highland sued based on, frankly, lying to that very same judge in Dallas County Court that Mr. Morris referred to. And not only the judge, the jury, where we have (inaudible) law from the various outside firms summarizing what these people -- you know, again, I generally refer to them as the cabal. But this just goes far beyond two parties having a good-faith battle with one another. This turns into, frankly, fraud. And I've had -- and by the way, Judge (inaudible) in Delaware Chancery Court, once he made this ruling, said that he sees evidence of fraud going all the way back to December of 2013, when Highland allegedly set up an escrow account on my behalf, and it never happened. And not only did it not happen, but again, they told Judge Hoffman

down in Texas and they told the jury that it did happen. And (inaudible) and everyone else on multiple occasions that (inaudible), only to find out in December of 2016, after all appeals -- the appeal process was exhausted, that most of that money was never put into escrow. Again, they never (inaudible) Dondero (inaudible). And (inaudible), his counsel. But that what any of those assets were there would have been shifting -- and when I say they, I mean Scott Ellington and Isaac Leventon -- while they (inaudible) my house in Dallas, while they were claiming that I had (inaudible) and were seeking turnover in Dallas, while they were terrorizing my family and sending the cops on the house, they had all those assets shifted to themselves, kept quiet about it, and then proceeded to order me to make a $3.1 million (inaudible) for their attorneys' fees.

I don't think a fraud can get more absolute than that. And so that is, you know, that's my quick summary on the nature of those fees. And, again, I know this (inaudible), but this is just a little bit different than your, you know, run-of-the-mill situation.

Q Mr. Daugherty, you mentioned indemnification in your answer. Did Highland or its affiliates assert claims against you in Texas state court based on your conduct as a Highland employee?

A They did. I mean, I was accused of having (inaudible), of

committing securities fraud violations, of not executing my duties to investors, when in fact I was doing just the opposite and (inaudible) protecting them from being defrauded. And some of those investors are on the Creditors' Committee today, as the Crusader and Redeemer Committee, is Eric Felton, (inaudible) Montgomery. Those were the people I was trying to protect from -- and by the way, at the end of the day, I felt like I protected Highland, too, to keep them from doing something stupid that could end us in this -- all of us in the situation where we are today.

So I was executing my duties as a portfolio manager. I was -- and by the way, that carried all the way through to January or February of 2012, after I left, because what Mr. Morris didn't tell you is in Mr. Colvin's affidavit I was enlisted by Highland to come to an exit interview after I had resigned, where they wanted to hear two categories of topics. One, the performance of the individual (inaudible) in the Crusader Fund, because Highland had lied to them (inaudible). They wanted to hear from me what I thought its true value was. One of those investments was Cornerstone, which we're all familiar with.

And then the other category of topics that they wanted to discuss with me was (inaudible) leaving Highland. And that included the timing, (inaudible) efforts. Money was being thrown at me, or offered to me, I should say, directly from

Dondero, from Cornerstone, to pay me a (inaudible) in order to seek releases for Highland.

So, you add all these things up together, and I was performing my duties as their portfolio manager and as a fiduciary that basically superseded any duty that I had to Highland itself when it came to those clients, which was my fund, Crusader, that I managed and that ultimately the beneficiaries, the investors, led by, as I said, one of their UCC members, Eric Felton, (inaudible) at the time, who now leads the Crusader entity.

Q Mr. Daugherty, with that background about the different bases for your theory (inaudible) claim, could you quantify it for us, how you reached $7.8 million?

A Well, the total fund, for the total 7.8, the answer is yes, I could break it down into individual components if it would be helpful to the judge because I believe the -- I believe the indemnification part of that, which the judge seemed to have issues with, was around 1.5, if I remember correctly. The rest of it was fees on fees, and defending myself against false accusations from the Debtor, and executing (inaudible) to defend those investors from -- (inaudible) that they were getting ripped off by Highland, by Dondero.

Q Are there any other components to your -- the amount that's represented in your fee claim?

A It's fees on fees. I think we touched on that. So that's related to the (inaudible).

Q You're -- you're saying that the claim included a reference to IRA penalties and --

A Oh, yeah. So, you know, when you have to proceed like this, and I know I've been presented as this rich greedy person, but there's a reason why Highland was wanting to get garnishment and wanting to seize my assets with the constable, because I got (inaudible) fighting this. And Judge Jernigan, I was in your case on another matter and you asked why there's not counsel, it's because I didn't have the money. And so one of the things I had to do was cash in my IRA, my wife's IRA.

Q What's --

A I had to take a mortgage on my house. I had -- with interest on that. And with penalties on the IRA. I did not (inaudible) -- I did not -- I hate this. I hate talking about this. Is that enough?

Q I want to talk briefly about this tax refund claim for 2008 and the basis for it. What -- what is this tax refund that you received in 2008?

A (inaudible). In 2008, and I put it in a page in my declaration, Highland was in trouble (inaudible) of the crisis, you know, the various -- and we had talked about our credit facility with our banks, led by Bank of America (inaudible), but they were unsecured. So what that's -- the

way it's drafted, and they wanted to get secured. In the process, I was having negotiations, which (inaudible) into 2009. They were concerned that money was being siphoned out of Highland while we were in breach of our credit facility. Initially -- initially, they thought all the partners were taking money out, and after getting their -- after getting their forensic accountants in there from FTI, they discovered that the only people taking money out was Dondero and Okada, under a guise of quote/unquote repaying a loan to themselves.

So, in the heat of all that, there were two things that came from that. One, they shut down all the money going out of Highland and they closed (inaudible). We had to reduce our headcount by 20 percent. We also had to reduce our costs, you know, our outgoing costs, as you would expect when you're in this type of situation.

Well, the problem was there wasn't enough money to pay the cash element of bonuses that were coming due in February of 2009 for the work that we (inaudible), you know, operate for the year 2008. The way it worked at Highland, and still does apparently, the employees work the full year, and then in February of the following year they get a compensation benefits letter that says, Here's what your bonus is. Here's what your tax bonus is going to be. It's going to be paid out in installments, call it February or August, February and August of the subsequent years. And then there would be some

type of deferred compensation and then some type of listing of the value of the (inaudible). So we got lunch generally every day, we had healthcare costs paid for, we had life insurance. And so we (inaudible) out all these things (inaudible).

And I think what you're asking in your question is, Where did the tax refund come in this? Well, historically, we would -- we would have got a cash bonus in that particular, you know, document that I mentioned. But (inaudible) pay cash bonuses beyond a *de minimis* amount. Dondero and, I believe, Mark Patrick in the tax groups and Rick Swadley, and there's another one, Jennifer Blumer, I think, and Michael Collins, they called all of us into the conference room and they said, We're going to pay your cash bonuses, but we're going to have to do it by making this election with the IRS.

And, frankly, none of us really understood what it was. It was very convoluted. But when we got our February 2009 award letter, and I think that's an exhibit in here somewhere, it says very clearly -- in my case, anyway -- (inaudible) tax refund, $1.475 million. And then it says, You're going to get this -- and I'm paraphrasing -- but, You're going to get this amount, but to the extent that you don't get this amount, we will provide you, you know, Highland will provide you substitute compensation.

So it was very important that -- to take the place of what had (inaudible) cash bonus, but it was compensation through

and through. And when you hear Mr. -- Mr. Morris, I'm sorry, go on about me getting $4 million in the loss, well, I did get (inaudible) that had a $4 million loss. As the IRS interpreted it, they only netted, I guess, accepted it, the -- they had the number equivalent at roughly 1.1.

But the point in all this is that was the method that Dondero and the tax team had concocted to generate the funds for Highland, its separate obligation, this is a compensation of benefits letter that I got.

And we understood the situation that Highland was in and we were willing to live with that. Where I think things went bad -- and by the way, this has been dragged out forever, Your Honor. I've talked to Mr. Stewart about it. I informed the IRS, tried to settle it. And I know (inaudible) probably never (inaudible), I'm more than willing to work with the Debtor to get it settled. But what I want, and I don't know how this works in bankruptcy, Your Honor, I -- I've got a claim, so I filed the claim, because if you don't file the claim, you lose it. Right? And then what happens is I'm (inaudible) the Debtor. The Debtor (inaudible) as an adversary, said, We're going to equitably subordinate this because this is equity in nature. And at one time, the method of payment that was concocted by the Debtor (inaudible) was, the compensation agreement is separate and apart from that, and that stands. And neither I nor any of the other guys that

got this are looking for a windfall. And I don't know how you vote it. I mean, if the Debtor had said, We're just going to assume this like a lease contract, I wouldn't be in here asking you to put a number on it. But what I got was an adversary saying, We're not going to pay this. We're going to go equitably subordinate this, even if you're trying to, you know, get it reimbursed through the partnership. So that forced me to bring it to you, Your Honor, and try to put a number on it.

Q Mr. Daugherty, during your time with Highland Capital, did you receive cash distributions from Highland in your capacity as a limited partner of Highland?

A That's a very important point. These K-1's that -- there were two kinds of partners at Highland. There were the real partners, Jim Dondero and Mark Okada, who referred to themselves as founding partners, and then there were the subclass of partners, really, we kind of -- we called ourselves profit centers partners because we had a place in the partnership but we weren't allowed to get any distributions.

So whenever you see a K-1, we didn't get any of that money. All right? That money stayed in the partnership or went to Mark and Jim. What we had was what's called a (inaudible) and a buy-sell agreement that were attached to the partnership which -- that basically we didn't get any

(inaudible) distributions or income from this, but what we got was at the end of that time we could go and terminate it and say, Pay me out now, and at that point it would be valued. And so in my case, when I left, the value that they offered me was $199,000. For all, for all those years of service. And so to answer your question, no, I didn't get any money from it.

Q Thank you. I want to ask you just a few questions about the HERA 80 or 81 Percent Claim that they were referring to. At a high level, what is HERA?

A Well, this goes back to the same situation I was talking about before as it related to this 2008 tax refund. As I mentioned, we were losing employees. People were leaving. I mean, we started the year in 2008 with 22 partners and we were down to I think 11 or 12 at the start of 2009. The banks were just, the banks were furious and they were talking about liquidating us and getting a trustee put in place because they were furious to find out that Dondero and Okada had taken out money. It was around $20 or $30 million.

Once we got through that hurdle, I said, Listen -- because I became, by the way, Your Honor, I became Highland's kind of advisor, restructuring person. I did that for Highland as (inaudible) usually us on the same side of the table as the banks on, you know, I was head of distressed and private equity at Highland, so I -- distressed debt and go and

negotiate at the Debtors' beck and call.

In this position, I moved over to the other side of the table and I was negotiating on behalf of Highland with a lot of my colleagues who were in the distressed community, which I generally refer to as knuckle raps. But they knew me, and I knew them, and we sort of -- and we had trust between each other, especially given what had just happened. And they agreed to set aside HERA, which is an acronym for Highland Employee Retention Assets, and it was a fund where they set aside, I don't know, around $20 to $25 million of assets that would then be used to incent employees to stay. And it had a three-year cliff vesting. And what happened is they didn't have any money left. Well, the employees that remained got reallocated their shares. So, contrary again to what Mr. Morris said, there was an agreement that the ownership interest would go up as we stayed through and helped right-size the ship.

Q Mr. Daugherty, why is it that you contend now that you're the one hundred percent owner of HERA?

A Well, this goes back to bad faith. And I sympathize with the judge, I did give you a ton of information, but this has just been nine years of terrorizing, you know, that I've had to contend with. And if you look back to December of 2012, January of 2013, a gentleman named (inaudible) had sent Dondero an email saying, Here's how you can pay everybody

except for one. And (inaudible) board member on HERA. And on HERA's board, there's affiliates of this guy. Ellington and John (inaudible). It's basically Jim's buddies, Jim Dondero's buddies, not (inaudible). So he sent me this email saying, Here's how you can pay everybody but one. So we get into January 2013, and Highland purports to make an offer to buy out everybody at HERA except me. Well, guess what. In the middle of January, all of the board resigns, without having anyone change the shareholder unit to the LLC and without taking board action that would allow Highland Capital to be an assignee of these units.

There is a reason for this. We go back to why HERA was created. The banks were furious about Mark and Jim taking money and the banks wanted to take a secured interest in all things Highland. So what we agreed is we would put it in a (inaudible), in an entity referred to as HERA, and Mark and Jim and Highland would not be able to participate in it. So they are not recipients of the preferred units, and the only way it can ever become (inaudible) preferred units is for there to be action taken, specific action take to amend the documents, or by the board, if they remain. And in my Texas trial, this issue did come up, and Thomas Surgent said that no such action was taken. Thomas Surgent is Highland's chief compliance officer. (inaudible). I'm getting a little --

Q I'm just going to ask two questions briefly before we turn

this over to Mr. Morris. How did you calculate the value of $21 million for this HERA 80 Percent Claim?

A I took what -- Highland took my own expert report and made it attorneys' eyes only in Delaware. So my lawyers could never sit down with me and explain it to me. So all I could go off of was what I saw at the trial. And it was only the last two or three days where Mr. Morris, he did file the entire expert opinion of my expert where I could see all the components.

So, at the time, I took what my expert was saying was the value of my expert assets, I think as of December 2016. And since I knew that that was based on 19.1 percent, I divided that number by 19.1 percent, came up with a total, and then re-multiplied by 80 -- 80.1 percent, to find out what that delta was.

Q Given that these claims were dismissed on procedural grounds in Delaware, and having heard Judge Jernigan's comments earlier about this claim and its value for voting purpose, what do you as the Claimant believe a fair allocation of this claim is for voting purposes?

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

THE WITNESS: Listen. I've --

THE COURT: Overruled.

THE WITNESS: -- been around Judge Jernigan --

THE COURT: Overruled. You can answer.

THE WITNESS: I've been around Judge Jernigan long enough to know that she means what she says and she says what she means. And I understand her reservations on this, too. But I will say there are some mitigating factors here that Highland, in Texas and all the way through the Texas Court of Appeals, they were saying (inaudible), this is a double counting, this is a double counting. That (inaudible) up for reconsideration in a court -- Texas Court of Appeals (inaudible), and the Court refused to see it that way. Then when we went to Delaware, they(inaudible), they said, Oh, no, we have cures. There's *laches*, statute of limitation is operating against them.

And so my reaction to that was, How am I supposed to be in an action based on my share ownership when you're saying I don't even own my share ownership and it's not determined until December 2016?

It is true that Judge (inaudible) said you should have basically filed a placeholder. As I've learned a little bit about Delaware law, I don't think that is consistent with Delaware law, but it is what it is. And if Judge Jernigan (inaudible) position. So if she's right to say that I could bring these claims over (inaudible) you know, contains, you know, a different item. And so you're asking me whether (inaudible) advice to the judge? I would say that I'm more -- I'm more than agreeable to whatever she decides. I just want

to know -- her to know why I'm here and what this is about, that this is not frivolous, but if it doesn't end with plan voting as she sees it, then I can live with that.

Q Thank you, Mr. Daugherty.

THE COURT: All right. Thank you. Pass the witness. Mr. Morris?

MR. MORRIS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Daugherty.

A Hello.

Q My name is John Morris with Pachulski Stang and I'm here on behalf of the Debtor. We've never spoken before, have we?

A Yeah, we have.

Q Yeah? I don't --

A Yes.

Q I don't recall. But it's --

A You were in in-person court in Judge Jernigan's court in January and February and I think we spoke.

Q Okay. Well, forgive me for not recalling that particular detail. I just wanted -- just a few questions, sir. On the tax issue, according to your testimony you were promised $1.475 million approximately in connection with your 2008 compensation; do I have that right?

A That's correct.

Q And I understand your testimony that it was Highland's idea, but you agreed to the method of compensation in the form of an allocation of Highland's partnership losses, right?
A I would not say that. There was no -- it was dictation, not an offer and acceptance.
Q Well, you did accept -- you did accept the benefit of the allocation of the Highland losses on your 2008 tax returns, right?
A I -- I don't know if accept is the right answer. I sent my K-1 in with my tax return, and as I clearly admit, there's approximately $4 million of losses that are allocated to me via the K-1 that they could use in the computation of my taxes.
Q Okay. So it's fair to say, then, that the manner in which, or I think the word that was used in your papers, the method by which you were compensated was through the allocation of a portion of Highland's losses; is that right?
A That is wrong. I was compensated that said you're going to get 1.475. If you don't get 1.475, we will provide substitute compensation. What you're confusing is the manner in which Highland decided to try and fund the obligation, and I just don't think it's right to conflate the two.
Q Well, Highland did fund the obligation through the allocation of losses to you; isn't that right?
A It is not. As I said, I got the $4 million pass-through

that the IRS determined was approximately $1.1 million, as I recall.

Again, I'm not here to try to capture that missing 3.75. All I want is Highland to basically stay in the shoes if -- or stand by the promise that they made, that they made, sorry, that they made to me, which is if the IRS changes their mind or if Highland (inaudible) and wanted to start to use this (inaudible) argument, that I get sufficient compensation to make me whole.

I mean, at this point, if that -- if we aren't successful, right, on this tax refund issue, then I'm going to get -- not just me. There's about seven or eight other employees who have all also filed claims in this case. We're going to get hammered with penalties and interest that far exceed that amount, and that's not fair.

Q Okay. As of today, Highland doesn't owe you -- that audit is not complete; is that right?

A Well, it's -- the audit took place for two years, and you're probably familiar more than me, I got a letter from Byron Collins in December of 2019, after the Debtor filed for bankruptcy, saying, We've exhausted effectively our negotiations with the IRS. We've now turned this over to some appeals unit in the IRS, and they determined that you don't get -- I'm paraphrasing -- that you don't get to keep this amount.

Now, that basically put me on notice, right, that this is coming to somewhat of a conclusion. (inaudible), I listed it as a claim, I listed it as unliquidated, because I really don't know how to treat it. I guess, I mean, hopefully, the judge makes a decision, and the same kind of category, I don't know how you classify this thing. But when you guys filed an adversary against me and said, You know what, by the way, (inaudible) to me about any of my clients. So when you present to the Court that you engage me and (inaudible) with this guy, you guys didn't talk to me once from the time you filed until October about my claims. You did it just recently, after you filed an adversary. I would have been happy to work with you on this.

MR. MORRIS: Your Honor? Your Honor, I apologize for interrupting. Can I have the question read back? Because I really move to strike. I'll be here all day if we get these answers that really have nothing to do with my question.

THE COURT: Okay.

MR. MORRIS: It's not proper.

THE COURT: Well, I'm going to sustain and strike the narrative answer. I'm going to ask you to just repeat your question at this point.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q The audit is not completed; isn't that correct?

A I don't know. I've been told by you that it's not.
Q Okay. And nobody has told you and you have no information to contradict my assertion that the audit is incomplete today?
A That's correct.
Q And as you sit here today, you don't know how much, if anything, you might owe on account of the tax issue. Is that right?
A That is right.
Q Okay. You first learned about the audit in 2010; isn't that correct?
A I don't know when I first learned about the audit.
Q You learned about the audit before you left Highland; isn't that correct?
A I know that when we filed this, you know, when we filed the returns, we had to file a cover letter that basically notified the IRS, hey, and I'm paraphrasing, we made these elections, you may not agree with these elections, but we're drawing your attention to it right now to put you on notice that we're making these elections. So that's what I know.
Q When is your first recollection of when you learned about the audit?
A I don't recall.
Q Okay. Let's talk about the HERA assets for a moment. When you left in 2011, you owned approximately 19.1 percent of the HERA preferred units; is that right?

A That is right.
Q Okay. And you learned in 2013 of the events that you described earlier with respect to the amendment of the HERA partnership agreement -- limited liability -- limited liability company agreement, the assignment agreement, the expense allocation? All of that occurred in 2013, and you knew it at that time, right?
A Well, if I could clarify that. I believe I was informed that the amendment -- you had a lot of questions in there, so I'll try and break it down. The amendment -- you're talking about 1241, right? I believe I was informed, informed of that either late February or early March 2014.
On the other stuff, we had -- we had sought discovery, and, you know, people have experiences that you don't always get discovery on an expedited basis all the time. We started to take discovery in dribs and drabs in -- early in July, and then a lot more in October and then a lot more in December of 2013. So the (inaudible) that you asked me a question about, we got a lot of it in that time period, and then some of it rolled into 2014.
Q Okay. So, you knew about Highland's purchase of the other holders of the HERA preferred units in 2013, right?
A Yeah, I knew about the purported purchase probably in February 2013.
Q And the purchases were by people who hold -- who held

vested interests in their preferred units in HERA; isn't that right?

A You said it was by them. I think it was from them. But I think (inaudible).

Q If I did, I misspoke, but thank you for the correction. But you'll agree, right, that -- that you knew in 2013 that Highland purchased from the vested holders of the preferred units their interests in -- in the HERA --

A You know, I knew that ultimately that happened. I don't remember if I knew definitively it happened until probably October of 2013.

Q Okay. And you don't bring these claims relating to all of this -- all of these things that happened in 2013 until the summer of 2017 in Delaware; is that right?

A That -- that's generally about right.

Q Okay. And that's more than three years after you learned of them. Is that fair?

A I brought my claims after the Texas Court of Appeals said that I had that shares that your clients said I didn't.

Q Okay.

MR. MORRIS: I'd move to strike.

BY MR. MORRIS:

Q And I ask you to just listen carefully to --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- my question. Okay. Listen carefully to my question. You brought the claims relating to the HERA events of 2013 for the very first time in Delaware in July 2017, right?
A Yes.
Q And it's more than three years after you learned of them; is that fair?
A I'm sorry. More than three years--?
Q More than three years after you learned of those events. You just said that you learned about them in 2013.
A I think that's right, yeah.
Q Okay. And you brought four different claims? I think claim -- Counts 2, 3, 4, and 5 in the original Delaware action were all based on the events of early 2013; is that right?
A I don't know. I don't -- I don't -- frankly, I don't recall my claims (inaudible) that you described.
Q Okay.
MR. MORRIS: Can we please call up Exhibit A to Mr. Daugherty's proof of claim, which I believe has been marked as Exhibit 40?
THE COURT: Okay. Are you going to share the screen or do you want the Court to pull it up?
MR. MORRIS: Yes.
THE COURT: Okay.
MR. MORRIS: I think we'll be able to share the screen. Thank you. And if we could just scroll to the end.

And I apologize, I don't have the page number, but it should be --

THE WITNESS: Could you go back up to the top, just so I know what I'm dealing with here?

BY MR. MORRIS:

Q Yeah. It's Paragraph 82.

A No, I'm looking at the date this was filed. Can you do it to the top? All right. So this is --

Q This is your amended pleading.

A Oh, this -- okay. You mentioned 2017, so I got a little bit thrown off. Okay.

Q So this is the -- this is the document that was attached to your proof of claim. That's why I'm using it. Okay?

A Okay. We've amended our proof of claim. You're talking about the first one?

Q This is the -- this is the one that was attached to your proof of claim, right?

A Well, as I said, we've amended the proof of claim. So are we talking about the one that's amended or the first one?

Q All right. Just take a look,

MR. MORRIS: If you can scroll down to Paragraph -- keep -- no, keep going. Keep going. La Asia, can we scroll down, please? Okay. So go to Paragraph 84 and 85. Okay.

BY MR. MORRIS:

Q Can you read Paragraph 85 into the record, please?

A (inaudible) unit holder of Highland Employee Retention Assets. The purported purchases of units by Highland Capital on January 30th, 2013 using the funds of Highland Employee Retention Assets were -- were invalid transfers.
Q Okay. And that's exactly what you're asking the Court here to find; isn't that right? That you're the sole remaining holder and that the purported purchases by Highland in 2013 were invalid transfers, right?
A Correct.
Q Okay.
A Well, we're not asking her to find that, but we're asking her to find for voting purposes.
Q Okay.
MR. MORRIS: Can you go to Paragraph 89, please?
BY MR. MORRIS:
Q In 89, the relief that you requested is the return to HERA of the funds transferred it and distributed to you as the sole remaining shareholder, right?
A That's correct.
Q And that's specifically one of the claims that the Court dismissed; isn't that right?
A I thought it dismissed the claims for me making ownership of the, you know, the (inaudible) because of the *laches* issue that you described.
Q Sir, sir, this claim was dismissed by the Chancery Court,

right?
A It was dismissed by Judge (inaudible) who's the Chancery Court on *laches* grounds.
Q Okay. How do you know it was on *laches* grounds?
A Because he said so.
Q Okay. Can we just look quickly at Cause of Action No. 3? This was a claim arising out of the exact same conduct against HERA Management and Mr. Dondero; isn't that right?
A I'm not sure I understand your question.
Q Count III was against HERA Management and Mr. Dondero arising out of the same facts, only this claim was for breach of fiduciary duty, right?
A I guess it was breach of fiduciary duty. I don't see -- I guess Mr. Dondero down there in No. 2, but I can't read the whole paragraph.
MR. MORRIS: Can you scroll down a little bit, please?
BY MR. MORRIS:
Q Okay. Right there, Paragraph 93?
A Correct.
Q The adoption of the third amended and restated agreement you allege to be self-dealing and constituting a breach of fiduciary duty, right?
A Correct.
Q And in Paragraph 94, if we can scroll down, you allege

that the execution of the allocation, the expense allocation whereby your interest was reduced to zero was also self-dealing and a breach of duty, right?

A Can you go back there? I can't read it.

Q But you recall making that claim generally?

A (inaudible) You know, give -- ask me the question again about generally what I recall.

Q Do you recall generally making an allegation in the Delaware Chancery Court that there is a breach of fiduciary duty by executing the expense allocation agreement, right?

A Yeah. On behalf of Highland ERA Management.

Q Okay.

MR. MORRIS: Can we go to Paragraph 95, please?

BY MR. MORRIS:

Q You also challenge the assignment agreement, is that right, as an act of self-dealing and breach of fiduciary duty?

A Yeah. I obviously can't read the redacted parts.

Q But this claim was also dismissed, right?

A As I said, these claims were reduced on a *laches* basis, but obviously I plan to appeal. I just (inaudible).

Q Right. And *laches* you understood meant that it was time-barred, right? It was brought beyond the statute of limitations?

A Yeah, as I understood it, yes.

Q Okay.

MR. MORRIS: Can we go to the next cause of action? This will be the last one, Your Honor.

BY MR. MORRIS:

Q This is against the Debtor, Highland Capital. Aiding and abetting breach of fiduciary duty. If you look at Paragraphs 101 and 102 and 103, it's charging Highland with liability for the same conduct, for the execution of the third amended and restated agreement, the receipt of the HERA assets, right, as --

A Correct.

Q -- part of -- and this too was dismissed on statute of limitations grounds, right?

A I believe so.

Q Okay. Thank you.

A You know, I know that Highland is liable for the transfer of promissory stock and the unjust enrichment. I don't know if (inaudible).

Q Okay. Well, we'll leave that alone. Okay? I think that -- that's what we've actually offered to allow your claim for, for all of those claims. Let's --

THE COURT: Mr. Morris, I want to make sure --

MR. MORRIS: Yes, Your Honor.

THE COURT: -- the record is clear about what Mr. Daugherty was testifying about the last five minutes.

MR. MORRIS: Sure.

THE COURT: This is, of course, an attachment to Daugherty's original proof of claim, but it is in the record at Docket Entry #1388, which was collectively all of Daugherty's exhibits for today, and it was at --

MR. MORRIS: Right.

THE COURT: -- Subpart 40, or Exhibit 40 therein, Subpart A of that.

All right. Did you want to offer that or does anyone want to offer that into evidence so that the record will make sense?

MR. MORRIS: Sure. I'll take it upon myself for this specific exhibit, Your Honor.

THE COURT: Okay.

MR. MORRIS: I offer -- I offer PHD Exhibit 40 unto evidence.

THE COURT: Okay. And I assume there's no objection since that was Daugherty's exhibit. It's admitted.

MR. UEBLER: No objection.

THE COURT: Okay.

(Patrick Daugherty's Exhibit 40 is received into evidence.)

BY MR. MORRIS:

Q Mr. Daugherty, let's just talk for a moment as to the timing of your departure from Strand. You were an officer of Strand at one point; isn't that right?

A Yes.
Q Do you have any letter of resignation or any other documentation that shows the date on which you were no longer an officer of Strand?
A I don't recall.
Q Okay.
MR. MORRIS: Can we please call up Exhibit X2? Your Honor, this is one of the two exhibits that I shared with counsel earlier today that are the corporate records that show the officers of Strand at various points in time.
THE COURT: All right. Are they on the docket?
MR. MORRIS: This goes to -- this goes to -- they're not. This goes to the indemnification claim.
THE COURT: Okay.
MR. MORRIS: All right. So if we can get X2 up, please.
(Pause.)
MS. CANTY: I'm sorry, John. One second. The computer's acting a little crazy.
MR. MORRIS: Okay.
(Pause.)
You know, Your Honor, instead of taking the Court's time with this, I don't need to cross-examine Mr. Daugherty with this. What I'd like to do is, because I've shared the documents with Mr. Daugherty's counsel -- oh, here it is.

Okay.

THE COURT: Okay.

MR. MORRIS: So let's just --

THE WITNESS: I see it.

MR. MORRIS: Thank you. Let's just get through this quickly.

BY MR. MORRIS:

Q Do you recall that, when you were an officer of Strand, that from time to time you signed a document that identified all of the officers of that entity?

A No.

Q Okay.

MR. MORRIS: Can you scroll down a little bit here?

BY MR. MORRIS:

Q Do you see that this is --

MR. MORRIS: I'm sorry, just a -- not quite so much. I want to see the first paragraph.

BY MR. MORRIS:

Q It says that "I am the president of Strand Advisors" and that Mr. Dondero was certifying that the people below were duly appointed and qualified to serve as officers of Strand. I'm paraphrasing a bit there. Do you see that?

A I can read it.

Q Okay. And do you see the third line down is you?

A Correct.

Q And that's your signature?
A It appears to be.
Q And did you serve in the capacity as Secretary of Strand?
A I mean, I served in various capacities. So I was agent, I was representative, I was an officer. I never was limited to just being Secretary.
Q Okay. But that's what you signed this document as, right?
A That's what my signature is next to.
Q Okay.

MR. MORRIS: And if you scroll down a little bit, let's just see the date.

BY MR. MORRIS:
Q And so that's August of 2006.

MR. MORRIS: Can we go to the next page, please?

BY MR. MORRIS:
Q You signed the next iteration of this as Secretary. Do you see that?
A I do.

MR. MORRIS: Can we scroll down a few lines to see the date?

BY MR. MORRIS:
Q That's February 27, 2007, okay? And all of these folks were officers at the time, do you recall?
A No.
Q No, you don't recall that?

A Huh-uh. I don't remember Nicky being an officer or Jim (inaudible) or Ron Williams.

Q Okay. It was 13 years ago.

MR. MORRIS: Let's scroll to the next page, please.

BY MR. MORRIS:

Q Do you see --

MR. MORRIS: Scroll down a little further.

BY MR. MORRIS:

Q You're now -- you've now been designated Assistant Secretary. Do you see that?

A Yes.

Q And that's your signature?

A It is.

Q And two lines above that, do you see there's Michael Colvin?

A Colvin, yes.

Q Yeah. And did you understand that he was Secretary of Strand at one point?

A I didn't focus on it one way or the other.

Q He submitted -- Mr. Colvin submitted a declaration last night on your behalf; isn't that right?

A He did.

Q And he said he couldn't recall when you stepped down from your position as an officer of Strand, right?

A Words to that effect, yes.

MR. MORRIS: Can we just show the date of this document? So, this is January 2008. Let's go to the next page. Here, again, if we can scroll down a little further, --

BY MR. MORRIS:

Q -- you have Mr. Colvin signing and you also signing as Assistant Secretary. Do you see that?

A I do.

Q And that's your signature?

A Yes.

MR. MORRIS: Okay. Can we just see the date of this document? This is May 2008. Let's go to the next page.

BY MR. MORRIS:

Q Okay. Again, Mr. Colvin as Secretary and you as Assistant Secretary; is that right?

A Yes.

Q And that's your signature?

A Yes.

Q And it's March 1st, 2009, right?

A That's what it says, yes.

MR. MORRIS: Okay. Let's go to the next page. Stop.

BY MR. MORRIS:

Q You see Mr. Colvin is still there, but you're not, right?

A Correct.

Q And this is dated May 29, 2009, right?

A Correct.

Q So Mr. Colvin, the person who submitted a declaration on your behalf, signed a document where you're no longer listed as an officer of Strand as of May 29, 2009, fair?
A That is correct.
Q Okay.
MR. MORRIS: Let's just keep going.
BY MR. MORRIS:
Q This one is dated January 2010. Again, Mr. Colvin was on and you're not, right?
A Correct.
MR. MORRIS: Next page.
BY MR. MORRIS:
Q Mr. Colvin was here as Secretary and you're not listed as an officer of Strand as of July 1st, 2010, right?
A That's correct.
Q Okay. Does -- does -- do these documents refresh your recollection that you stepped down as an officer of Strand sometime between March and May of 2009?
A No.
Q Okay.
MR. MORRIS: Can we call up the other exhibit, please?
BY MR. MORRIS:
Q This is a document entitled Secretary's Certificate. Do you see that?

A I do.
Q And do you see Mr. Colvin signed it as Secretary?
A I do.
Q And do you see that it was delivered on behalf of Strand Advisors?
A No.
Q Up at the top line.
A Oh, yes.
Q Okay. And Mr. Colvin signed this as of August 4, 2009, right?
A Well, it's --
Q Above his signature?
A Well, Highland had the practice of -- it sort of had the practice where they would put an effective date prior to the actual time that the document was created.
Q So Mr. Colvin, the person and the attorney who submitted a declaration on your behalf, signed this document as of August 4, 2009, right?
A Well, well, it says, The undersigned has executed, so yeah, I'm just going to have to say yes. I'm just not sure -- I don't know, I guess, is my obvious question of when he actually signed it.
Q Okay. Well, he was comfortable signing it as of August 4, 2009, is that fair, based on his signature?
A I mean, you're showing me a document with his signature on

it. That's all I see in front of me. I don't know what he was comfortable with.

Q Okay. And in Paragraph 1, it says that, The resolutions attached as Exhibit A have been duly authorized by the company, by the company's sole director. Do you see that?

A I do.

MR. MORRIS: Let's look at Exhibit A, please, if we can scroll down.

BY MR. MORRIS:

Q And this is the consent of the sole director as of May 29, 2009. Do you see that?

A Yeah. (inaudible) as Treasurer?

Q No, we'll scroll down, sir. No problem.

MR. MORRIS: Let's keep scrolling down. Okay. All right.

BY MR. MORRIS:

Q And there's your list of officers, and you don't appear there, right?

A I don't appear there, no.

Q And so would you agree that Mr. Colvin, the attorney who signed the declaration on your behalf last night, signed a Secretary's Certificate pursuant to which he attested to the accuracy of the resolution, that as of May 29, 2009 the officers were as listed here and it didn't include -- did not include you?

A Okay. I just want to clarify a couple things. One, he signed it on Friday. You know, just so you know, it didn't get created last night. And will you ask me the rest of that question?

Q Sure. I apologize. I just didn't see it until last night, and that's why I'm referring to last night, because I didn't see it until it was filed.

A I think we included it in the exhibit list on Friday.

Q Okay. I know it was on the list. In fact, that's where --

A I pulled it off the Internet from the court site, so they had it.

Q You're not on this list of officers?

A I'm not on this list, no.

Q Okay. And just a few more questions, sir.

THE COURT: I'm going to make sure the record is clear once again. Are you going to offer into evidence these pages you've described as Exhibit X2, so we --

MR. MORRIS: X2 and X1.

THE COURT: X2 and X1?

MR. MORRIS: Yes.

THE COURT: All right.

MR. MORRIS: And we will file -- we will file an amended list for the docket, Your Honor. But again, this just came up a couple of hours before the hearing, because

personally I didn't see the Colvin declaration until I woke up this morning. I asked the question and I got these documents. So these documents are being tendered in response to that very specific declaration.

THE COURT: All right. It was filed at 6:11 p.m. last night, in case -- Central Time.

MR. MORRIS: Right.

THE COURT: Any objection to X1 and X2?

MR. UEBLER: And Your Honor, this is Tom Uebler. For purposes of this summary proceeding, I'm inclined not to object to the document. We've both put a lot of paper before the Court. But we would reserve our right to explore these documents further in discovery on the merits and try to find out why we didn't see them for the last three years in Delaware.

THE COURT: All right. So X1 and X2 will be admitted for today's hearing. And Mr. Morris, you're going to file them later on the docket.

MR. MORRIS: Yes, Your Honor.

(Debtors' Exhibits X1 and X2 received into evidence.)

MR. MORRIS: Yes, Your Honor. Just a few more questions. I know we're almost out of time here.

BY MR. MORRIS:

Q Mr. Daugherty, just quickly, in the Texas action you were found liable for breaching your fiduciary duty to Highland;

isn't that correct?
A Correct.
Q And you were ordered to pay Highland's legal fees of approximately $2.8 million; is that right?
A Correct.
Q The litigation that you -- excuse me. Withdrawn. The claims that you have been pursuing against all of the Highland-related people and entities, you would be the beneficiary of any judgment that you obtained, right?
A I don't know what you mean by that.
Q You are the sole plaintiff in all of these cases?
A On the actions that I brought?
Q Yes.
A I believe so, yeah.
Q Okay. And so any judgment that's rendered will be rendered in your own personal capacity; isn't that right?
A Yes.
Q You didn't bring --
A Well, I'm the plaintiff, I guess is what I'm saying.
Q Yeah. That's fair.
A So, I mean, yeah, the payments will go to me.
Q Okay. You mentioned something about a criminal case being overturned on appeal.
A I didn't. My lawyer did.
Q Okay. Can you just describe for the Court what the

original charge was?
A I don't believe that it's relevant, but there was an injunction put in place that said that -- that prohibited me from retaining Highland's account information. And over the course of, I don't know, from about 2014 to 2018, Highland brought eight different, you know, variations of show cause violations on that injunction against me. Eight times I had to defend. And one of those eight was based on Josh Terry had just been terminated from Highland and I saw him, I think, I saw him in London May of 2016. He got terminated in June. I sent him -- I walked up to his house and handwrote him a letter extending my condolences and --
MR. MORRIS: Your Honor, I'm going to --
THE WITNESS: You asked me a question and I'm trying to answer it.
BY MR. MORRIS:
Q I apologize. I apologize. Let me ask a different question because -- because that wasn't responsive to what I was asking. Were you found in contempt of court?
A No.
Q Okay. What crime were you charged with?
A I was charged with contempt of court violating the injunction. And a three-member panel at the Texas Court of Appeals found unanimously in my favor that there was no evidence that I violated the injunction.

Q But the trial court did in fact not only find that there was evidence, but the trial court is the one who imposed the judgment against you; is that fair?
A That is correct. And he was ordered to vacate that ruling.
Q Okay.
MR. MORRIS: Your Honor, I have no further questions.
THE COURT: All right. Redirect?
MR. UEBLER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. UEBLER:
Q Mr. Daugherty, the fee award that Mr. Morris referred to in Highland's favor, did you pay that?
A I did. I wired approximately $3.1 million to Highland, I want to say, December 13th or 14th, 2016.
Q 2016?
A Yeah.
Q What amount have you received form Highland or any of its affiliates as a result of the judgment you obtained?
A Zero.
Q With respect to Strand Advisors, when did you last serve as an agent of Strand?
A January-February 2012, when Highland enlisted me to meet with the Crusader investors, and I guess one called a Stratus (phonetic) investor, to the Stratus -- as I mentioned, there

was two categories. One, my view on value of various Top 40 portfolio investments, and two, to discuss my reasons for leaving Highland.

Q When did you last serve as a representative of Strand?

A In that January-February 2012 time frame.

Q Were you authorized to sign documents on behalf of Strand Advisors?

A Yes.

Q When did that authority cease?

A When my employment at Highland terminated in October 2011.

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

THE COURT: Any recross?

MR. MORRIS: Mr. Daugherty? Yes, Your Honor.

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Daugherty, did you submit any documentation in support of your contention that you served not as an officer but as an agent or a representative of Strand until the time of your departure in 2011?

A Yes.

Q All right.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Thank you.

Mr. Daugherty, we appreciate your testimony. You're

excused.

THE WITNESS: Thank you, Judge.

THE COURT: All right. Mr. Uebler, do you have any other evidence today?

MR. UEBLER: I don't have any other evidence, Your Honor, just some very brief closing remarks, if that's permitted. And I see we have four minutes left, so I'll defer to the Court.

THE COURT: Well, I won't cut you off cold in four minutes.

Mr. Morris, did the Debtor have any evidence today?

MR. MORRIS: Yes, Your Honor. Does Mr. Daugherty rest?

THE COURT: Yes, they rested. What I understood, they rest.

MR. UEBLER: I -- that's correct. I mean, subject to my comment earlier about submitting the exhibits and the papers as part of our case.

THE COURT: Well, let's make sure we get all of Mr. Daugherty's evidence in before I shift over to Mr. Morris. So what else did you want to offer?

MR. UEBLER: Only the -- the papers we've provided, including Mr. Daugherty's declaration and the exhibits attached to our motion and our reply.

THE COURT: All right. So those were filed as

separate exhibits at Docket Entry No. 1388. I think it's all there, correct?

MR. UEBLER: Correct.

THE COURT: All right. So it looks like it's Exhibits 1 through 42 that appear there.

Any objection, Mr. Morris?

MR. MORRIS: Yes, Your Honor. I object to the admission into evidence of Exhibits 7 through 10, No. 14, and No. 17 through 38, on grounds that they are irrelevant in light of the fact that the Debtor has conceded for purposes of voting the $9.1 million in claims, and on the separate ground under Rule of Evidence 403 that any probative value of this material is greatly outweighed by the waste of time and the irrelevance of the subject matter.

I will point out just some examples, Your Honor. And this is why the Debtor really doesn't put this stuff in the record, because it is so irrelevant to these claims. But he's got things in there, the Court of Appeals decision on his criminal case. He's got a Crusader presentation. Actually, I -- we also object to that one, which is Exhibit 5. We've got, you know, appellate decisions, the escrow correspondence. We've got a Court of Appeals mandate. We've got correspondence relating to the escrow at Exhibit 30. We've got a transcript on an argument on a motion to compel. We've got motions for the argument.

If you look at these documents, Your Honor, they really have nothing to do with the claims that are being made here. Certainly, in light of the Defendant -- in light of the Debtor's concessions that we've made, we don't think that the record should include any of the documents that I've identified.

THE COURT: All right. Mr. Uebler, it's 2,619 pages in all. And what do you say to that objection?

MR. UEBLER: I agree they are prejudicial documents, Your Honor, but that doesn't make them inadmissible. They're prejudicial documents because they establish Mr. Daugherty's right to fee shifting under the bad-faith exception to the *American* Rule.

This is not, as Mr. Morris said earlier, a case where both sides' hands are dirty. This is a case where the Delaware court found the crime fraud exception applied. Based on my research, that was the second time that has happened in Delaware. That's a big deal.

And the transcripts that we put in, the motions for re-argument, the history we have presented in those 2,000 pages supports Mr. Daugherty's claim. It's directly relevant to an issue that I think Mr. Morris referred to as frivolous earlier, but I don't want to put words in his mouth. It's directly relevant, and that relevance by far outweighs any prejudice to Highland, or at least prejudice that wasn't of

its own making.

So it should all be submitted at a minimum for the purpose of considering Mr. Daugherty's request for fees.

THE COURT: Okay. I overrule the objection. I'll admit Exhibits 1 through 42.

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

THE COURT: All right. So you rest at this point?

MR. UEBLER: Yes. Thank you, Your Honor.

THE COURT: All right. Mr. Morris?

MR. MORRIS: Yeah, just one clarification there, Your Honor. Is Mr. Daugherty attempting to offer into evidence Mr. Colvin's declaration?

THE COURT: I did not hear him offer that.

MR. UEBLER: I believe that's No. 42, Your Honor, so the answer is yes. And Mr. Morris had ample opportunity to question Mr. Daugherty about the substance of the declaration.

MR. MORRIS: Your Honor, it's --

THE COURT: Oh, okay. I had misunderstood.

MR. MORRIS: Okay.

THE COURT: It is Exhibit 42, even though it was just filed separately on the docket last night. So did you have an objection, Mr. Morris?

MR. MORRIS: I do. It's hearsay, Your Honor. It's being offered for the truth of the matter asserted by a

witness who is not available to be cross-examined.

THE COURT: Okay. I sustain --

MR. UEBLER: Your Honor, --

THE COURT: I sustain that objection. 42 will not be admitted. All right.

(Admission of exhibits revised to exclude Patrick Daugherty's Exhibit 42.)

THE COURT: Mr. Morris, you have evidence?

MR. MORRIS: Yeah. So the Debtor offers into evidence Exhibits A through -- Exhibits A through V. And I guess Exhibits X1 and X2 have already been admitted.

THE COURT: All right. Let's be clear there. Those appear --

MR. KATHMAN: Your Honor? Your Honor, this is Jason Kathman. And I just wanted to -- on Exhibit 42, we talked with Mr. Morris, and maybe I had a misunderstanding, but my understanding is that we were going to present witnesses via declarations in that manner. And there had been some discussion about -- and giving him the opportunity to cross-examine Mr. Daugherty. So if I misunderstood the agreement, that's on me, but there was -- we had I believe it was in two phone calls, and I think he's had more (inaudible), about how testimony and witnesses would be presented for this hearing. And if Mr. Colvin is outside of that, again, maybe I'm misunderstanding, but I at least wanted to raise that issue.

MR. MORRIS: Your Honor, respectfully, I have great respect for Mr. Kathman, but he is misunderstanding. I would never, ever permit a declaration to come into evidence in a matter like this without the ability to cross-examine. I can describe for the Court what the offer was, but it was not that.

THE COURT: Okay. Well, I regret there was a misunderstanding, but just pulling this up, while it's only a one-and-a-half page declaration, it has 57 pages of attachments, or approximately 57 pages of just all kinds of things that I can presume the Debtor might want to cross-examine Mr. Colvin on. So I again sustain the objection. 42 will not come in.

All right. Mr. Morris, your evidence. Where do Exhibits A through V appear on the docket? I need to refresh my memory.

MR. MORRIS: Your Honor, just to let you know what happened last night, because we were working with Mr. Daugherty's counsels on redaction, and I think Mr. Anabel, with your Court's permission, allowed us to email the documents to you, and we had emailed them to Mr. Daugherty because we weren't sure at the late moment as to where we were going to be with the redactions. We can certainly file everything now. But Your Honor has those documents.

THE COURT: Okay. I do have those. I knew that

there were several emails that they were attached to. I just didn't know if they were separately on the docket. So, again, let me pull those up. It's A through V?

MR. MORRIS: Yes.

THE COURT: Any objections by Daugherty's counsel?

MR. UEBLER: Your Honor, as I said, for this summary proceeding, we're not going to object to A through V. But with the exclusion of Daugherty 42, the Colvin declaration, it seems that X1 and X2 have no relevance anymore and should be excluded. Mr. Morris stated earlier that those two documents were submitted expressly in response to the Colvin declaration. With that out, Exhibits X1 and X2 should be out as well.

THE COURT: Okay. Your response, Mr. Morris?

MR. MORRIS: Yeah, very briefly. Number one, I used them to cross-examine his witness. I offered them into evidence. There was no objection. They've already been admitted into court. So I think this issue is moot.

But number two, when Mr. Daugherty said that he didn't -- I don't remember exactly what his testimony was, but suffice it to say that he wouldn't agree that he had resigned sometime between March 3rd and -- between March and May of 2009, I certainly could have used them as impeachment documents under any circumstance.

THE COURT: All right. I overrule the objection. X1

and X2 are in.

(Debtors' Exhibits X1 and X2 are again received into evidence.

THE COURT: Again, I think not only were they admitted without objection earlier, but they do, I guess you would say, contradict some of the testimony of Mr. Daugherty. His position, as I hear it, is he was still an agent, or he was an agent at least of Strand beyond the May 2009 time period. And these are documents that arguably impeach that testimony.

All right. So A through V and X1 and X2 are admitted.

(Debtors' Exhibits A through V and X1 and X2 received into evidence.)

THE COURT: If I could just ask, Mr. Morris, that you all later submit on the docket these exhibits, all of them, so we don't have to go back and print out the email attachments and do it the old-fashioned way.

MR. MORRIS: Sure.

THE COURT: All right. Any other evidence?

MR. MORRIS: No, Your Honor. The Debtor rests.

THE COURT: All right. I'll hear brief closing arguments. Mr. Uebler, you first. (Pause.) Mr. Uebler, you're on mute, sir. Mr. Uebler?

CLOSING ARGUMENT ON BEHALF OF CREDITOR PATRICK DAUGHERTY

MR. UEBLER: Thank you. Let me try that again. I

want to start by responding to one of Mr. Morris's questions of Mr. Daugherty, which was, Did you submit any papers in this case that would establish that you were either an officer or an agent of Strand through resignation in 2011? That's Exhibit 2. It is, in fact, Highland's answer in the Delaware case at Paragraph 66, where Defendants admit that Daugherty served as an officer and agent of Strand from 2004 until he resigned from Highland in 2011. So I think that should answer Mr. Morris's question.

Let me just conclude by some comments that James Seery recently made in a deposition. He said, Equally, on the other side, you could say that the man's life was ripped out from him, that his position was taken away, that he got an arbitration award that arguably the Debtor and the Debtors' management at the time stripped away all the assets and pretty patently denuded it to try to leave him with no recovery. Then when he sought a recovery, they sought to sue him in every jurisdiction in the world and basically ruin the guy's life and put him in a position where, while to some it might seem a windfall, to him it might seem just.

Mr. Seery was talking about Josh Terry, not Mr. Daugherty. But Highland's blueprint for ruining a guy's life originated from its treatment of Mr. Daugherty.

We've given you reasons today to permit the full amount of the three remaining disputed issues for voting purposes for

Mr. Daugherty's claim. Allowing that full amount will protect Mr. Daugherty as a creditor, give him his appropriate say in any plan that's presented, and would hopefully bring these parties at least one step closer to resolution.

Thank you for your time today.

THE COURT: Thank you, Mr. Uebler. Mr. Morris?

CLOSING ARGUMENT ON BEHALF OF THE DEBTORS

MR. MORRIS: Yeah. Very briefly, I'll just borrow Mr. Uebler's phraseology and say that it would not be just to give to Mr. Daugherty anything on account of a $21 million claim that has already been dismissed and that his testimony just established will be time-barred. We don't believe that it would be just to give him anything on account of a tax claim that is completely contingent, unliquidated, and where the Debtor admittedly owes absolutely nothing to Mr. Daugherty today.

I can't imagine what it's been like to go through this litigation, just like I couldn't imagine from Mr. Terry's perspective, from Mr. Dondero's perspective. These people have been at this for a decade. That's not what -- that's, you know, it's not anything I can get my arms around. What I'm here to do is to protect the Debtors' estate and its stakeholders, including its general unsecured creditors.

Mr. Daugherty is going to have a very meaningful claim if the Court allows his claim for voting purposes at $9 million.

It's going to be the third biggest claim, at least at this point, of anybody. So that's just. It's just that he has a seat at the table. We're offering him a seat at the table. But he shouldn't get anything on account of the claims that really have little to no merit.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Well, I thank you for your thoroughness, your professional courtesy that was very visible here today.

As I started out with today, Bankruptcy Rule 3018(a) is what guides us. That rule is a provision that states, quote, Notwithstanding an objection to a claim, the Court may temporarily allow a claim for voting purposes in such amount the Court deems proper, after notice and a hearing.

There are many cases that have attempted to kind of impose a legal framework for analysis on that rule because, as you've just heard, the rule doesn't give much detail. The cases all sort of sing the same tune, that the rule contemplates only a summary estimation proceeding, not a full trial on the merits. The Court has great discretion to employ whatever method is best-suited to the circumstances of the case in determining what amount should be allowed for voting purposes. The Court should consider things like whether there's a last-minute objection to strategically prevent a creditor from voting who might vote no and the objection might be frivolous, that sort

of thing. And all decisions are reviewed for abuse of discretion, should there be any appeal.

So that is the rule and the case law interpreting the rule. Based on that, I will note that we start out here with an amended proof of claim filed by Mr. Daugherty in the amount of $40,710,819.42. And I studied hard before coming out here today the addendum to that proof of claim filed by Mr. Daugherty. It had a description of the claim that was done in the form of a chart. I'm holding it up here -- I don't know if it picks up on camera -- what I'm looking at. But it appears at Docket Entry 1280-2. It was part of the appendix to the motion to estimate claim.

So the amount is broken down into components. If you're looking at that chart -- again, which was most helpful -- I note that in the claim of Daugherty for HERA units, there are different line items that total approximately $26 million and some change. So that's the issue we've talked about a lot today. Is it correct, is it reasonable to assume that Daugherty might be entitled to a hundred percent of the value or a hundred percent of the HERA units? So, I found that, based on the evidence and the argument, to be a problematic assumption. Again, one day we will have a trial on the adversary, a trial on the proof of claim. I will hear every bit of relevant evidence that the parties choose to put in on that issue. But for our purposes today, under Rule 3018, I

just found considerable doubt that that would be an appropriate damage calculation here.

So, again, using my discretion, I found that, at a minimum, you should reduce that $26 million-plus component of the Daugherty proof of claim by the roughly 81 percent, because it was 19.1 percent, I think, that Daugherty would have been entitled to of the HERA units. So that's a roughly $5 million amount, or a $19 million reduction that -- excuse me. I did my math wrong. That's a $21 million reduction that I think would be reasonable for estimation purposes under 3018.

Further looking at the chart that breaks down Daugherty's claim -- we discussed this today in testimony -- there is an attorney fee component that aggregates to $7,854,752.31, and that's the indemnification, it's the interest on indemnification award, it's the fee shifting fees on fee award. And once again, looking at this through the lens of 3018(a), I do not think it's appropriate to assume I'm going to get there, if you will, on this attorneys' fee award. There have been *bona fide* issues, if you will, raised on whether the indemnification provision that was cited would entitle Mr. Daugherty to these fees. Section 4.1(h) of the partnership agreement would be that indemnification provision.

Moreover, the deviation from the *American* Rule, if that indemnification provision does not apply, is a big hurdle to

achieve. It's very deeply rooted in our law that if you don't have a contract provision and you don't have a statute that entitles you to attorneys' fees, it's quite a high hurdle to get there, whether it be Rule 11, the vexatious litigation statute, or some common law argument of bad faith.

So, again, looking through the lens I'm looking through today, I just cannot get there under 3018.

So, doing my math, I'll go backwards. I've just said that I can't there on $7,854,750.31 of Mr. Daugherty's $40-plus million claim. I've said I can't get there on $21 million of his $40.7 million proof of claim because of the HERA, the 81 percent interest in the HERA units. So what else in that chart gives me pause? The tax refund, the 2008 tax refund component. We have $1,475,816 plus estimated interest on that of $1.174537 [million]. It's very clear that at this point this is, at best, contingent. And again, down the road we may get to a point where it's not contingent, the IRS has finished doing what it's going to do, and we may get to a point where we think a result is appropriate. I don't know. There may be, even if we get there, a subordination argument. The point is, there are *bona fide* arguments today that do not allow me to get to the point I feel like I need to get at an estimation hearing to allow this claim, these components of the claim.

So when you subtract $7.854 million and $1.475 million and $1.174 million and $21 million, that's about $32 million that

I would -- I was thinking about, before I even heard the evidence, deducting out of the claim that I would estimate for voting purposes.

That, I will tell you, is why I came out here at the very beginning today and said, Jeez, the Debtors' suggested voting claim of $9,134,019, which the Debtor came at a different way as far as the math, that sounded darn reasonable to me.

So I am going to allow a voting claim for Mr. Daugherty at $9,134,019.

Now, let me say a couple of more words why I fall back on that number. A, it's pretty close to the direction I was leaning, but B, I want Mr. Daugherty, if he's still on the line, to understand. I hope it doesn't seem like I'm giving Highland every benefit of the doubt here today and reducing your claim by every argument they made and just going at it that way. I do feel like I am obviously giving you some benefits of the doubt here. Primarily, the benefits of the doubt I'm giving you are, number one, the HERA judgment was obviously a HERA judgment. I mean, it was a judgment awarded to Mr. Daugherty against HERA, not Highland per se, right? I didn't misunderstand that. So I am assuming you have got darn good arguments, Mr. Daugherty, to hold Highland liable for that HERA award, plus the pre-judgment and post-judgment interest, up to the bankruptcy petition date of October 16th, 2019.

So I'm giving you the benefit of the doubt there, and on -- well, I do want to make one more point on the attorneys' fees. Again, that was a huge component of your proof of claim. And I certainly well understand the bad faith arguments and your many ways you think you will have of getting attorneys' fees at the end of the day. But I'm sitting here today looking at the fact that the Texas state court actually awarded Highland attorneys' fees against you. Now, I understand, or I think I understand, that was somewhat of a discrete issue with regard to the breach of fiduciary duty arguments in sharing information or taking files or information. And you might argue, well, that was very discrete, and obviously you paid it. But all this to say there are lots of a *bona fide* disputes here, I think. And again, the rule doesn't use that term, *bona fide* disputes, but, again, I have lots of discretion here, and I think, at the end of the day, a roughly $9 million voting claim is very reasonable.

I know the point I ended up making. I've also given you the benefit of the doubt, Mr. Daugherty, on the roughly $5 million claim I'm giving you for the 19 percent of the HERA assets. And I understand there were things about the Texas state court judgment that left that a little ambiguous, whether you could get that or whether that would be double-counting. But again, I just, I want you to know that I

haven't weighed every benefit of the doubt in favor of Highland here. I've weighed a couple of these doubts in your favor.

All right. So, $9,134,019 is the voting claim of Mr. Daugherty. Again, this is without prejudice or waiver of any arguments at a later trial on the claim for distribution purposes.

Are there any questions?

MR. DAUGHERTY: Just, you asked if I was on. I just wanted to let you know I got back on. I took my (inaudible). But I heard every word and I appreciate your comments.

THE COURT: All right. Thank you, Mr. Daugherty.

Mr. Morris, would you be the scrivener on this order? And of course, run it by Mr. Uebler and Kathman.

MR. MORRIS: Of course, Your Honor.

MR. KATHMAN: Your Honor? Your Honor, this is Jason Kathman. We have just one housekeeping issue. We had filed, when we filed our motion to -- this 3018 motion at Docket No. 1280, actually, we filed a motion for leave to amend our proof of claim, which is the -- actually, the chart that I think Your Honor was looking at was the chart that we attached to our amended proof of claim. We filed that with negative notice, and that negative notice actually ran yesterday. So we'll upload a certificate of no objection. But just, while we're here on the record, I wanted to ask for the Court to

approve that motion for leave to file an amended proof of claim.

THE COURT: Okay. So I neglected to note that detail. I was of the impression it wasn't contested, and in fact, the objection deadline has run. So I will accept your order on that. Okay?

MR. KATHMAN: Thank you, Your Honor.

THE COURT: All right. Thank you all. We stand adjourned.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 3:59 p.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling **11/18/2020**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	June 25, 2025
	9:30 a.m. Docket
Reorganized Debtor.	
	- MOTION TO EXTEND DURATION OF TRUSTS (4213)
	- MOTION TO APPROVE SETTLEMENT (4216)

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

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25-03055

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

DALLAS, TEXAS - JUNE 25, 2025 - 9:38 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated.

MR. LANG: Good morning, Judge.

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

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

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

THE COURT: Okay. Good morning. Other appearances?

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

THE COURT: Good morning.

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

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

THE COURT: Good morning.

MS. DEITSCH-PEREZ: Good morning.

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

THE COURT: Good morning.

MR. LANG: Good morning.

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

THE COURT: Good morning.

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

THE COURT: Good morning. Ms. Schmidt?

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

THE COURT: Good morning.

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

THE COURT: Good morning.

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

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

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

THE COURT: Okay.

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

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

THE COURT: Okay.

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

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

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

THE COURT: Okay.

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

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

MR. MORRIS: Uh-huh.

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

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

THE COURT: Okay.

MR. MORRIS: It's that simple.

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

MR. MORRIS: Yeah.

THE COURT: Okay.

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

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

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

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

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

THE COURT: It does.

MS. DEITSCH-PEREZ: Okay.

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

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

MR. MORRIS: Sure.

THE COURT: So I was --

MR. MORRIS: So let me clarify.

THE COURT: Okay.

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

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

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

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

THE COURT: Okay. Gotcha.

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

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

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

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

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

THE COURT: All right. Could you repeat the numbers

once again?

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

THE COURT: Okay.

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

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

All right. They are admitted.

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

JAMES P. SEERY, JR., PROFFER OF TESTIMONY

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

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

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

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

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

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

of.

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

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

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

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

not be monetized by the end of this extension period.

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

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

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

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

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

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

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

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

THE COURT: I have a couple of questions.

MR. MORRIS: Sure.

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

MR. MORRIS: Great.

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

MR. MORRIS: Sure.

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

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

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

THE COURT: Okay. Thank you.

All right. My question is probably for you.

THE WITNESS: Uh-huh.

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

MR. MORRIS: Equity interest.

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

MR. MORRIS: That is correct.

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

THE WITNESS: That's correct, Your Honor.

THE COURT: Okay. Thank you.

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

MR. MORRIS: Uh-huh.

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

MR. MORRIS: Yes, Your Honor.

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

MR. MORRIS: Precisely.

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

MR. MORRIS: Yes, Your Honor.

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

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

THE COURT: Ah.

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

THE COURT: Okay.

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

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

MR. MORRIS: Precisely.

THE COURT: So that would go away.

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

MR. MORRIS: Yeah.

THE COURT: So, --

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

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

(Counsel confer.)

MR. MORRIS: Go ahead, Your Honor.

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

MR. MORRIS: Appeal.

THE COURT: -- appeal.

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

we're just waiting for a decision.

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

MR. MORRIS: Uh-huh.

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

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

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

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

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

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

THE COURT: Appeal.

MR. MORRIS: My hope is that --

THE COURT: It's an appeal of --

MR. MORRIS: Yes.

THE COURT: Okay.

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

THE COURT: Okay.

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

THE COURT: Okay. So those potentially three things?

MR. MORRIS: Yeah.

THE COURT: Plus the Daugherty matter?

MR. MORRIS: Yeah.

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

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

THE COURT: Okay.

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

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

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

MR. MORRIS: Yeah.

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

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

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

THE COURT: Okay. All right.

Anyone wish to say anything about this motion to extend?

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

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

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

the 9019 motion?

THE COURT: You may.

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

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

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

MR. CURRY: We had just finished.

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

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

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

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

THE COURT: All right. You may.

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

THE COURT: Okay. All right.

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

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

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

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

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

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

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

actually get it resolved.

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

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

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

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

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

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

MR. PHILLIPS: Correct.

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

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

MR. PHILIPS: Yes.

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

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

THE COURT: Okay. All right.

MR. PHILLIPS: Yeah.

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

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

MR. PHILLIPS: Correct.

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

MR. PHILLIPS: Yes, Your Honor.

THE COURT: -- Charitable DAF.

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

universe, Your Honor.

THE COURT: The universe? Okay.

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

THE COURT: Okay.

MR. PHILLIPS: But in the universe.

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

MR. PHILLIPS: Correct.

THE COURT: -- the Reorganized Debtor, --

MR. PHILLIPS: Correct.

THE COURT: -- Claimant Trust, Subtrust.

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

THE COURT: All right.

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

THE COURT: Okay. Thank you.

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

THE COURT: Okay. For what that is worth.

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

THE COURT: All right. I appreciate that.

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

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

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

THE COURT: -- the objection.

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

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

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

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

MR. PHILLIPS: We object.

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

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

that we --

THE COURT: Coming from someone --

MR. PHILLIPS: It looks like a letter --

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

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

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

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

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

MR. LANG: Yes.

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

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

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

MR. PHILLIPS: Your Honor?

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

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

MR. LANG: Thank you.

THE COURT: Thank you.

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

THE COURT: Okay. Thank you.

MR. CURRY: Thank you, Your Honor.

THE COURT: Anyone else wish to weigh in?

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

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

MR. MORRIS: And the Dugaboy, yes.

THE COURT: And Dugaboy, of course.

MR. MORRIS: That's right.

THE COURT: Okay.

MR. MORRIS: So, --

THE COURT: So how did you want to proceed?

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

THE COURT: Okay.

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

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

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

MR. MORRIS: Uh-huh.

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

Foundation.

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

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

MR. YORK: There was no objection.

THE COURT: All right.

MR. MORRIS: All right. May I proceed?

THE COURT: You may proceed.

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

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

(Pause.)

THE COURT: You may proceed.

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

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

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

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

(Counsel confer.)

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

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

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

MR. MORRIS: You go ahead and do that.

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

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

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

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

THE COURT: So, --

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

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

MR. LANG: He was not.

THE COURT: Okay. So how would you address that? Again, we've had, I know, some back and forth over who was

going to represent Dugaboy on this matter.

MR. LANG: Yes.

THE COURT: I remember the substitutions and whatnot. But --

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

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

MR. LANG: Well, the issue had --

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

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

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

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

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

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

THE COURT: All right.

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

THE COURT: Uh-huh.

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

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

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

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

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

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

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

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

THE COURT: Okay. Let me --

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

THE COURT: Thirty second.

MR. MORRIS: Really quickly.

THE COURT: Uh-huh.

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

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

THE COURT: Okay.

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

someone tried to introduce it as evidence.

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

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

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

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

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

MR. PHILLIPS: Yes, Your Honor.

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

MR. MORRIS: Your Honor?

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

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

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

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

THE COURT: Oh.

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

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

Highland?

MR. PHILLIPS: Your Honor?

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

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

THE COURT: Which they've stipulated.

MR. PHILLIPS: Which they've stipulated to.

THE COURT: Uh-huh.

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

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

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

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

A VOICE: That was long ago.

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

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

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

MR. MORRIS: Correct.

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

MR. MORRIS: Okay.

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

(Pause.)

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

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

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

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

MR. YORK: That's fine.

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

timing you like you're on the clock.

MR. MORRIS: Okay.

THE COURT: Okay?

MR. MORRIS: May I proceed?

THE COURT: You may proceed.

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

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

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

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

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

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

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

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

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

THE COURT: Yes, go ahead and address it.

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

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

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

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

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

MR. LANG: 57.

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

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

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

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

MR. LANG: To 57?

MR. MORRIS: Yeah.

MR. LANG: Mine did not.

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

THE COURT: Okay.

MR. MORRIS: Okay.

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

MR. LANG: Oh, sorry.

THE COURT: That was the first one.

MR. LANG: Yeah.

MR. MORRIS: We'll withdraw #10.

THE COURT: All right.

MR. MORRIS: Okay.

THE COURT: So, 59?

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

MR. LANG: We withdrew that.

MR. MORRIS: Oh, you withdrew that?

MR. LANG: Withdrew.

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

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

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

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

THE COURT: Uh-huh.

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

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

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

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

MR. LANG: Okay.

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

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

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

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

MR. LANG: Yes.

MR. MORRIS: No objection.

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

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

THE COURT: And Daugherty's exhibits?

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

THE COURT: All right.

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

THE COURT: All right. So you confirm?

MR. MORRIS: Yes, Your Honor.

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

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

THE COURT: All right. Opening statements.

OPENING STATEMENT ON BEHALF OF THE CLAIMANT TRUST

MR. MORRIS: All right. Good morning, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for Highland Capital Management, LP and the Highland Claimant Trust.

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

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

MR. MORRIS: Counsel have a hard copy.

THE COURT: Oh, okay.

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

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

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

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

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

burden to carry the day here.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

(Pause.)

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

THE COURT: Okay.

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

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

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

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

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

Is that clear to Your Honor?

THE COURT: It is.

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

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

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

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

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

It continues by saying that the Administrator, Mr.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: And --

MR. MORRIS: Uh-huh?

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

MR. MORRIS: That's all right.

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

MR. MORRIS: UBS.

THE COURT: -- claim?

MR. MORRIS: Exactly right.

THE COURT: Okay.

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

THE COURT: Okay.

MR. MORRIS: Because they had purchased --

THE COURT: They had Class 9 --

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

MR. MORRIS: Yeah.

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

OPENING STATEMENT ON BEHALF OF THE HUNTER MOUNTAIN ENTITIES

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

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

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

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

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

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

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

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

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

OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

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

THE COURT: You may.

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

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

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

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

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

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

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

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

And so Highland cannot come into this courtroom and on the

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

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

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

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

MR. YORK: The --

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

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

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

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

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

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

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

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

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

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

THE COURT: Wait. Wait. What?

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

THE COURT: Mr. Highland?

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

THE COURT: Uh-huh.

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

THE COURT: Uh-huh.

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

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

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

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

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

MR. YORK: I understand, Your Honor.

THE COURT: So, --

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

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

MR. YORK: I presume that --

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

MR. YORK: And --

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

out theoretically in those interim distributions.

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

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

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

part of Mr. Daugherty's Class 8 claim.

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

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

MR. YORK: Sure.

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

MR. YORK: With respect to his --

THE COURT: -- on his Class 9 claim.

MR. YORK: Correct.

THE COURT: Is that not true?

MR. YORK: So, the day --

THE COURT: Is that true?

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

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

MR. YORK: Yes. Sure.

THE COURT: Has he been paid?

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

after the proposed settlement was filed.

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

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

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

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

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

MR. DAUGHERTY: That's not true.

THE COURT: $1.7 million?

MR. DAUGHERTY: No.

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

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

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

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

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

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

THE COURT: Well, what --

MR. YORK: Yes.

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

MR. YORK: Sure.

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

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

MR. MORRIS: Not that much, Your Honor.

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

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

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

MR. YORK: Happy to do so. Sure.

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

MR. YORK: Correct. We indicated that --

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

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

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

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

MR. YORK: Sure. Happy to.

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

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

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

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

So, that's all I have.

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

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

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

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

MR. YORK: Sure.

THE COURT: -- a contingent unliquidated claim.

MR. YORK: I understand.

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

MR. YORK: Thank you.

THE COURT: And Mr. Lang?

OPENING STATEMENT ON BEHALF OF THE DUGABOY INVESTMENT TRUST

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

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

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

Does that make sense?

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

MR. LANG: On the petition date.

THE COURT: -- on the petition date?

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

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

MR. LANG: Yes.

THE COURT: Okay.

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

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

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

THE COURT: It was in several pleadings.

MR. LANG: Okay. Yeah.

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

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

THE COURT: Uh-huh.

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

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

MR. LANG: Yes.

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

note that is addressed in the settlement.

MR. LANG: Yes.

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

MR. LANG: That was --

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

MR. LANG: Seventeen-ish.

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

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

MR. LANG: Yes.

THE COURT: Okay.

MR. LANG: I believe so.

THE COURT: Okay. Thank you.

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

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

THE COURT: Okay.

MR. MORRIS: Or by lunch, for sure.

THE COURT: It's 11:30.

MR. MORRIS: Yeah.

THE COURT: So, all right.

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

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

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

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

MR. SEERY: Thank you, Your Honor.

JAMES SEERY, CLAIMANT TRUST'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery.

A Good morning.
Q Do you have three binders in front of you?
A I have four binders in front of me.
Q Okay. I just want to make sure you have ours.
A I think -- yes, sir.
Q The fourth has the last few exhibits that we filed on the docket.

Should we wait for Mr. Edmond?

THE WITNESS: That would be good.

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

(Pause.)

THE COURT: All right.

THE WITNESS: Apologies, Your Honor.

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

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

MR. MORRIS: May I proceed, Your Honor.

THE COURT: You may.

MR. MORRIS: All right.

BY MR. MORRIS:
Q Are you comfortable, Mr. Seery?
A Yes.

Q I want to actually start a little unscripted with the argument that was just made on behalf of Mr. Daugherty. Did you listen to that?
A I did, Your Honor. Yes, I did. I'll speak to Your Honor. Yes, I did, Your Honor.
Q Did Mr. Daugherty have a Class 9 claim?
A He did have a Class 9 claim.
Q And what was the value of the Class 9 interest that he held?
A It was approximately $3.7 million.
Q And who are the other Class 9 claim holders?
A There are three -- I'm sorry, there are four other Class 9 holders. There is Muck Holdings, LLC. There is Jessup Holdings, LLC. There is UBS AG. And there's UBS Securities, LLC.
Q Okay. And if you can turn to Exhibit 58, which is in Volume 1.
A VOICE: Mr. Morris, what was the exhibit number?
MR. MORRIS: It's 58.
A VOICE: Thank you.
MR. MORRIS: You're welcome.
BY MR. MORRIS:
Q Do you have that in front of you, sir?
A Yes.
Q What is that?

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

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

A That's approximately correct, yes.

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

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

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

A Yes. The distributions were pro rata.

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

A No, he did not.

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

A No, he did not.

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

A Yes, I did.

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

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

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

pursuant to the plan to put HCLOM in there.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A Yes.

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

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

--
Q Yeah.
A -- I have looked through them before, and this is the information back and forth. We generally exchanged, other than at the face-to-face meeting, we exchanged information on Zoom calls as well, but when we get documents we gave them counsel-to-counsel.
Q Okay. And did you instruct me to produce all of the communications with the HMIT side in connection with the discovery requests that were served in this case?
A Yes. We had discovery requests that we went through in detail and reviewed them, and we produced in accordance with those requests.
Q Are you aware of any document that we didn't produce that reflects the parties' negotiations of this agreement?
A No, not at all.
Q Can you describe for the Court the general deal points that were negotiated? Withdrawn. Who was your counterparty to these negotiations?
A The principal on the HMIT side is Mr. Mark Patrick. He had his team. And I was responsible on our side with my team.
Q And can you just describe for the Court what the primary negotiating points were between the two teams?
A Yeah. Number one for us was dismissal of outstanding litigations. So we needed, with prejudice, dismissal of those

litigations. Otherwise, why are we bothering?

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

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

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

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

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

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

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

A The topic of the allowed --

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

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

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

A Yes.

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

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

I think the partnership agreement talks about 99-1/2 percent for HMIT. It doesn't talk about dollars because that's kept in the accounting for the partnership. And that amount was consistently kept by Highland up to the petition date. And even after the petition date in the monthly operating reports.
Q If you take a look back at the exhibit list, I would direct your attention to Page 12 of 15. Actually, it starts at the Page 11. At the bottom, it's got the heading, Capital Account Amounts. Are you familiar with Exhibits 113 through 118? And if you need to look at the exhibits, take your time.
A Oh, I'm sorry. I thought you told me 15.
Q No. One -- I did. I mentioned Page 15. But we're just looking at Exhibits 113 to 118.

THE COURT: 113 to what?

MR. MORRIS: 18.

THE COURT: Okay.

THE WITNESS: Um, --

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

THE COURT: Right.

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

THE WITNESS: Yes.

BY MR. MORRIS:

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

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

Q Yeah. That's 115?

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

Q And is that Exhibit 116?

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

Q Okay.
A So it sets out the K-1. The numbers that we have are slightly different because they're in the -- they're not middle of the year, but they're for the petition date of 10/16/19. And there are -- there's economic activity that happens during the year, that you take the year-end from '18 and you have economic activity that would affect, pursuant to the partnership, the capital account of each partner during that year, fixed it on the petition date, and then it's been forward since.
Q Did you apply any of your own subjective views or beliefs in the calculation of the amount of the Class 10 interest held by HMIT?
A No. This was math.
Q And did you hear Dugaboy's counsel suggest in the opening that there was a different methodology that perhaps you could have used, a pro rata methodology, instead of the methodology you used?
A I heard what he said, but it doesn't make any sense. You can't fix an amount that way.
Q And do you understand that Dugaboy, under the partnership agreement, is subordinated to HMIT?
A Dugaboy is subordinated under the partnership agreement for certain distributions. But importantly for our purposes, they're subordinated under the plan. So the Class 11

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

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

A I -- I don't recall.

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

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

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

A Yes.

Q What did you do to satisfy yourself?

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

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

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

Q If you just look at the exhibit list.
A Oh.
Q It's at the front. You'll see on Page 8 of 15 of the exhibit list there's a heading, --
A Yes.
Q -- E, Patrick Authority, and then I'm asking you if you are aware of what Exhibits 70 through 104 are?
A Yes. So, these, these are -- there's a number of organizational documents that we looked and made sure that Mr. Patrick had authority.

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

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

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

the Cayman Islands?
A I hesitate to say generally aware. I'm aware that there's a proceeding in the Cayman Islands about involving a blocker corp. And there's disclosure in this Court about what that entity is. It's a blocker corp. in the Caymans that prevents the ultimate charitable entities -- and I put that in quotes -- to -- from receiving UBTI, which is Unrelated Business Income. And in that case, they would have to pay tax on it, and the idea is that they don't want to pay taxes and they don't pay taxes. So that corp. apparently is in some sort of proceeding. That's on the DAF side. That is not on the HMIT side.
Q Okay. So, based on the work that you did and the documents that you reviewed, did you form a view as to whether or not Mr. Patrick is authorized to enter into the settlement agreement on behalf of each of the HMIT entities?
A Yes.
Q And what view did you reach?
A He has complete authority over each of these entities. They run up to entities that he controls or he owns. And he's had that, and it's the structure that was set up a long time ago, and any changes to that structure are just consistent with the documents that let him do these things. And the proceeding in Cayman, whatever that is, has no impact on Mr. Patrick's authority over these entities or any of the entities

in this chain.

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

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

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

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

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

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

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

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

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

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

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

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

A Yes.

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

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

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

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

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

A Yes.

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

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

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

A That's correct.
Q Okay. Let's finish up here. Are you familiar with the objections of Dugaboy and Mr. Daugherty that the settlement somehow violates the plan because it's making distributions to Class 10 before junior classes are paid in full?
A Yes. I'm familiar with those.
Q Do you believe the settlement violates the plan?
A Not at all.
Q And why is that?
A The plan specifically contemplates that -- I don't think it's -- we showed the 9 and 10s, but I think it's any claimant could take less than is being offered by the plan. What we did very specifically is go to the Class 9 claimants and discuss with them this opportunity to settle with HMIT and what it would take, which included some, as I described earlier, payments upfront.
After being fully informed -- they asked a lot of questions, they pushed back quite a bit, as you can expect that they would -- and we reached agreement with those Class 9 claimants in writing to approve the structure of the deal and the settlement and the concurrent payments, as well as the final small payment to Mr. Daugherty on behalf of his Class 9 claim.
Q Could I trouble you to turn to Exhibit 59, please, Mr. Seery?

A I've got it.
Q Are you familiar with that document?
A I am, yes.
Q Can you explain to the Court what that document is?
A This document is the written consent that we entered into with the Class 9 claimants, approving the settlement agreement as well as the payment to Mr. Daugherty.
Q Okay.
A And -- and -- so these -- the payment to Mr. Daugherty would have been non-pro rata, so they agreed to that. And the concurrent payments under the settlement agreement to Class 10 were agreed to by the Class 9 claim holders.
Q So looking at Page 2 at the top, do I have this right, that Mr. Daugherty's original Class 9 subordinated claim was in the amount of $3.75 million, and that with the payment described in this document his claim was paid in full?
A That's correct, yes.
Q And did he complain that he was getting paid in full but the other Class 9 holders were not?
A No. That had never been his complaint.
Q Did he complain that he was getting paid in full on his Class 9 claim but his Class 8 claim remained unresolved?
A No. I think that, as indicated before in my testimony and indicated here, this was the last payment, the 781. Before that, he'd received almost $3 million on account of his Class

9 claim. And pro rata with the other Class 9 claimants.
Q I think you mentioned that your understanding is that, under the plan, creditors can elect to receive less favorable treatment than the plan otherwise provides. Is that right?
A That's correct. And I think that's a pretty standard provision in virtually every plan that I see.
Q Can we just grab that for a second? It's the last exhibit, 126, which is probably in the skinny binder, if you have one.
A Yes. Do you want me to go to the section?
Q Yeah. Just one minute. I want to make sure the judge is with us. Give her a second.
MR. MORRIS: Are you with us, Your Honor?
THE COURT: Yes.
MR. MORRIS: Okay.
BY MR. MORRIS:
Q So if you can turn to Page 23 of Exhibit 126. Does Section 9, under Treatment, Romanette (ii), is that the provision that you were just describing that gives Class 9 holders the ability to receive such other less-favorable treatment as to which such holder and the Claimant Trust may agree upon in writing?
A That's correct.
Q And the same is true with respect to the Class 10 claims, at the top of Page 24?

A That's also correct, yes.
Q All right. And so was the consent that was executed by the Class 9 holders that's Exhibit 59 done in satisfaction of these plan provisions?
A I'd say it's consistent with these. They could elect to receive it or not, but this was, you know, did it under this provision and they were entitled to elect to take lesser treatment, if that's what they agree to.
Q Okay. Can you describe for the Court why you believe that the Class 9 claim holders are receiving less-favorable treatment under -- as a result of this settlement agreement than they would otherwise be entitled to under the plan?
A Well, they would be entitled to receive payments in front of any payments that would be made to Class 10. In addition, they would have been entitled to receive a pro rata distribution of the $800,000 that was paid to Mr. Daugherty, and they agreed to waive those provisions.
Q Okay. Is it your understanding that HMIT is also accepting less favorable treatment than it might otherwise receive if it pursued and succeeded in the prosecution of its claim?
A I suppose, ultimately, if everything was resolved, that they could have gotten a Class 10 interest that wasn't structured along the lines of the settlement agreement. So the settlement agreement takes some of that structure and what

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

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

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

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

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

Q Yeah. We can stop there.

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

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

THE WITNESS: Thirty minutes.

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

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

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

MR. YORK: Fifteen minutes, maybe.

MR. LANG: Twenty minutes or so.

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

MR. PHILLIPS: Sure.

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

MR. PHILLIPS: Perfect.

THE COURT: All right?

MR. PHILLIPS: Thank you, Your Honor.

THE WITNESS: Thank you.

THE CLERK: All rise.

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

THE CLERK: All rise.

THE COURT: Please be seated.

(Pause.)

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

(Pause.)

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

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

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. PHILLIPS:

Q Could you look at Exhibit 118, please?

A You said 118?

Q Yes, sir.

A Certainly.

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

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

THE COURT: Would you like this?

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

THE COURT: Okay.

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

BY MR. PHILLIPS:

Q Correct.

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

Q Thank you.

THE COURT: All right. That was one question.

All right. Counsel?

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

CROSS-EXAMINATION

BY MR. YORK:

Q Good afternoon, Mr. Seery.

A Good afternoon.

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

A Yes, I have it.

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

A It appears to be, yes.

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

starts on Page #11?
A Yes.
Q And that relates to a reserved claim that Mr. Daugherty had as part of his proof of claim against Highland in the bankruptcy, correct?
A That's correct.
Q And would you agree with me that the second line of Section 9 there of the settlement agreement describes that claim as a contingent unliquidated claim against the Debtor?
A I would not agree with you on that, no.
Q Why not?
A Because it says, Daugherty contends --
Q Ah. Daugherty contends.
A -- he has a contingent unliquidated claim against the Debtor.
Q Okay. Well, why don't you then turn with me to Daugherty Exhibit #2, which is the -- which is the -- Highland's adversary complaint that was filed against Mr. Daugherty on I believe May 2nd of 2025. Correct?
A I don't recall the specific date and it's blurred at the top. So if you say so, I'll accept that.
Q All right. And if you look at Paragraph 1, the third line, there's a sentence there that says, All of Mr. Daugherty's claims were settled except his unliquidated contingent claim that the Debtor has a continuing and

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

Did I read that correctly?

A You did read that correctly, yes.

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

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

Q All right.

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

THE WITNESS: I'm sorry, Your Honor.

THE COURT: Okay. Good.

MR. YORK: All right.

BY MR. YORK:

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

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

Q Right.
A So it is not in a class now at all. We seek to disallow it in its entirety, or, at worst, subordinate it to all creditor claims.
Q Understood. But it has been asserted as a Class 8 general unsecured claim, right?
A He asserted it as that, yes.
Q Okay. And is it fair to say that in the adversary complaint, if you go to Page -- I'm sorry, Paragraph 4 -- Highland alleges that: However, even if Mr. Daugherty's claim is not disallowed in its entire -- I think that should be entirety. Right?
A It should be, yes.
Q It remains contingent on the outcome of the 2008 audit. Correct? Did I read that correctly?
A You did read that correctly, yes.
Q And the next sentence says, It is unclear when, how, or if the 2008 audit will finally be resolved. Correct?
A Correct.
Q And in fact, if you go to, then, Page #7 of the complaint and you look at Footnote 6, at the very end of that footnote it indicates that Highland has an understanding that the resolution may not be expected until approximately 2029. Is that correct?
A The litig... I can't read it because it's small, but the

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

Q How do you know that?

A I was advised that by another partner.

Q Who?

A Kurt Plumer.

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

A No, I have not.

Q Have you asked for it?

A Yes.

Q You did, personally?

A My lawyers did.

Q Your lawyers did?

A Yes.

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

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

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

A Asked Mr. Daugherty.

Q Asked Mr. --

A I think asked you, I'm sorry.

Q Oh, asked me for that information?

A Yes.

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

you know if Mr. Daugherty has received the FPAA?
A I don't know.
Q Okay. Do you know if anybody else has received an FPAA?
A I was told there was a final determination. I don't know if they've actually received an FPAA. But I do know that Mr. Daugherty has produced a document where the IRS has requested additional information for him. Since they hadn't done that for 17 years, I suspect that they've reached a final determination of the audit.
Q All right. So you don't know whether an FPAA has actually been issued?
A I --
Q True?
A I don't know. And for the Court's benefit, that's a Final Partnership something Determination.
Q Okay. What -- where --
THE COURT: F-A --
THE WITNESS: F-P-P -- I think it's --
MR. YORK: F-P-A-A.
THE WITNESS: -- F-P-A-A.
THE COURT: Okay. The court reporter will no doubt ask, so good.
BY MR. YORK:
Q Tell me, where in the universe is it that -- is it Mr. Daugherty's obligation to provide Highland with the FPAA?

A I don't -- I don't think there's any such obligation that I've seen.
Q And in fact, the IRS audit is handled by the tax matters partner for Highland Capital, correct?
A The IRS audit for Highland Capital's -- from Highland Capital's position is handled by that. The IRS handles their side.
Q Right. From Highland's side. Okay. And that tax matters partner is doing that on behalf of Highland Capital, right?
A I think at this point it's doing it on behalf of the old Highland Capital, not Reorg Highland Capital. We don't have any liability with respect to it, nor do we have any visibility as to what's going on in the tax audit.
Q So even though, under the partnership agreement, that's the tax matters partner that's referred to, Highland Capital cannot compel that tax matters partner to provide that information to them, if an FPAA actually exists?
A I don't think so. That partnership agreement is the pre-effective date partnership agreement.
Q All right.
A The new Highland Reorg Debtor doesn't have these partners and is not a tax matter partner for those -- those audits.
Q So let's go back, then, to Paragraph 4 of the adversary complaint that was filed. And I want to look at the next sentence that Highland wrote there. It says: Moreover, if

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

Did I read that correctly?

A You read that correctly.

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

A Yes.

Q How much?

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

Q Which would be how much?

A It would be approximately $2.2 million in aggregate.

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

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

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

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

A It simply --

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

THE WITNESS: It simply didn't do that.

MR. MORRIS: Yeah.

THE COURT: Okay. Overruled.

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

BY MR. YORK:

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

A That's correct.

Q Why not?

A Because I didn't want to.

Q Why?
A Because Mr. Daugherty is an extremely difficult person to deal with. The last time I dealt with Mr. Daugherty on the phone with respect to anything, I had extreme difficulty and got sucked into a stalking lawsuit that I had to testify to that is a complete mess that I want nothing to do with. So originally my counsel said, have no communication with him. But with respect to this, we were objecting to his claim. We knew he would try to hold this up. You have tried to do that and demanded $20 million. So that's why we didn't reach out to you. We just paid the 9 and we have a fully-reserved amount on the 8.
Q You thought that the stalking case that you were pulled into was completely fabricated, didn't you?
A I thought that at the time. I'm not as sure anymore.
Q Oh, really?
A Yeah.
Q Okay. And you actually also told Mr. Daugherty that Mr. Ellington, who brought that case, was a complete liar and POS, right?
A I don't know if I used POS, but I do not think Mr. Ellington is an honest person.
MR. MORRIS: Your Honor, at some point I'm going to on relevance grounds. I think we've got a settlement agreement before the Court that we're trying to get approved

today, not to take discovery on any other matters.

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

MR. YORK: Understood.

THE COURT: -- reign it in.

MR. YORK: All right.

BY MR. YORK:

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

A Not necessarily, no.

Q Why not?

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

Q Yes.

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

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

A Yes. The Indemnity Trust would make those distributions

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

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

A Yes.

Q On an interim basis?

A Yes.

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

A That's correct.

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

A Now I am.

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

applicable interest, --

Did I read all that correctly?

A Yes.

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

A Yes.

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

A That's correct.

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

A Yes.

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

A Generally, yes.

Q All right. And you'd agree with me that, in the -- about four lines down, it says: The Claimant Trustee shall allocate to each holder of allowed Class 10-B and 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 Class 11 or -- Class 10 or Class 11 interest, excuse me, as applicable

under the plan.

Did I read all of that correctly?

A I believe you did, yes.

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

A That's correct, yes.

Q All right. And then the next sentence goes on to say: The contingent trust interest shall not vest and the equity holder 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 postpetition interest consistent with the plan and all disputed claims have been resolved. The GUC Payment Certification.

Did I read that correctly?

A You did, except you used the article "The" before "contingent trust interest" at the start of the sentence.

Q Fair enough. And the GUC beneficiaries there would be the general unsecured creditor beneficiaries, correct?

A That's correct.

Q And this certification has not been issued yet by the Claimant Trustee in this bankruptcy, correct?

A That's correct.

Q In part because of Mr. Daugherty's remaining unresolved Class 8 claim, correct?
A In part, yes.
Q And also in part because of the remaining Class 9 claimant holders who still have money owed to them on their Class 9 claims?
A In part, yes.
Q Okay. Does the term of the proposed settlement agreement provide those Class 9 consent holders with releases from the HMIT entities?
A No.
Q It does not?
A No.
Q At all?
A No.
Q Even if they were in their capacity serving as board members for Highland Capital?
A Certain of the Class 9 holders are also on the Oversight Board. In their capacity as Oversight Board members, yes, they get -- they get broad releases. UBS, for example, is not. There are no releases in there for the two UBS entities.
Q Would you now -- you can set that binder aside. And if you'd turn with me to Exhibit 60 in the -- Highland's exhibit list.
A Six zero?

Q Yes, sir.
A Yes.
Q This is a copy of the tolling agreement extending objection deadline between -- that's on -- dated July 27th of 2022 between Mr. Daugherty and Highland Capital Management, LP and Highland Claimant Trust. Correct?
A Yes. That's what it appears to be, yes.
Q All right. If you would, go with me to Page 2 at the bottom. There is a Footnote #3. Do you see that?
A Yes.
Q And that footnote relates to, up above, a defined term called a "Reserved Claim," the Reserved Claim being what was discussed earlier in Mr. Daugherty's settlement agreement with Highland, right?
A That's correct, yes.
Q And it states in here that that Reserved Claim means "the contingent and unliquidated claim as referenced in Proof of Claim #205."
Did I read that portion of the footnote correctly?
A Yes.
Q All right. And it goes further to say that the amount listed there of 2.65 million three hundred -- two point six -- let me start ever. $2,650,353 is the amount estimated as of October 23, 2020. Correct?
A That's correct.

Q All right. It doesn't say it's -- anywhere in there that it's a fully -- it fully reserves that unliquidated contingent claim. Correct?

A In what you just read, no.

Q All right. And if you go to Page 1 -- or, I'm sorry, to Page 3, Paragraph 1, the covenant to reserve where Highland agrees to reserve $2,650,353 on account of the reserved claim, does it say anywhere in there that that is -- fully reserves that contingent unliquidated claim anywhere?

A It says exactly what it says. And you read it.

Q That's not my question. Does it say --

A I don't -- well, it says, Further agree to reserve $2.650 [million] on account of the reserved claim in disputed claim reserve.

Q All right. Does it say anywhere in there that that is the fully-reserved amount of that claim?

A Not in that sentence, no.

Q Thank you. All right.

MR. YORK: Your Honor, give me one second. Let me confer.

THE COURT: Okay.

(Pause.)

BY MR. YORK:

Q Mr. Seery, UBS is one of the consent holders, Class 9 consent holders related to the HMIT settlement. Correct?

A There are two UBS entities, UBS AG 66 and UBS Securities, LLC.
Q All right. Did either of those entities sit on the Unsecured Creditors' Committee in this bankruptcy?
A A UBS entity did. I'm not sure which of those did, or whether it was both with one counsel. I don't -- there's a UBS entity on that Creditors' Committee.
Q Is the -- are the members of the Unsecured Creditors' Committee within the definition of the Highland released parties under the proposed HMIT settlement? Do you know?
A I don't know. The members of the Creditors' Committee, I believe, have exculpation anyway, so I don't -- I don't -- I don't know if it captures the old members of the Creditors' Committee. I don't -- for example -- I don't think so. I don't -- I don't know.

MR. YORK: Pass the witness.

THE COURT: All right. Mr. Lang?

THE WITNESS: Do you have a separate binder?

MR. LANG: No.

THE WITNESS: Okay. Will you be using Mr. Daugherty's binder?

MR. LANG: No.

CROSS-EXAMINATION

BY MR. LANG:
Q All right, Mr. Seery. Just to be clear, the Class B and C

-- or the Class A interests and the -- of Highland under the plan, they have 99.5 percent of the -- Highland Capital Management. Correct?

A Could --

Q Sorry. The Class B and C --

A Limited partnership interest.

Q -- shareholder -- limited partnership interests were 99 point -- or, were .5 percent of Highland Capital Management?

A I -- I'm not trying to be difficult.

Q No, it's fine. It's a terrible -- terrible --

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

Q Okay. So, at the time of the petition, --

A Yes.

Q -- Hunter Mountain Investment Trust owned 99.5 percent of Highland Capital Management?

A It owned 99-1/2 percent of the limited partnership interest in Highland Capital Management.

Q And the remainder -- and HMIT has the Class 10 claims. Correct?

A You said something, the remainder? The --

Q Oh, sorry. The remaining interests are owned by the Class 11 claims under the plan.

A The remaining partnership interests are among those entities I testified earlier to, which are Dugaboy, Strand, --

Q And Okada?
A -- Mark Okada individually, and two Mark Okada and Pamela Okada trusts.
Q Okay. And the total assets in the estate right currently you testified are between $65 to $70 million?
A I -- off the top of my head, I don't recall, but it -- rough range, it could be in that general vicinity. That does not include the payments that have to be made to the 9s and expenses. So I believe there's documents in here that we could go through, if you like.
Q And I believe you testified that the remaining unpaid 9s are owed approximately $20 million?
A Approximately $20 million, yes.
Q Okay. And the plan does not say that the equity claims for Class 10 and 11 are to be determined by the capital account values of the limited partnership interests in the Debtor LP?
A That's correct. It says to set an amount. It doesn't tell you how to do the amount.
Q Okay. And under the settlement agreement, Class 10 interests will be allowed in the amount of $336,940,230.58?
A Approximately $336 million, yes.
Q $336 million. Fair. And this is the capital account balance as of -- HMIT's capital account balance as of the petition date, less, I believe, the HMIT note?

A That's correct. So that amount is the net amount.
Q The net? And do you know how the capital account balances were calculated --
A Yes.
Q -- on the petition date?
A Yes.
Q And how were they calculated?
A So, you take the 2018 year-end capital account amount, and then there's activity in the company that gets passed through through the partnership. The partnership agreement -- in this instance, the prepetition Debtor partnership agreement passed through profits and losses on a pro rata basis. There was activity in the first half of the year that affected that capital account. You can see that reflected in the year-end auditeds as well as the K-1 statement that -- for 2018 that was given to HMIT. That would be their 2018 year-end. That then, from an accounting perspective, was used and brought down to the petition date. And between the petition date and year-end 2019, there was additional capital activity, the biggest one of which was the reserve -- full reserve for the $50-plus million for the HMIT note. And so then you'll see the 2009 auditeds that are signed off by Mr. Waterhouse. And in those interim months, then you also see the gross amount of the partner capital each month in the monthly operating reports.

Q And correct me if I'm wrong, but I believe you testified that the capital account balances continued to go down after 2019. So you have the petition date, you have the next year, and did they continue to --

A I don't think I testified to that. What I testified to is that there was economic activity in 2019 that affected the year-end '18 to the petition date. And then from the petition date there was year-end activity -- there was activity from the petition date to year-end '19 that would affect the capital account as reflected in the 2018 auditeds -- they weren't auditeds -- 2018 tax returns signed off by Waterhouse. The biggest part of that activity was the application or the reserve for the Hunter Mountain Note.

Q And was there any activity after the 2019 tax return?

A There was postpetition activity in the partnership, certainly.

Q And did it reduce the capital accounts during those years?

A I assume it would have reduced all of the capital accounts pro rata.

Q Okay. And why'd you use the petition date as the date to determine the value of the capital accounts?

A Because this is bankruptcy and that's the date on which you fix all your claims and interests.

Q If you used -- have you ever used equity ownership percentages to determine the payment to the equity versus

their capital account balances?
A In this case, or elsewhere?
Q Elsewhere.
A I think that's standard. I can't cite you a specific thing, but typically when a partnership liquidates or a partnership is sold, amounts get distributed pursuant to the capital accounts and -- and -- in up to amounts in the capital accounts.
Q You would agree, if you use the percentage of ownership, being 99.5 percent for Class 10 and the .5 percent for Class 11, would potentially leave money for the Class 11 creditors to recover?
A I don't think so. No, I don't agree with that.
Q Why do you say that?
A Because Class 11 is subordinated to Class 10.
Q Okay. So explain how, if $60 million exists and you pay $20 million to the Class 9, --
A Roughly. Yeah.
Q Rough. Just rough math.
A Okay.
Q That leaves $40 million.
A Okay.
Q Correct? And if the ownership interests or the allowed claim for HMIT was 99.5 percent, wouldn't that leave .5 percent of $40 million for the remaining creditors?

A That doesn't make any sense, because 99-1/2 percent of a senior thing means you get everything. So that Class 10 has to be paid in full before the 11.

In addition, there's already an agreed-upon amount on HCLOM for $10 million. So how do I give HCLOM $10 million and 99-1/2 percent to somebody else? There has to be numbers.

Q But to be clear, the plan does not say that the equity claims are determined on capital accounts. Correct?

A That's correct.

Q All right.

MR. LANG: No further questions.

THE COURT: All right. Any redirect?

MR. MORRIS: Just one moment, Your Honor.

(Pause.)

MR. MORRIS: We have no questions, Your Honor.

THE COURT: All right. Any redirect from --

MR. PHILLIPS: No, Your Honor. Thank you.

THE COURT: -- the one question?

Okay. Thank you, Mr. Seery. You are excused from the witness box.

THE WITNESS: Thank you, Your Honor.

(The witness steps down.)

THE COURT: Okay. I'm going to again take proposals. I can live with a 30-minute lunch break. I and my staff can. But it's easier for us than all of you. So do you all want to

negotiate for more?

MR. MORRIS: I just wanted to let the Court know that, with that, the Movants rest. We're not -- we're not going to call anybody else.

THE COURT: Okay.

MR. MORRIS: We reserve the right to cross-examine. We reserve the right to call rebuttal witnesses, including Ms. Deitsch-Perez and Mr. Dondero, depending on what testimony is elicited. So we reserve the right to call rebuttal witnesses. But we're not calling anybody further on our direct case, and we rest.

THE COURT: Okay. So let me --

MR. MORRIS: I'll let them --

THE COURT: -- follow up on that point.

MR. MORRIS: Uh-huh.

THE COURT: There had been a discussion of Mr. Patrick.

MR. MORRIS: Uh-huh.

THE COURT: Limited to one total hour. Thirty minutes collectively, Debtor and HMIT. Thirty minutes collectively, Dugaboy and Daugherty.

MR. MORRIS: You know what, Your Honor.

THE COURT: You're -- you're not asking --

MR. MORRIS: No, maybe I -- I forgot that you had told us we could do it, too. So let's take the lunch break,

let us figure it out, we'll let you know when we come back.

THE COURT: Well, I'm clarifying because I'm deciding --

MR. MORRIS: Yeah.

THE COURT: -- who gets to go first.

MR. MORRIS: Understood.

THE COURT: Each witness.

MR. MORRIS: Understood.

THE COURT: And I presume --

MR. MORRIS: Understood.

THE COURT: -- the Debtor/HMIT would go first.

MR. MORRIS: Yeah.

THE COURT: And then with regard to Dondero, --

MR. MORRIS: Yeah.

THE COURT: -- you all would go first.

MR. MORRIS: So I withdraw what I said. Let us confer during the lunch break and we'll figure out who's going first, whether we do rest or whether we put Mr. Patrick on for a short direct.

THE COURT: Okay. Which leads me to our lunch break. Do people want to negotiate for more than 30 minutes? I don't want to make someone collapse if --

MR. MORRIS: Thirty minutes, or 1:30?

MR. PHILLIPS: 1:30.

MR. MORRIS: 1:30, Your Honor. It's nice and round.

MR. PHILLIPS: One clarification, Your Honor. Because I don't -- I don't -- if one side doesn't take the half hour, does that go over to the other side, or --

THE COURT: No.

MR. PHILLIPS: No?

THE COURT: I don't think -- I'm just giving --

MR. PHILLIPS: Great. Thank you.

THE COURT: And my law clerk said maybe I was confusing about that earlier today.

MR. MORRIS: Yeah.

THE COURT: One hour total, but 30 minutes each. And if one collective team doesn't use the whole 30 minutes, we're not --

MR. MORRIS: Yeah.

THE COURT: -- giving it to the other side. Okay?

MR. PHILLIPS: That was my question.

MR. MORRIS: Understood, Your Honor.

THE COURT: And while I'll let you all discuss whatever you want, what I envisioned is you all would go first with Mr. Patrick, --

MR. MORRIS: Uh-huh.

THE COURT: -- and then Dugaboy and Daugherty would go first on Mr. Dondero. But if you all collectively think it makes sense to do something different, I'll hear.

MR. MORRIS: No. That makes sense, Your Honor.

MR. PHILLIPS: Thank you, Your Honor.

THE COURT: All right. So we'll come back at 1:30 --

MR. YORK: Yes.

THE COURT: -- and resume.

MR. YORK: Thank you so much.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(A luncheon recess ensued from 12:51 p.m. until 1:33 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right. We're back on the record in the Highland Capital matter, the Rule 9019 motion for approval of a settlement. When we broke, we were waiting to talk about Mr. Patrick and Mr. Dondero as witnesses. Are they going -- is Patrick going to be your witness?

MR. MORRIS: No, Your Honor. We're going to reserve our 30 minutes for rebuttal.

THE COURT: Okay. Thank you.

All right. I'll hear from the Objectors now.

(Pause.)

MR. YORK: Sorry, Your Honor. I didn't realize they were going to observe. So, --

THE COURT: Well, yes. If you understood what I was saying before the break, I presumed they might want to go first with Mr. Patrick, but it was -- you're the one who

wanted him, so if they want to go second, they can go second.

MR. YORK: Well, --

THE COURT: Well, I say "you're." I'm sorry.

MR. LANG: No, it's okay.

THE COURT: Mr. Lang wanted to go --

MR. YORK: Yeah. So are we definitely doing Mark Patrick now?

MR. PHILLIPS: No.

MR. YORK: Oh, okay.

MR. PHILLIPS: We just rested.

THE COURT: Okay.

MR. MORRIS: They can call whoever they want.

THE COURT: They have rested. If you don't want to go forward with any witnesses, you don't have to.

MR. YORK: Oh, we --

THE COURT: But you had wanted to go forward -- you wanted to question Patrick and I said, if he's going to be a witness, then Dondero should also be a witness. Okay? And at most an hour collectively for each witness. If you don't want to call either one of them, you don't have to call either one of them.

MR. LANG: We're going to. I think that they were just going to call Daugherty first. I didn't know if you had an order that you wanted to do this in.

THE COURT: Well, no. I don't care. I guess I don't

care. Was Daugherty listed? I mean, --

MR. YORK: Yes.

THE COURT: I'm sorry. Did you say Daugherty or Dondero?

MR. LANG: Daugherty.

THE COURT: Okay. I'm sorry. So you want to call Daugherty?

MR. YORK: Yes.

THE COURT: And you listed him as a witness?

MR. YORK: Yes.

THE COURT: So you may call Daugherty.

MR. YORK: All right.

MR. MORRIS: Yes. I --

MR. YORK: We'll call Patrick Daugherty, then.

THE COURT: Okay.

MR. MORRIS: I don't believe Dugaboy did, but --

MR. YORK: Right.

MR. MORRIS: -- if they -- if they want to call him, by all means.

THE COURT: Okay.

MR. MORRIS: Yep.

THE COURT: All right. Mr. Daugherty, if you could approach the witness box, I will swear you in. Please raise your right hand.

PATRICK DAUGHERTY, PATRICK DAUGHERTY'S WITNESS, SWORN

THE COURT: All right. Please be seated.

THE WITNESS: Oh, wow. A lot of water up here.

THE COURT: Plenty of water for everyone.

DIRECT EXAMINATION

BY MR. YORK:

Q Good afternoon, Mr. Daugherty. Could you state your name for the record, please?

A Patrick H. Daugherty.

Q Mr. Daugherty, are you a creditor in the Highland Capital bankruptcy?

A Yes, I am.

Q All right. And would you turn to, in the Daugherty exhibit binder, turn to Exhibit 1, please?

A Yes.

Q And this is a settlement agreement between you and Highland Capital Management relating to claims -- your proof of claim that you made in this bankruptcy, correct?

A Yes.

Q And we looked earlier. You were in the courtroom for Mr. Seery's testimony, correct?

A I was.

Q All right. And we talked in Section 9 about the defined Reserved Claim in there. Do you remember that?

A I did.

Q All right. Can you describe what --

A I consider it the Compensation Claim, but yes.
Q Can you describe what the Reserved Claim is?
A Yeah. Basically, it, background, it dates back to the financial crisis of 2008, 2009. Highland was on the brink of filing for bankruptcy. We had a creditor bank led by Bank of America and Scotia, and we were in default. And so the banks came in, declared default, and basically put a limit or terminated our ability to pay cash bonuses. And that -- right after Lehman Brothers failed, so call it September 2008 and going into 2009.

And the problem with that is we were losing people right and left. We had about 22 senior-level guys. We were down -- and I say guys. I think there were some women, too. But we were down to about 12 people. And they were trying to stem the tide of people running out of the doors in order to save the value of Highland. We started the year at about $40 billion under management, and by that time, we were -- I think we were as low as $19 or $20 billion under management.

Hedge funds were rolling up. CLOs did fine. Private equity did fine. Retail funds were having problems. And separate accounts were okay. But we were definitely a firm in crisis and trying to hold on to people.

So the nature of this compensation claim, you know, every year, everybody except Dondero and Okada would get what's called a compensations and award letter. Because Dondero and

Okada were really the only partners. I think you can kind of see that, given your experience. They were called the founding partners. They were the only ones that got true distributions from the firm annually. Guys like us, you know, the other 12 or so, we got cash bonuses and incentive comp and deferred comp. And, you know, obviously, cash compensation was a big part of our compensation, and they were prohibited from the banks from paying it.

So Dondero, with the help of Rick Swadley and some of the other tax people, I don't know if we used out outside firms or not, they came up with this scheme, if you will, where Highland was going to go and use whatever they came up with with the partnerships and whatnot and then generate a tax refund to the senior-level guys. As or in lieu of the cash bonuses that couldn't be paid, they were going to go make these elections and then we were going to get this money.

And if you look at our awards agreement, it says you're going to get *x* amount of money. And it's in the line that historically is the cash bonus.

Also, when we got like our email or whatever that year from Patrick Boyce, our CFO, he was like, Congratulations, your bonus this year was *x*. And it was whatever that amount was on your compensation and award letter.

Well, several of us had the same accountant, John Garvey, at Bland Garvey. Me, Joe Daugherty, and Davis Deadman. And

we took this concept to our accountant and he's like, man, that's really precedent. And so you guys are going to have to basically protect yourselves from -- sorry, go ahead. Make your objection. I'm sure I'm --

MR. MORRIS: I just, I just don't remember what the question was at this point and he's testifying to --

THE WITNESS: Why I got this thing.

THE COURT: It was --

THE WITNESS: My apologies.

MR. MORRIS: -- to conversations and hearsay.

THE COURT: What is the --

MR. YORK: Let me ask a question and I'm going to try to --

THE COURT: -- proof of claim about, was the essence of the question.

MR. YORK: Yeah. Right.

THE COURT: So I sustain. We're getting a little narrative, shall we say.

THE WITNESS: My apologies.

MR. YORK: So, --

THE WITNESS: I'll tighten it up.

BY MR. YORK:

Q All right. So, Mr. Daugherty, what you were getting under this scheme, as you describe it, was a cash bonus that was masked as a refund, correct?

A Look, Highland paid for it however they're going to pay for it. They're the one who created whatever that they did. But for us, it was a cash bonus.
Q Okay.
A But given that I was -- what I was just alluding to, there were concerns about the tax impacts if the IRS didn't agree with Highland. And so what we did is we negotiated for and got from Dondero -- really, I mean, Jim ultimately made the decisions at Highland. He said, look, if you don't -- if this doesn't work, if it doesn't go through, we'll make you whole. And so we got that provision in the compensation and award letter that says if the actual refund deviates materially from the refund, then you'll get substitute compensation. And that was enough for us, --
Q And --
A -- and that's what led to this claim.
Q And was it your understanding that, in terms of making you whole, that was not just whatever you had to pay back for the refund, but also interest and penalties?
A Yeah.
MR. MORRIS: Objection. Leading.
THE COURT: Sustained.
THE WITNESS: That's fair enough.
BY MR. YORK:
Q What was your understanding as to what that 'make you

whole' constituted?
A It was basically to put me and the others back in the position of getting to that number that was listed in the document. So if there were any interest, penalties, pullbacks from the IRS, then we would be made whole at that -- we'd get back the net of that number. However, if the IRS was fine with it, we wouldn't get anything.
Q So there's a chance, depending on how the IRS audit turns out, if the IRS says what Highland did was fine, then you don't owe the IRS anything, right?
A Yeah. That's been a critical thing, that I may not owe the IRS anything, and certainly I wouldn't expect Highland to give me anything.
Q And at that point, what's been reserved as your reserved claim would effectively at that point, from the IRS perspective, the IRS audit perspective, would be a zero dollar amount, right?
A Yeah. I mean, more so. I mean, Jim Seery offered to buy me out with an amount of the reserved claim. And I said, listen, I'm not looking for a windfall here. What I'm looking for is to be made whole, --
Q Right.
A -- it's my insurance policy on what I earned back in 2008, because the alternative is I will have ended up working for free in 2008, plus have to pay penalties and interest going

forward that could wipe out my net worth.
Q All right.
A So I wanted the insurance policy aspect of it.
Q So you heard Mr. Seery's testimony earlier where he said the total amount you would owe was somewhere in the range of $1.4 to $1.5 million if there was --
A He's wrong about that, if that's what he said.
Q Why?
A At the time -- I think the number he was referencing was in our claim number that I filed back in, I want to say, October 2020. And the $1.45 million, what was in the compensation -- was the number in the compensation and awards letter.

The other number that I spoke about from the gallery out there was one point -- I don't know, whatever the interest -- whatever I guessed the interest might be. And then I didn't have anything for penalties. So, at that particular time, took those numbers and said, okay, if the IRS says no way on all this, this is what I'd have to pay, not including penalties.

Q All right. So you've seen today and you listened to the testimony about the footnote in Highland's adversary complaint against you in which they say that the resolution may not be until 2029 of this IRS audit?
A That's correct. I've heard that.

Q All right.
A I've seen it and heard it.
Q All right. As you've sat here today, have you done any calculation back of the napkin to try to estimate what your potential exposure would be to the IRS in terms of interest and penalties as a result of that audit dispute if it wasn't resolved until 2029?
A Yeah. I listened to the judge. I went and ran '33 because that was a number that was just thrown out. At '33, if it's 2033, it's $7.4 million, and if it's 2029 it's $5.7 million.
Q What sort of financial impact would that have on you?
A The latter would pretty much wipe me out. I'm sorry. The former would -- the $5.7 million would wipe me out. The latter would cause me to file for bankruptcy.
Q Okay. Mr. Seery also discussed his -- that he had heard through the grapevine that the IRS audit had been resolved. Has anyone from Highland ever told you that the IRS audit is resolved?
A No one's told me that from anywhere, anyhow, anyway.
Q Have you had a conver... have you had -- so nobody at all, right?
A No one at all.
Q Have you -- did you have a conversation recently with Kurt Plumer over it?

A I did. I had lunch with him at Hillstone.
Q Did he mention it at all?
A No.
Q All right. Could you turn with me to, in your exhibit binder, Exhibit 8, please?
A Yeah.
Q All right. Can you just identify for us what this document is?
A This is a letter I got from the IRS dated November 20th, 2024, basically telling me that the case is open and I may owe money.
Q And specifically, if we look at the first paragraph, it says, "Why You're Receiving This Letter," in bold, right?
A It does.
Q And then below that it says: We might have to adjust your tax return based on our examination of the Highland Capital Management listed above.
Did I read that part correctly?
A Yes.
Q And so is it your understanding that your -- that this is related to the IRS audit of Highland?
A That is my understanding.
Q And that your tax return, your personal tax return may be adjusted as a result of that?
A Mine and my wife's.

Q Which would mean you're subject to interests and penalties as well?
A As is she.
Q Okay. And is this the only letter you've ever received from the IRS?
A No.
Q Related to the Highland Capital Management audit?
A No.
Q All right. Do you receive these periodically?
A Yes. The initial one came I want to say about five months after we filed the returns in two thousand -- it was for the calendar year 2008, so it was April 15th, 2009, I want to say. Maybe it was -- I think the first one came around October, late October 2009.
Q And --
A Like this. I can't -- I don't remember it verbatim.
Q Is this the last communication you have received from the IRS relating to Highland's IRS audit?
A This was it. Yeah.
Q Okay. Has anyone from the IRS ever told you that an FPAA has been issued --
A No.
Q -- with respect to the Highland's audit?
A No. I don't even know what that -- I didn't even know what that was.

Q And you've never received an FPAA from the IRS, right?
A I have not.
Q And you've never -- nobody else has ever sent you an FPAA related to the Highland audit, right?
A No.
MR. MORRIS: I'm being kind, but this is just --
THE COURT: It's leading.
MR. MORRIS: -- testifying from the podium.
THE COURT: Sustained.
THE WITNESS: Yeah.
BY MR. YORK:
Q All right. Mr. Daugherty, would you turn -- we'll switch topics real quick to the tolling agreement. Would you turn in Volume 1 of the Highland exhibits to Exhibit 60, please?
A Volume 1, and then which one, I'm sorry?
Q Exhibit 60.
A Yeah. Yes, I'm there.
Q Why did you enter into -- well, back up. Strike that. Start over. This is the tolling agreement extending a claim objection deadline between you and Highland Capital and the Highland Claimant Trust as of July 27th, 2022, correct?
A That is correct.
Q And is it your signature on Page 6 or 7 of the document on the left-hand side?
A It appears to be, yes.

Q All right. Why did you enter in this tolling agreement? Why did you enter into --

A I'm sorry, what was your question?

Q Why did you enter into this tolling agreement?

A Jim Seery had reached out to me in 2022 and said that they had a problem with -- the Court had an objection deadline that was running and that was somewhat inconsistent with the settlement agreement that we had just gotten approved in early March of 2022 that said they couldn't object, they being Highland, object to the legitimacy or amount of my compensation claim.

So he said, look, you know, we're in a little bit of a predicament here. We can go to the Court or we can try and work this out. And I'm like, hey, I'm fine to work it out. I don't want the estate to be burdened or any way. So we went back and forth on the document, and ultimately I felt that it was the right thing to do. The spirit of our settlement was, you know, I -- they couldn't -- they couldn't challenge this part of my claim, but the *quid pro quo* was I'm not going to be able to beat them out on a technicality by running in here, saying, ah, the objection deadline, you know, expired.

So his solution seemed to be a reasonable one. And we worked with their counsel, I think Demo and to some degree Morris, to work that out for them.

Q How did the estimate come about in Footnote 3?

A I don't know. Nobody ever asked me about it. There was no -- Mr. Morris is right, there was no negotiation about it. Because, frankly, I didn't see that as my problem. They had something to fulfill pursuant to the plan. And there was no back and forth on that reserve amount with Seery whatsoever. He just said, This is what we're doing and, you know, we're going to put this -- and my perception is I didn't have any right to challenge it other than what was in my settlement agreement. And I looked at that as a one-time right to go and seek an estimate, and I didn't want to do it that early in the process.

Q Would you take a look with me at the last recital that's on Page 3 of the document? All right. It says, --

A Oh. You're going to make me read. All right.

Q It says: Whereas, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, and without any party admitting liability, fault, or wrongdoing, or releasing or waiving any rights or defenses with respect to the reserved claim, the parties desire to enter into this agreement to extend the claim objection deadline solely with respect to the reserved claim to January 11th, 2023 at 5:00 p.m. Central Time, defined as the Objection Deadline.

Did I read that part correctly?

A You did.

Q What was your understanding of this recital provision

being put in here?
A Well, I think I just kind of summarized it. There was a problem that the parties didn't, you know, fully recognize could occur that would give me a windfall, and so this was to kind of solve that on an interim basis until we got to a final resolution on this tax refund thing.
I mean, the honest truth, God -- Judge. Not God, Judge. But the honest-to-God's truth is Seery and I had a very good relationship, and we were going back and forth, and his view was that this thing could get resolved in 2022.
Q Did you have an understanding as to whether or not you were reserving all rights with respect to your reserved claim under the terms of the tolling agreement?
A Absolutely I did. Both in emails and in the document.
Q All right.
MR. YORK: Pass the witness.
THE COURT: All right. Any cross? I'm assuming Dugaboy did not have questions. And, Mr. Daugherty, I should have --
MR. LANG: No, we do not.
THE COURT: Okay. Thank you. Cross?

CROSS-EXAMINATION

BY MR. MORRIS:
Q Good afternoon, Mr. Daugherty. Take your time.
A How are you, Mr. Morris?

Q Good. I just have a few questions. You have been paid in full on your Class 9 claim, correct?
A Evidently, yes.
Q And that Class 9 claim was for $3.7 million, correct?
A I believe it was $3.75 million.
Q Thank you for the clarification. Do you recall how many payments you received that resulted in your receipt of $3.75 million?
A I don't.
Q When you received those payments, did you tell Mr. Seery -- did you send it back to Mr. Seery out of any concern that your Class 8 claim has not been resolved?
A No.
Q When you received those payments, did you object to Mr. Seery or to anybody else that it was improper for the other Class 9 holders to receive the payments when your Class 8 claim had not been resolved?
A I had no idea what they were receiving.
Q Did you have any reason to believe that you were receiving a benefit that the other Class 9 claim holders were not receiving?
A Again, I had no idea what they were receiving, so I can't compare the two.
Q Okay. But it is true that you accepted without protest your Class 9 payments, even though your Class 8 claim had not

been resolved, correct?
A I think that's accurate.
Q Okay. I think you mentioned in your proof of claim it had $1.4 million; is that right?
A Again, I'm cuffing it. If you could grab it, I'll -- I want to say it was -- the proof of claim had two components, as I mentioned. There was a, as I mentioned, there was the compensation award amount from my compensation letter of like $1.475 million.
Q Uh-huh.
A Don't quote me on that, but close enough.
Q Approximate.
A And then an interest component that would take me up to that particular time if the IRS reversed it.
Q Okay.
A But no penalties were included.
Q And that approximately $1.45 million, that's money that you received back in 2009?
A I didn't get that full amount in 2009. That was -- I don't want to broaden this up too much, but many times what was promised was not what was delivered. So I got a lesser amount from the IRS.
Q How much less did you receive?
A I want to say, on a net basis, it was just under $1.2 million.

Q Okay. And so it's true that you've had the benefit of the $1.2 million for 15 years now?
A When you say the benefit, what do you mean?
Q It went into your pocket 15 years ago.
A Yeah, but it's a contingent liability I have back to the IRS, so I can't say that it's, you know, not without reservations.
Q But you've had possession of that million and a half dollars now for 15 years, correct?
A Right. And with it comes an obligation --
Q Okay.
A -- contingent back to the IRS.
Q Your claim is a prepetition claim; is that right?
A What do you mean by my claim? Are you talking about the compensation one?
Q Yes.
A Yeah. I mean, that -- that contractual obligation originated in, well, yeah, February 2009.
Q It's not an administrative claim, right?
A I don't believe so, no.
Q It's just -- it's just a claim that existed prior to the petition date. Fair?
A That is fair.
Q Okay. With respect to the reserve, you did agree to that amount of the reserve, fair?

A I did not. I mean, I -- I signed the document, but I did not agree to that amount.
Q Well, --
A I did not negotiate for it or anything like that.
Q Well, but if you turn to Exhibit 60 that you just looked at, --
A sure.
Q -- and you go towards the end of the document, that is your signature on the first Page 7, right?
A Yeah. I've already admitted that.
Q And Paragraph 1 of the agreement that you signed specifically set the reserve at the amount set forth in Paragraph 1, correct?
A That much is true.
Q Okay. And you --
A You just said, did I agree to it, and I'm like, it was in the document.
Q It's in the agreement that you signed, correct?
A For sure.
Q Okay. And you've never asked for that amount to be adjusted, correct?
A I've spoken many times to Mr. Seery and told him that it will need to be adjusted upward as years go by. We've had quite a dialogue along those lines.
Q Okay. But he's never agreed to do that, correct?

A He said when the time comes, we'll figure out -- listen, we had a very collaborative relationship up until like the last year. And so it was like, hey, I'm not going to press you. You don't -- he's fighting off Dondero right and left. You know, and I'm like, I don't want to get in the middle of all this. You go do what you've got to do. We'll both sit tight. In fact, there was dialogue to that very effect.

Q Uh-huh.

A And so this was just all part of sitting tight, thinking that the right thing would be done when we got final analysis to this.

Q Okay. So would you just agree with me that, since signing this agreement, you haven't come to court to seek an adjustment --

A No.

Q -- of the reserve?

A I did not want to be a burden.

Q Okay. And since signing this agreement back in 2022, you and Mr. Seery have not come to an agreement on any adjustment to the reserve, correct?

A We have not.

Q Okay. Do you believe that you have claims against Highland's employees?

MR. YORK: I'm going to object on relevance grounds. Also, outside the scope.

THE COURT: What is the relevance?

MR. MORRIS: We're going to get to the $20 million demand in a moment. I'm laying the foundation. But we have anybody on anybody --

THE COURT: But what's the $20 million demand?

MR. MORRIS: I'll get to it in a moment.

THE WITNESS: There's --

THE COURT: I can't figure out if --

MR. MORRIS: I can make a proffer if you'd like.

THE COURT: -- that's relevant.

MR. MORRIS: I can make a proffer, Your Honor. I'll tell you. I'll tell you right now.

On June 5th, Mr. York called me and said that Mr. Daugherty asserts that he has claims against the Highland employees, and if Highland didn't pay him $20 million he was going to sue them, and he was going to file this objection together with a petition in the Supreme Court opposing Highland's request to stay the issuance of a mandate in the Fifth Circuit.

MR. YORK: First off, if Mr. Morris is going to become a witness, we've got a problem here. Secondly, any sort of communications between us would be 408. And third, it's not relevant to the issue we're here on today.

THE COURT: Okay.

MR. MORRIS: My response to that, Your Honor?

THE COURT: All right. I'm going to allow a little latitude, --

MR. MORRIS: Yeah.

THE COURT: -- but I'm still unclear --

MR. MORRIS: It's about -- it's about three questions.

THE COURT: Okay.

MR. MORRIS: It's about three questions.

THE COURT: You may proceed.

BY MR. MORRIS:

Q Do you believe you have claims against Highland's employees?

A Me personally, no.

Q Okay. Do you -- did you authorize your lawyer to call me and to demand $20 million in exchange for a release and your standing down from filing any objection to this motion?

A I'm not aware that that ever happened. Nobody demanded anything of you.

Q Really?

A Yeah.

Q Do you know that your lawyer used the number $20 million to me?

A Oh, I've read the emails back and forth between you.

Q So why don't you explain to Judge Jernigan what your understanding is as to what your lawyer meant when used $20

million to me.
A I can't say for sure what he meant, but I can tell you from my perspective what I understood.
Q What did you understand?
A I have another entity that I picked up in the settlement with Highland called the Highland Employee Retention Asset Fund. And again, pursuant to the settlement agreement, I mean -- I guess supposedly, I guess, when I think about it, I do have claims individually, because it's with me, that agreement.

But it said that Highland had to turn over all the books and records of the HERA fund. And Mr. Morris was on many of those emails. And they had turned over some of the books and records, but they didn't turn over any of the books and records that implicated Thomas Surgent and David Klos in defrauding HERA in allocating Highland's expenses when they were litigating me, against me, back to HERA.

So I do have a settlement agreement with Highland and these employees, but Highland Employee Retention Assets needs their books and records. And we've made it very clear to you on numerous emails where you, you know, kind of muscled up on us and said this is all you're going to get and tough if you don't like it or whatever.

And so the deeper we get into this, we did get discovery from others, we found that Highland's been withholding

material information.

So as it relates to -- I mean, you're doing that little squeaky thing, and I think he's a fantastic lawyer, but the reality is you guys have created some damages to HERA that you may be accountable for. Your clients, not you.

Q Okay. In the four years since we signed the settlement agreement, you've never asserted a breach of contract claim, have you?

A Well, because we thought you were complying with it. So if you want to go into the details there, in 2022, we were -- asked for more information. 2023, we asked for more information. 2024, we asked for more information. And so those are continuing breaches.

Again, I -- I don't want to go to war with Highland. You're too damn good of an attorney, you're scaring me a little bit. But --

Q I don't want to.

A You know, listen. You know I think well of you.

Q I appreciate that.

A But, you know, I mean, I just wanted the information. I'm not looking to go to war with you guys. I got enough battles that I've got to fight. And so, you know, I guess a number was thrown out or whatever. I don't know the full context of it. But it wasn't -- it wasn't for this IRS compensation issue.

Q But what was the -- my last question. What was the $20 million demand for?

A Again, it's just a number. Y'all were having settlement negotiations. So, I mean, you work off of it.

Q All right.

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

THE WITNESS: Yeah.

THE COURT: All right. Any redirect?

MR. PHILLIPS: I have no questions, Your Honor.

THE COURT: All right. Okay.

MR. YORK: Apologies. I wanted to make sure.

THE COURT: Yes.

MR. YORK: No redirect, Your Honor.

EXAMINATION BY THE COURT

THE COURT: Okay. If you've watched Highland hearings, you know the judge sometimes has questions. I am still trying to understand the 1.4, the 1.2, the 1.475. I understand broadly that, in essence, a cash bonus was negotiated back in early 2009, I think you said.

THE WITNESS: Yes.

THE COURT: After 2008. And so that's, in essence, what was contractually negotiated. But I understand there was a hook, if you will, we're calling it a contingency, whatever word you want to use, where if one day there was an IRS audit and I guess Highland had extra liability for 2008, that this

-- I don't know if I understood it or not.

THE WITNESS: Do you want me to try and guess what you're asking, or --

THE COURT: Try to guess what I'm asking. Again, I'm --

THE WITNESS: The liability -- so, Highland chose to use this tax scheme as a currency to pay us a cash bonus. From our perspective, we weren't stupid. We're like, well, okay, that's great, but if the IRS says --

THE COURT: Okay, I just want to know what -- you say you were contractually entitled to $1.4 million.

THE WITNESS: That's what I was supposed to get for that bonus year.

THE COURT: Okay. But there was a tax contingency, if you will, where -- that's where I want you to jump in.

THE WITNESS: So, Highland had a tax problem. They came up with this mechanism to use whatever they were doing with the IRS to create the cash to pay us a bonus. We looked at it and said, well, this looks fishy -- by the way, every year before that and after that, I've just gotten a cash bonus. But for this one year, when the banks are saying, no, no, no, we get this. And so we looked at this and said, look, this sounds fishy, but if you can't pull it off, we need to be made whole. I can't be in a situation where here I am in 2025 and I may have to pay $5, $6 million to the IRS for the

pleasure of working at Highland.

THE COURT: Okay. See, that's where my disconnect is.

THE WITNESS: Uh-huh.

THE COURT: Because I thought this all turned on a Highland tax return.

THE WITNESS: Oh, no, no. So, Highland did the planning and the creation of the scheme, and I guess ultimately it was Highland's tax return, but it flowed through to us as pass-throughs. K-1s, what have you.

THE COURT: Right.

THE WITNESS: So I guess it's both.

THE COURT: Okay. You were a partner.

THE WITNESS: Well, that's debatable, too. That's debatable, too, because I had a --

THE COURT: Okay. I thought you weren't, but --

THE WITNESS: Well, I wasn't --

THE COURT: But you got -- okay. Let me just skip to, --

THE WITNESS: Yeah.

THE COURT: -- I guess, the important part. You did, you got paid? You said $1.2 million?

THE WITNESS: Yeah. I got a refund back from the IRS for around that amount. Slightly under $1.2 million.

THE COURT: So the contingency you are worried about

that you think gives you a contingent claim against Highland is, what, the IRS comes back and says --

THE WITNESS: And they say, Give us that money back plus interest plus penalties or we're taking your house. And it's a very real threat, because this has gone on, as you've noted, forever. And I went from having a one-point-whatever bonus to possibly having to pay six, seven, eight, I don't know how long this lasts, million dollars back to the IRS for an election that was made by them. As a substitute for paying me a cash bonus the regular way, they did it this way. And that's why we put and negotiated for that term in the compensation agreement that said, if for whatever reason the actual refund is different, we get made whole.

THE COURT: Okay. I may be overthinking this, I do do that sometimes, but I'm still, I'm trying to understand why your claim would escalate up to, you know, you said maybe $5.7 million if, in 2029, this all plays out with the IRS.

THE WITNESS: That --

THE COURT: Because you've gotten the benefit of that money and --

THE WITNESS: Well, no, because if the IRS says --

THE COURT: -- return on that.

THE WITNESS: Sorry. I didn't mean to interrupt.

THE COURT: You know what I'm saying? So I'm trying to figure out why it would grow in the way that you're

suggesting.

THE WITNESS: Can I respond?

THE COURT: Yes.

THE WITNESS: So I've gotten money that the IRS says is not mine. Right? And the IRS says --

THE COURT: And you've had the use of it.

THE WITNESS: Oh, yes.

THE COURT: You've presumably invested it and --

THE WITNESS: Well, no, I mean, you can't --

THE COURT: Well, you've had the ability to. Uh-huh.

THE WITNESS: But you don't want to take risk with something that's not yours, so you're kind of limited, right? But I have, I have that amount of money. Here's the problem, Your Honor, with that. If the IRS says, Give us back our money, here's the interest, here's the principal. Oh, by the way, if it's $7, $8 million, I can't -- I don't have that. I've got to file for bankruptcy in order to give the IRS back money that I'm having to pay them for the pleasure that I had of working for Highland in 2008 when I helped save the company and create a lot of the assets that paid all these people in the room. MGM Studios, Trussway.

THE COURT: Okay.

THE WITNESS: Okay.

THE COURT: Yeah. We are going beyond this.

THE WITNESS: Fair enough.

THE COURT: I was just, I'm zeroing in on this because I'm trying to figure out, I mean, it matters to me if that reserve is likely fair enough, the reserve I'm told you agreed to is fair enough. And I'm having trouble figuring out, I mean, if you've had the use of this money for 17 years or whatever that is, why you would get this extra interest add-on that you're -- $5.7 million or whatever it would be. You know, $3 million more.

THE WITNESS: Can I answer that question?

THE COURT: Uh-huh.

THE WITNESS: Because the IRS didn't look at it as my money. They looked at it as their money. And so if you look at the plain language of the compensation award letter, if the actual amount deviates from the amount that was granted, then Highland was going to give me substitute compensation to make me whole. Making me whole includes the penalties and the interest that I would owe the IRS. Because if you look at it any other way, I had to pay money to work at Highland.

THE COURT: Do I have that letter in my evidence?

THE WITNESS: You should. Drew?

THE COURT: Do I? Maybe I'll just cut this off and look at the letter.

MR. YORK: It's at Daugherty 2, and it's at the back of --

THE WITNESS: There's multiple letters, but this is

one of them.

THE COURT: The letter that you say this claim stems from.

THE WITNESS: Sure.

THE COURT: I'll just cut it off and look at that.

THE WITNESS: Yeah, you can tell her where it is.

MR. YORK: So I think it's at the back of the statement on PD-2. It's at the last page, Your Honor.

THE COURT: Which one?

MR. YORK: P -- Daugherty 2.

THE COURT: Oh, 2? I've got emails.

THE WITNESS: P-2? I don't think so.

THE COURT: Okay. We can move on.

MR. YORK: That's fine. We'll work this out.

THE COURT: Before we're done here today, I want to look at the letter to better understand how the claim could grow substantially to --

MR. YORK: Yeah.

THE COURT: -- $5.7 million by 2029. Okay. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're excused.

THE WITNESS: Oh, I found -- I just found it and then I closed it.

THE COURT: Okay. Well, you can --

THE WITNESS: My bad.

THE COURT: -- call my attention to it when you find it.

THE WITNESS: All right.

(The witness steps down.)

THE COURT: All right. Your next witness?

MR. YORK: I believe we're calling Mark Patrick.

THE COURT: All right, Mr. Patrick. All right. Please raise your right hand.

MARK PATRICK, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

THE COURT: All right. Please be seated.

And, Courtney, you're going to start the clock going. I show 2:12. I don't know if my clock's right.

You may proceed.

MR. LANG: And, Your Honor, may I hand the witness -- this is from Mr. Morris' opening. May I use this as Exhibit 3?

THE COURT: Oh, okay. You're talking about the back page of his PowerPoint?

MR. LANG: Yes. Org chart.

THE COURT: Yes. I've got it in front of me. And for the record, I'm going to put this PowerPoint, even though it's not an exhibit *per se*, as a demonstrative aid in the file for this matter. And so it's the last item of the Highland PowerPoint. All right.

MR. LANG: Yes.

DIRECT EXAMINATION

BY MR. LANG:

Q Mr. Patrick, does this Hunter Mountain Investment Trust org chart that I just handed you accurately reflect the structure of the Hunter Mountain Investment Trust ownership today?

A Just give me a few moments to review.

Q Sure.

MR. LEWIS: Your Honor, I had mentioned early on that we object to this whole line of questioning because it's outside the scope of the objection of Dugaboy. And I don't want to interrupt, but I want to make sure that my objection is continuing, because this has nothing to do with the objection presented by Dugaboy.

THE COURT: All right.

MR. PHILLIPS: So we object to the question.

THE COURT: Okay. So the record will reflect basically a running objection from Hunter Mountain?

MR. PHILLIPS: We would appreciate that, Your Honor.

THE COURT: Okay. In light of the failure of Dugaboy to disclose Mark Patrick as a witness, as well as the failure to challenge in a written objection his authority. Okay. So I recognized that this was quite a persuasive objection, but given the magnitude, I would say, of what is going on here,

potentially a settlement that could come very close to ending this long-running plan implementation process, I'm erring, if it's an error, I'm erring on the side of allowing this. All right. But you have a running objection that the record will reflect if one day there is an appeal.

MR. MORRIS: And, Your Honor, the Highland Claimant Trust and the Highland Litigation Subtrust and Highland Capital Management, LP join Mr. Phillips' objection.

THE COURT: Okay. Understood.

MR. PHILLIPS: Thank you very much, Your Honor.

THE COURT: All right.

BY MR. LANG:

Q Mr. Patrick, have you had time to study this Hunter Mountain Investment Trust org chart?

A Yes, I have.

Q And does this accurately show the ownership structure for Hunter Mountain Investment Trust today?

A I'm not sure, without reviewing the underlying corporate documents on some of these entities that you have listed here.

Q Did you help prepare this chart?

A No.

Q No? Okay. So Hunter Mountain Investment Trust is owned by Beacon Mountain, LLC, correct?

A Yes.

Q And Beacon Mountain, LLC is owned by CLO Holdco, LLC,

correct?
A Correct.
Q And CLO Holdco, LLC is owned by CLO Holdco, Limited?
A That's correct.
Q And CLO Holdco, Limited is owned by Charitable DAF Fund, LP?
A Correct.
Q And Charitable DAF Fund 1, LP is owned by CDMC FAD, LLC?
A The ultimate beneficial owner is DFW Charitable Foundation. To my -- to the best of my recollection, I would say that appears accurate. I'm just not a hundred percent.
Q Okay. And --
A But I am a hundred percent that DFW Charitable Foundation is the ultimate beneficial owner. And I'm a hundred percent that Dugaboy Investment Trust has no interest in it. And I'm also a hundred percent that The Dallas Foundation or any --
MR. LANG: Judge, I haven't asked --
THE WITNESS: -- or any other nonprofit has any --
MR. LANG: -- any of these questions.
THE COURT: Okay. There's an objection, nonresponsive. I sustain.
BY MR. LANG:
Q Mr. Patrick, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, correct?
A (Pause.) I'm just waiting for a relevancy. I don't

understand how that's relevant to my authority --

THE COURT: Okay. You're not allowed to make a relevancy objection. Okay.

MR. PHILLIPS: Your Honor, I think the problem is that, if I could, we have made an objection. And our objection, our running objection is founded on relevancy and founded on improper process. So I would like to just tell the Court, and so my client representative can hear it, that the fact that I'm not standing up every time there's a problematic question, --

THE COURT: Okay.

MR. PHILLIPS: -- because every question is problematic, my objection is being maintained to every question that's being asked.

THE COURT: Okay. You understand that, right?

THE WITNESS: I --

THE COURT: There's a running relevancy objection. You're the witness. You can't make the objection. But it's on the record for whatever use it might have down the road.

MR. PHILLIPS: I have objected to every question that's coming in connection with this line of questioning on the basis of relevance.

THE COURT: I got it. I think we all have it.

MR. PHILLIPS: I'm just --

MR. LANG: Understood.

THE COURT: Yes. And you're thinking he's eating into your 30 minutes?

MR. LANG: Yes.

THE COURT: Okay. We've got it.

THE CLERK: I stopped the time.

MR. LANG: So -- thank you.

THE COURT: Did you stop the time for a minute?

THE CLERK: Yes, I did.

MR. LANG: Thank you.

THE COURT: Okay.

BY MR. LANG:

Q So, to my question, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, correct? Charitable DAF Holdco, Limited?

A And where is that on the chart?

Q I'm asking, before December of 2024, Charitable DAF Fund, LP was owned by Charitable DAF Holdco, Limited.

A Can you show me a corporate document so I know the precise corporation you're referring to?

Q You're the -- you are the manager of -- or the control person of CDHGP Limited, correct?

A Again, I'd have to refresh my recollection, but I am the control person over CDMC.

Q Okay. And CDMC --

A As well as Charitable DAF Fund. I'll represent that to

you.
Q Okay. Was there a transaction in December of 2024 where Charitable DAF Holdco, Limited sold its interest or transferred its interest in Charitable DAF Fund, LP to CDMC FAD, LLC?
A I know you're trying to help other litigation and --
MR. PHILLIPS: Mark.
THE COURT: Okay. Nonresponsive.
THE WITNESS: Your Honor, he's using your time to fish for other litigation to support that --
THE COURT: Okay. Okay. We have a running objection to relevance. I'm going to say that one more time. Okay. Just answer the question as best you can.
THE WITNESS: I'd have to review the corporate documents to refresh my recollection for that time period.
BY MR. LANG:
Q Up until December of 2024, Charitable DAF Fund, LP was owned 100 percent by Charitable DAF Holdco, Limited, wasn't it?
A I don't know what entity you're referring to without a refreshment of corporate documents of that entity. There could be a lot of entities called that.
Q You're aware that there is a proceeding in the Caymans investigating the December 2024 transaction that sold -- where Charitable DAF Holdco, Limited sold its interest in -- and or

transferred its interest in Charitable DAF Fund, LP to CDMC FAD, LLC?

A There are several parts to that question. So the answer is no.

Q Are you aware of a proceeding pending in the Caymans involving Charitable DAF Holdco, Limited?

A Again, I don't know what entity you're referring to. Show me a -- show me a corporate document.

MR. LANG: Your Honor, this was on the Foundation's exhibit list. We cross-designated any document designated as an exhibit by any other party in this case. And I'd like to hand this to the witness.

MR. MORRIS: Which exhibit is it?

THE COURT: Which is -- yes.

MR. LANG: It was on the -- it was on the DAF -- or, the Foundation's exhibit list.

MR. MORRIS: They haven't been admitted into evidence and they've withdrawn their objection. We object, Your Honor.

THE COURT: Yes, they've not been admitted.

MR. LANG: Okay. Well, can I --

MR. PHILLIPS: We object to that, Your Honor. We object to any witness --

MR. LANG: We cross-designated every --

THE COURT: I already discussed at the beginning what we were admitting and that was not disclosed.

MR. LANG: Okay.

THE COURT: As I recall, I said you've only designated the plan and settlement agreement, and the answer was yes.

MR. LANG: Okay.

BY MR. LANG:

Q And we're aware that the Joint Official -- are you aware that there is a Joint Official Liquidator appointed over a Charitable DAF entity in the Cayman Islands?

MR. PHILLIPS: Objection to form.

THE WITNESS: Again, without more specific --

THE COURT: Overruled. Yes.

THE WITNESS: -- specificity, there could be a thousand different actions that you're referring to, in my mind.

BY MR. LANG:

Q Are you aware that the Joint Official Liquidators in the Caymans are investigating transactions involving Charitable DAF Fund, LP and Charitable DAF Holdco, Limited?

A Again, again, I don't specifically know what you're referring to.

MR. PHILLIPS: Your Honor, may I -- excuse me. I don't know that my running objection includes an objection to form for each of the questions. This objection is to form of the questions about, quote, --

THE COURT: What's wrong with the form?

MR. PHILLIPS: -- investigation.

THE COURT: What is wrong with the form of that question? I'm not clear.

MR. PHILLIPS: My objection to form is that the question is an open-ended question with an undefined term, investigation.

THE COURT: Overruled. I don't think that's a vague term. So you may answer.

THE WITNESS: If you show me some document, some complaint or something, I'll be very happy to verify whatever questions related to that. But just giving me verbal words of entities and names and actions, I don't know precisely what you are talking about.

BY MR. LANG:

Q Mr. Patrick, who set up the entities in the Hunter Mountain Investment Trust org chart that is sitting in front of you?

A I'm sorry. Repeat the question?

Q Who set up the various entities that are in the org chart that is on your -- on the stand?

MR. PHILLIPS: Objection to form. Set up. What does that mean?

THE WITNESS: It -- yeah, it's very --

THE COURT: I think we know what it means. Creating,

perhaps.
BY MR. LANG:
Q Created?
A Who? Are you asking if I created it?
Q Did you participate in creating them?
A Did I participate? In which ones?
Q CDMC FAD, LLC.
A What do you mean by participate?
Q Were you involved in creating -- did you initiate the creation of CDMC FAD, LLC?
A Lawyers were.
Q Did you engage in any capacity on behalf of any entity? Were you involved in engaging the lawyers to set up CDMC FAD, LLC?
A Yes, I engaged lawyers to set up entities.
MR. LANG: Objection. Nonresponsive.
THE COURT: Sustained.
MR. LANG: Did you --
THE COURT: He asked about this one particular entity, I think.
BY MR. LANG:
Q Did you --
A Which entity, again, did you ask?
Q CDMC FAD, LLC.
A Yes, I believe I hired a lawyer.

Q And when did CDMC FAD, LLC become a hundred percent owner of Charitable DAF Fund, LP?

A Around the end of March of 2025. I believe.

Q And were you involved in the transaction between -- in which CDMC FAD, LLC obtained a hundred percent interest in Charitable DAF Fund, LP?

A What do you mean by involved? How?

THE COURT: Okay. I can see what's happening here or I have an impression of what's happening here. I feel like you're slowing down this process where I've given 30 minutes to this lawyer. Okay? And I feel like you're feigning confusion. I don't mean to be insulting, but that's how it comes across. Okay? So I need you to speed up your answers and not be confused about things you shouldn't be confused about. Okay?

THE WITNESS: Okay.

THE COURT: I feel like it's late 1980s *Dondi*. Does anyone know what I mean by that? Okay. We've been there, done that, in the federal courts, and we don't like the looking at -- you're not looking up at the ceiling. That's what they did in *Dondi*. Confusion. Delay. Okay?

So I don't mean to chastise you. I'm just telling you that you're going to make us be here a lot longer, and nobody wants that, because I will give him extra time for this. Okay?

THE WITNESS: Understood.

THE COURT: Thank you.

BY MR. LANG:

Q Okay. So you were involved in the transaction in which CDMC FAD, LLC acquired 100 percent ownership interest in Charitable DAF Fund, LP in or around March of 2025, correct?

A Correct.

Q Who did CDMC FAD, LLC obtain its interests in Charitable DAF Fund, LP from in March of 2025?

A From an -- from an entity called Charitable DAF Holdco, Ltd.

Q Charitable DAF Holdco, Ltd., the entity that I asked about earlier, correct?

A Of the same name.

Q Yes. And Charitable DAF Holdco, Ltd. has had Joint Liquidated -- Liquidators, Joint Official Liquidators appointed over it in the Cayman Islands, correct?

A Yes.

Q And those Joint Official Liquidators were appointed over Charitable DAF Holdco, Limited in or around May 6th, 2025?

A In May is what I recall.

MR. LANG: Your Honor, we'll pass the witness.

THE COURT: All right. Do we have any questions?

MR. YORK: No questions, Your Honor.

THE COURT: Okay. Any cross?

MR. MORRIS: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Patrick, do you know who initiated the proceedings to get the appointment of the Joint Official Liquidators in the Cayman Islands?

A The director and myself, we initially filed for a voluntary joint liquidation in May.

Q And did there come a time when the Cayman court appointed the Joint Official Liquidators?

A Yes.

Q Do you know who asked the court to appoint the Joint Official Liquidators?

A We did, as well as other -- it was an agreement with the participation holders of that entity.

Q And who are the participation holders of that entity?

A It was the DFW Charitable Foundation as a 51 percent holder as well as the Highland Dallas Foundation, Highland Santa Barbara Foundation, and the Highland Kansas City Foundation.

Q And those three foundations that you just mentioned, do you know who controls them?

A Jim Dondero.

Q Is it your understanding that Mr. Dondero was funding the litigation in the Cayman Islands?

A Yes.
Q The Joint Official Liquidators, are you aware of any statement that they've ever made that you are not authorized to act on behalf of any of the HMIT entities?
A Yeah, they've never made a statement that I'm not authorized to act under any of those entities.
Q Okay. Did you receive a letter last night that was purportedly authored by the Joint Official Liquidators?
A Yes.
Q Did you review that letter?
A Yes.
Q Did that letter refer to today's hearing?
A Yes.
Q Are you aware of the Joint Official Liquidators making any appearance in this proceeding?
A No, I'm not aware they made any appearance in this proceeding.
Q Based on your recollection of the contents of that letter, did the Joint Official Liquidators challenge your authority to enter into the settlement agreement on behalf of the HMIT entities?
A No, they did not, because there's no ownership interest.
Q Okay. And what do you mean by that?
A The entity in liquidation owns nothing. And the DFW Charitable Foundation is the ultimate beneficial owner.

Q Are you aware that The Dallas Foundation filed an objection to the settlement agreement on behalf of Empower Dallas Foundation, the Okada Family Foundation, and Crown Global?

A Yes.

Q Are you aware that that objection was withdrawn?

A Yes.

Q Was the withdrawal of that objection the product of negotiations that your counsel had with lawyers for The Dallas Foundation and Crown Global?

A Yes, it was.

Q Did The Dallas Foundation or Crown Global require you to surrender your control position of the HMIT entities as a condition to the withdrawal of their objection?

A To give up my control? No.

Q They didn't ask you to do that, did they?

A No. No.

Q You are the control person for each of the HMIT entities that are party to the settlement agreement, correct?

A That is correct.

Q Are you aware of any requirement in any of the governance documents --

MR. CURRY: Your Honor, I'm not questioning, but I'm going to object to the line of questioning here about what was asked and what was not received into negotiations, because,

frankly, you're getting an imperfect picture there. And I don't think it should be misrepresented. The communications didn't happen with Mr. Patrick.

THE COURT: Okay. I don't know if that objection was a confidential settlement communications.

MR. CURRY: It's a combination of foundation and that he's going into confidential settlement discussions.

MR. MORRIS: Your Honor, it's a very simple question. I'll ask it again.

THE COURT: Okay. We'll let --

BY MR. MORRIS:

Q To the best of best of your knowledge, Mr. Patrick, did The Dallas Foundation or any of the entities on whose behalf it filed its objection require you to surrender your position as the control person of the HMIT entities in exchange for the withdrawal of their objection?

A No, they did not.

Q Thank you. Are you aware -- are you familiar with the governance documents for the HMIT entities?

A Yes, I am.

Q Are you aware of any restriction on your ability to act on behalf of those HMIT entities with respect to -- withdrawn. Are you required to obtain the consent of anyone in order to enter into the settlement agreement on behalf of the HMIT entities?

A No, I am not. I'm the sole authority and control person for that entity.
Q And do you believe that you're entering into the settlement agreement on behalf of the HMIT entities in good faith?
A Yes, I do.
Q Have you received legal counsel before entering into the agreement?
A Yes, I have.
Q Do you believe that you've negotiated the best terms that you could get on behalf of the HMIT entities?
A Yes, I do.
Q Do you believe that you received the information that you believed you required in order to make an informed decision before you entered into the settlement agreement on behalf of the HMIT entities?
A Yes, I did.
MR. MORRIS: I have no further questions, Your Honor.
THE COURT: All right. Mr. Phillips, anything from you?
MR. PHILLIPS: No questions.
THE COURT: Okay. Any redirect?
MR. LANG: Briefly.
THE COURT: Uh-huh.
MR. LANG: Your Honor, because they mentioned the

letter of last night from Grant Thornton, the Liquidators, I'm going to offer that into evidence as the letter that we talked about this morning. But Mr. Morris directly asked him if he reviewed it and asked him questions about it.

THE COURT: Response?

MR. MORRIS: No objection, Your Honor. Go right ahead.

THE COURT: I'll admit it.

MR. LANG: This is --

THE COURT: Do I have it in my notebook?

MR. LANG: -- Dugaboy --

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. LANG:

Q Mr. Patrick, I've handed you --

THE COURT: We're going to call this Dugaboy 3?

MR. LANG: Dugaboy 3.

THE COURT: Okay.

(Dugaboy Investment Trust's Exhibit 3 is admitted into evidence.)

BY MR. LANG:

Q Mr. Patrick, I've handed you a letter. It's from Grant Thornton dated June 24th, 2025. Do you see that?

A Yes.

Q And is this a true and correct copy of the letter that you

received or that you reviewed from the Joint Liquidators that you referred to in your answers to Mr. Morris' questions?

A Well, it's a PDF. I mean, I'm assuming it's from the Official Liquidators.

Q But this is the letter you were referring to in your testimony a few minutes ago?

A Yes.

Q And do you see on the second paragraph it says that, on May 6th, 2025, the Grand Court of Cayman Islands Financial Services Division appointed Margot MacInnis and Sandipan Bhowmik, each of Grant Thornton Special Services (Cayman) Limited, as the Joint Official Liquidators of the company. Do you see that?

A Yes.

Q And do you see on the second page, it says: Since our appointment, we have been diligently investigating these transactions, including a corporate transaction that occurred in or around December 2024 where the company transferred a hundred percent of its interest in the Fund to CDMC FAD, LLC, which resulted in the company being the sole member of CDM and subsequent redemptions of the company's interests in CDM.

Do you see that?

A Yes.

Q Is that your understanding of what is happening in the Caymans right now, is investigating these transactions?

A Correct.

MR. LANG: Pass the witness.

MR. MORRIS: May I just have that letter, please?

THE COURT: Any recross?

MR. MORRIS: Yeah, just real brief.

RECROSS-EXAMINATION

BY MR. MORRIS:

Q None of the transactions that you were just asked about has anything to do with any of the HMIT entities, correct?

A That's absolutely correct.

Q Okay. And now that we have the letter in the record, if you could look at the third paragraph. Do you see --

A Yeah.

Q Do you see it refers to the Highland Dallas Foundation, Highland Santa Barbara Foundation, and Highland Kansas City Foundation?

A Yes.

Q Are those the three entities that you referred to earlier that are, to the best of your understanding, controlled by Mr. Dondero?

A Yes.

Q Okay. And this is the letter that you said you reviewed and concluded that the Joint Official Liquidators weren't challenging your authority to enter into the agreement on behalf of the HMIT entities; do I have that right?

A Yes. Yes, you do.

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

THE COURT: Okay. I have a question or two.

EXAMINATION BY THE COURT

THE COURT: And again, I apologize if I sounded harsh earlier. I recognize different people present different ways when they testify. It just appeared to me that maybe we were slowing things down unnecessarily. All right?

THE WITNESS: I apologize, too. I'm just a little emotionally upset they're using this proceeding for a benefit someplace else.

THE COURT: Okay. My question, very general question: Do you think this settlement is fair and equitable as far as HMIT is concerned?

THE WITNESS: Absolutely.

THE COURT: And could you tell me why?

THE WITNESS: Yeah. There was no obvious pathway for HMIT to, in my mind, to receive the residual interest of the bankruptcy estate without a settlement with the Debtor. Otherwise, it just seemed to me that it would go on forever. And then I balanced that against the existing litigation and the probability of the outcome weighted against the costs, and determined that it made sense from HMIT's perspective to enter into the settlement agreement.

THE COURT: Okay. And you understand that, as part

of this, you're giving up some litigation claims that have been waged now for a couple of years or more?

THE WITNESS: That is correct, but I'm also receiving the Kirschner Litigation, which I did negotiate to receive.

THE COURT: Okay. And there was a note that the estate -- I've heard it called at some point the $57 million note that HMIT owed Highland, a December 2015 note -- that basically gets credited against the capital account. You understand that?

THE WITNESS: Yes, I do.

THE COURT: Okay. And then you understand that if I approve this deal, I'm not sure why there's going to be $500,000 to HMIT and then also another $10 million to HMIT, but subsequent payments could get held up if there are litigation threats to the Highland Claimant Trust. You understand that, correct?

THE WITNESS: Yes, I do.

THE COURT: Okay. I just, I have to ask. I'm confused about what's going on here. I thought that -- well, let me just ask this: Would you consider yourself crossways with Mr. Dondero now?

THE WITNESS: No, but I'll answer the question. Upon advice of counsel, I quit Skyview Group. And upon advice of counsel, I terminated the back office services that Skyview Group was providing to the DAF.

THE COURT: Okay. Well, you said you're getting maybe a little emotional because of other litigation. I'm just trying -- I don't understand what all that other --

THE WITNESS: Unrelated -- well, unrelated to that. They're clearly trying to use this forum to benefit their Cayman actions. They hired U.S. counsel called Reed Smith, and they've been begging for an organization chart to issue a variety of frivolous lawsuits against the operating DAF entities. So I do apologize, but that's a little upsetting to me because I know we're going to -- that I've just fed them a list of targets in another unrelated matter.

THE COURT: Okay. Reed Smith. Here we go again with -- they've made an appearance for Mr. Seery in this litigation.

MR. MORRIS: Exactly. And we have raised that issue.

THE COURT: Okay.

MR. MORRIS: And I'm surprised to hear that they think they still have the ability to do this. But we will pursue that later.

THE COURT: Okay. All right. I had nothing further. Thank you, Mr. Patrick.

(The witness steps down.)

THE COURT: All right. So where are we now? I said that, again, just trying to balance the playing field, if Dugaboy was given the ability to question Mr. Patrick, then I

would allow I guess you want to call it rebuttal in the form of the Debtor, Reorganized Debtor/Claimant to call Mr. Dondero. Do you choose to call him?

MR. MORRIS: I'm not.

THE COURT: Oh, and I guess I'll allow you, --

MR. MORRIS: Yeah.

THE COURT: -- if you want to put on your client representative, Mr. Lang.

MR. LANG: We call Jim Dondero.

THE COURT: All right. Yes, we are timing.

Please raise your right hand, sir, Mr. Dondero.

JAMES "JIM" DONDERO, DUGABOY INVESTMENT TRUST'S WITNESS, SWORN

THE COURT: All right. Thank you. The time is running.

THE WITNESS: Thank you for the time.

DIRECT EXAMINATION

BY MR. LANG:

Q Mr. Dondero, do you claim that Mr. Patrick lost authority to enter into the 9019 settlement -- or, the settlement agreement that's the subject of the 9019 motion today?

A Yes.

Q And when do you claim Mr. Patrick lost authority to enter into that settlement agreement?

A I think it's best if I give a timeline. He left Sky -- can I give a --

MR. PHILLIPS: Objection, Your Honor. Nonresponsive.

THE COURT: Overruled. He can give a timeline.

THE WITNESS: He left Skyview in October, November, walked out the door, never talked to anybody again, never talked to the charities again except through counsel. Never collected severance, anything else. Just walked out the door.

As part of Skyview's review of what he'd been working on and what was the nature and what might have been happening, they discovered numerous abnormalities. They discovered--

THE COURT: Do we have an objection?

MR. MORRIS: We do. We're not going to use this opportunity to smear Mr. Patrick. If the notion is that the breach of the ability to act with authority occurred in May, he should start his timeline in May.

THE COURT: Well, I assumed he was just giving background to explain.

THE WITNESS: Yes.

THE COURT: So I'll overrule.

THE WITNESS: Thank you. I'm going to just give you a little bit of background. Everything that I'm stating is in the public record. I won't do anything to besmirch Mark Patrick. It's all in the public record. It's all in the Cayman pleadings. But there was affidavits regarding embezzlements by vendors where he would request overbilling and the money sent to his house.

MR. PHILLIPS: Your Honor, we're talking about documents outside the scope, not identified, not listed. Objection.

THE WITNESS: It's all --

MR. PHILLIPS: This is not a timeline.

THE COURT: This --

THE WITNESS: It's --

THE COURT: Sustained. We don't have anything in the record. This is --

THE WITNESS: Okay. It's all in the public arena. And so is the insider trading.

MR. PHILLIPS: Objection, Your Honor.

THE WITNESS: So, --

THE COURT: Okay. I sustain.

THE WITNESS: Okay. All right.

And then, yeah, and then there was monies missing. There were large amounts of monies missing from the estate. There was unexplained $16 million of expenses in '23.

MR. PHILLIPS: Objection, Your Honor. They're --

THE COURT: Okay. Explain the relevance, Mr. Lang.

MR. LANG: I thought he was just giving a background.

THE COURT: It's getting rather --

THE WITNESS: Okay, Your Honor. Well, --

THE COURT: -- colorful, shall we say. All right?

THE WITNESS: Okay. Without giving specifics

regarding the embezzlement or --

MR. PHILLIPS: Your Honor?

MR. MORRIS: We move to strike, Your Honor.

MR. PHILLIPS: We move to strike all of this.

MR. MORRIS: We move to strike all of this.

THE COURT: Okay. I grant. We don't have any evidence of embezzlement.

THE WITNESS: Okay. All right. Without detailing any of the bad acts that we -- that it looked like happened from the investigation, we took all the bad acts and all the investigations and we gave them to the three underlying charities. Let's remember the DAF is a legacy charity I set up 15 years ago, or actually, Mark Patrick did the documentation back when he was a loyal employee. And it was three -- around $300 million and about $600 million of liability, I mean, legal claims and other things that were meant to be a family legacy, where the donations would help the community. We've given out more than $50 million over the years. And the recognition would help our various companies or our families. That's what it was. Okay?

Went to the three underlying charities who were the beneficiaries of the DAF as it existed: Santa Barbara, Dallas Foundation, Kansas City. These are large charities that have been around for a hundred years. I don't control them by any form or fashion. As a matter of fact, the Hunts are $4

billion out of the $6 billion in Kansas City. I think I'm a hundred million or whatever. The DAF was a hundred million. I think the Hunts would be disturbed to hear that I control it.

Anyway, so all those charities were beneficiaries. And so we went to them with all the investigative results. And at first, they tried to verify, they tried to have an audience with Mark Patrick. They wanted details. They wanted what -- financials. They wanted to know what was happening. And nothing was forthcoming from Mark Patrick. He didn't think he owed them any fiduciary responsibilities.

MR. PHILLIPS: Objection. Hearsay.

THE WITNESS: No, that's --

THE COURT: What is the out-of-court statement? I'm not sure.

MR. MORRIS: Mark Patrick thinks that he doesn't owe any fiduciary duties.

MR. PHILLIPS: They did an investigation. They tried to do *x*. They tried to do *y*.

THE COURT: Oh, okay. Technically not hearsay, but I think we're getting --

THE WITNESS: Okay.

THE COURT: -- a little far beyond the subject matter. So if we could reign it in, please.

THE WITNESS: Okay. In February, they were noted,

they were notified, or, in particular, Dallas Foundation was notified that their Empower subsidiary, which owned a hundred percent of the HMIT interests that we were talking about, was transferred to an undisclosed company for a million dollars. Without any transparency, without any understanding of who the new owner was, they filed for receivership in Cayman. To the best of the charity's knowledge and based on all the documentation --

MR. PHILLIPS: Your Honor, objection.

THE COURT: Okay. Let me try to understand the relevance. Do you think I opened this up by asking if there was a falling out essentially between you and Patrick? Is that why you're going into this? Or --

THE WITNESS: No, no, no. No. The falling-out is much bigger than this. But I'm just saying the day receivership was filed was the day Mark Patrick lost authority. And I think anybody would look at it that way. It was for liquidation in the Cayman --

THE COURT: Okay. That's his view and we'll either see the --

THE WITNESS: Okay.

THE COURT: -- documents that support that or not.

THE WITNESS: All right. So, your -- yes. Because the question was when do I think he lost authority. I -- you could make the argument he lost it a lot sooner, because for

months beforehand the charities had written him letters saying they wanted their assets distributed in kind, they lost faith in --

THE COURT: Okay.

THE WITNESS: Yeah.

MR. PHILLIPS: Again, Your Honor, objection.

THE COURT: This is hearsay. Okay. I sustain.

THE WITNESS: Okay. Well, they did.

So, eventually, and it takes a lot to get four little old ladies at different charities to get together and agree to file a charity in liquidation, but they did in the Caymans. Okay? And then lo and behold, the response from Mark Patrick was, ha-ha, there are no assets there anymore, I moved them all to my living room --

MR. PHILLIPS: Move to strike, Your Honor.

THE WITNESS: -- at DFW.

MR. PHILLIPS: There's no evidence in the record of this. There was no evidence of any statement. Move to strike.

THE COURT: There's not, right?

THE WITNESS: Well, no, there is, because what Mark Patrick --

THE COURT: Sustained. I don't have it.

MR. PHILLIPS: Your Honor, there is no evidence of any of this.

THE WITNESS: Well, Mark Patrick's testimony, he said -- he said that our receivership was right after his receivership. He had liquidated and taken all the assets out from Dallas, Santa Barbara, and whatever, and moved it all to his charity. So when we tried -- when the poor charities in Texas in the U.S. tried to file for liquidation, his response was ha-ha. And there were no assets there, you know, because he had already filed --

MR. PHILLIPS: Objection.

THE WITNESS: He -- he --

THE COURT: Okay, I've sustained the objection to the ha-ha. Okay.

THE WITNESS: Okay. But he had, he had filed --

MR. PHILLIPS: Your Honor, please, move to strike.

THE COURT: Okay. Let's strike everything after that last question. Ask your next question.

MR. LANG: I don't remember what the first question was.

BY MR. LANG:

Q What happened -- or, what's your understanding of the proceedings in the Caymans?

MR. PHILLIPS: Your Honor, objection. Form. Understanding of the proceedings in the Caymans?

MR. LANG: His understanding is, I mean, his understanding. What's his endgame?

THE COURT: All right. I sustain.

MR. LANG: Okay.

THE WITNESS: The Cayman Islands --

MR. PHILLIPS: Your Honor?

MR. LANG: Hold --

THE COURT: I sustained, so --

THE WITNESS: Oh, sustained. Sorry. Okay.

BY MR. LANG:

Q What is your endgame with respect to your objection over the authority of Mr. Patrick to enter into the settlement agreement that is subject of the 9019?

A The three charities in the U.S. are affected materially. Dallas Foundation can't make payroll as of October. Dallas Foundation --

MR. PHILLIPS: Your Honor, I'll object to this testimony. The Dallas Foundation has withdrawn its objection on behalf of -- Dallas Foundation appearing on behalf of Empower, the Okada Family Foundation, and Crown Global. The Dallas Foundation is no longer a party here and did not even object in its -- an individual capacity. Object.

THE COURT: I sustain the objection. They had an objection. They withdrew it.

Moreover, as I announced early on today, I was really questioning their standing to weigh in.

So in light of all of that, I'm not going to allow

testimony regarding the impact there has been on Dallas Foundation as a result of something Mark Patrick may have done. Okay?

THE WITNESS: Okay. I can answer it differently.

THE COURT: Well, wait for your question. Okay.

BY MR. LANG:

Q Well, what -- what is the --

A What is my goal?

Q Well, yes, what is your goal?

THE COURT: Okay. Yes. Why are you objecting? Why is Dugaboy objecting? How about that?

MR. LANG: Safely.

THE WITNESS: Safely. Without stating where the assets are or might be, they are not with the three charities they were with a year ago. They have zero. And I would like to get those assets back.

(Pause.)

THE COURT: Okay. Go ahead. I have a couple of questions, but maybe you'll hit on them.

MR. LANG: Oh.

BY MR. LANG:

Q Mr. Dondero, are you asking the Court to -- are you objecting to the settlement agreement that is the subject of the 9019, asking the Court to allow the Joint Liquidators in the Caymans to weigh in on the settlement agreement?

A Yes. Or described a little differently, there's no irreparable harm --

MR. PHILLIPS: Objection. Nonresponsive.

BY MR. LANG:

Q Well, let me ask you this: Are you asking --

THE COURT: Let him answer.

MR. LANG: Yes.

THE COURT: Go ahead and answer.

BY MR. LANG:

Q Go ahead.

A There's no irreparable harm for a bit of delay to get to the bottom of where the assets are and what bad deeds have occurred.

Q Is that the reason why you're objecting, is to delay this for 45 days or so?

A Well, I believe the HMIT million-dollar transaction in February was a steal. I believe it was a stolen asset that he -- Mark Patrick's trying to monetize. And I don't believe it's monetized at nearly its fair value. And so I believe that it needs to be reviewed.

Q Are you asking the Court to -- are you objecting simply to allow the Liquidators in the Caymans time to review this transaction and the settlement agreement?

A Yes. There needs to be more time.

Q Okay.

MR. LANG: I'll pass the witness.

THE COURT: All right. Cross?

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Dondero.

A How's it going?

Q Okay. You referred to the three underlying charities as being The Dallas Foundation, The Highland Santa Barbara Foundation, and The Highland Kansas City Foundation. Do I have that right?

A The three are The Dallas Foundation, Santa Barbara, Kansas City. There's a holding company or there's an entity below it, below each one that I'm on the board of, but it's separate and distinct from the overall charity.

Q Okay. But the ones that are separate and distinct that have the Highland name, --

A Yes.

Q -- those are the ones that you control, correct?

A No. I'm on the board. There's three or four people on the board.

Q Okay. But --

A But we don't control. Otherwise, you know, we would have not recommended the settlement.

Q Does the Hunt family make their contributions to The Dallas Foundation, The Santa Barbara Foundation, and The

Kansas City Foundation, or do they make them to The Highland Dallas Foundation, The Highland Santa Barbara Foundation, and The Highland Kansas City Foundation?

A Most families do it through DAF, so they probably have their own -- they're just involved with Kansas City, as far as I know. I don't know if they're involved in any of these others. But they probably have a Hunt Kansas City.

Q But the ones with the Highland name are the ones who initiated the proceeding in the Cayman Islands to get the Joint Official Liquidators appointed over this entity down there, right?

A Yes, I believe so.

Q And you personally funded that litigation, correct?

A The charities can't make payroll.

Q And the charities, did you tell the charities what's happening here?

A Yes. They're aware.

Q When did you tell the charities what's happening here?

A They've known it for weeks.

Q And they haven't filed any objection in this court, correct?

A They thought it was best for Dallas to file it.

Q And Dallas settled; isn't that right?

A To the surprise of all the other charities.

Q Okay. So today, there's actually no charity who is

objecting to the settlement agreement, correct?
A Because it was -- she got bludgeoned in depositions over the weekend and it happened last night and nobody was aware of it.
Q I didn't bludgeon anybody.
A Well, --
Q I don't bludgeon people.
A She switched course after a Sunday full-day deposition or half-day deposition.
Q Okay. So the charities that you speak of aren't objecting, correct?
A Well, if we had more time. We only had six hours' notice that Dallas fell away. I think they probably would object.
Q And you say -- you began to have concerns about Mark Patrick going all the way back to 2023, right?
A 2023? A little bit, yeah.
Q And then you had real concerns in 2024, right?
A Yeah. I mean, he's an odd duck, but he was really odd towards the end.
Q Did you file a declara... is one of those public documents you mentioned in the Cayman Islands, that's your affidavit, right?
A I believe so.
Q Do you want to grab Binder 3 of 3?
A Sure.

Q And turn to Exhibit 119?
A Yes.
Q Okay. And this is the declara... this is the affidavit that you filed in the Cayman Islands?
A Yes.
Q And if you turn to Page 4, in Paragraph 25 you begin to recite events concerning Mark Patrick that concerned you, correct?
A Yes. I'm glad you're bringing this into evidence.
Q Yes. And in the two years since you started having concerns, has anybody sued Mark Patrick for breach of fiduciary duty?
A No.
Q Have you recommended to any of these charities: Mark Patrick is doing wrong, let's go sue him?
A We were unaware on 90 percent of it until he left.
Q You were aware of everything that's in your declaration. It says in 2023, you have notice of these emails. Right? And you did an investigation in 2024, correct?
A Yes. But it took a while to get the affidavits from third parties.
Q You had the whole investigation done in 2024 and nobody sued Mark Patrick, right?
A We didn't sue him. Correct.
Q You're just mad that you lost control. Isn't that right?

A No.
Q Turn to Paragraph 33, please. You accuse Mr. Patrick of misusing material nonpublic inside information. Is that right?
A Yes.
Q What material nonpublic inside information did he abuse?
A I wasn't involved in the specifics. My understanding is that he had an awareness of a tender or some financial transaction and then was providing inside information to attorneys and then had them do something. But I don't -- I don't know the specifics.
Q Sir, under oath, in this affidavit that you submitted to the Cayman Islands, you accuse Mark Patrick of obtaining and abusing material nonpublic inside information. Can you just tell Judge Jernigan what you had in mind?
A Whatever it says I have in mind. I'm just saying I didn't remember the specifics. I can read it, though, if you'd like me to read it.
Q Well, was it something about a put option?
A Yes.
Q Did he tell The Dallas Foundation that it had a put option? Does that refresh your recollection?
A I don't remember the details.
Q Do you remember who the counterparty was to the put option?

A Counterparty. One of the mutual funds.
Q Does it refresh your recollection that it was the Dugaboy?
A No.
Q Do you remember, sir?
A I don't remember.
Q I'm going to try. I'm going to try and refresh your recollection. Do you remember that Mark Patrick suggested to The Dallas Foundation that it could recover millions of dollars if it simply exercised the put option with Dugaboy?
A My recollection is it was a mutual fund, and it wasn't millions of dollars, but it would disrupt the transaction that was already in place. That's my recollection.
Q Okay.
A And I don't see Dugaboy anywhere in here, by the way.
Q I know. I was wondering if you could just -- I asked you, but it doesn't sound like you know specifically what the material nonpublic --
A Well, --
Q -- inside information is that you accused Mr. Patrick of abusing at that time.
A I know it's been reported. We can get you the details.
Q Okay. You, in fact, acted on behalf of HMIT, didn't you?
A Who is HMIT?
Q Apologies. You personally -- there's no question in your mind that Mark Patrick is the Administrator at HMIT, correct?

A I'm sorry, I'm drawing a blank on HMIT. What is HMIT?
Q I apologize. Hunter Mountain Investment Trust.
A Oh. Okay.
Q I'm calling it HMIT.
A Okay. All right. Sorry.
Q I probably not saying it clearly. I apologize. H-M-I-T. HMIT, that's what I call it. Is there something better that you prefer?
A No, that's fine. Yeah.
Q Okay. So HMIT. Mark Patrick is the Administrator at HMIT, right?
A I believe his status, his dirty hands, I believe he's trying to monetize a stolen asset.
MR. PHILLIPS: Objection, Your Honor. Nonresponsive.
THE COURT: Sustained.
THE WITNESS: No, I -- I saw it. I don't agree --
MR. PHILLIPS: Objection, Your Honor.
THE COURT: Sustained.
MR. PHILLIPS: Move to strike.
THE COURT: Granted.
THE WITNESS: I do not agree.
BY MR. MORRIS:
Q Okay. Has he -- he was at one time the Administrator. You would agree with that, right?
A Yes.

Q And did he stop becoming the Administrator in your mind when the Joint Official Liquidators were appointed?
A Yes. I believe.
Q Okay. So, in your mind, that's when it happened?
Can you describe for the Court the relationship between the entity in the Cayman Islands and HMIT?
A The entity in the Cayman Island, as far as we knew, was the org structure that all the assets were either in or controlled by in the organizational structure before all the HGEQ things that you went over earlier with Mark Patrick.
Q Okay. I'm not asking -- it's my fault. Do you believe the entity in the Cayman Islands controls HMIT?
A HMIT was one of the assets that were owned by the charities until it was moved for a million dollar to who know who.
Q And do you know how many layers there are between the Cayman Islands entity and HMIT?
A I do not.
Q Is it fair to -- in your view, do you believe that the Cayman Islands entity had a direct -- withdrawn. Do you believe that the Cayman Islands entity had an indirect ownership interest in HMIT?
A We believed it was direct.
Q Direct. So it was the owner?
A Well, it was -- it was the direct before it got moved in

February.
Q Hasn't Beacon always been the owner of -- the beneficial owner of HMIT?
A Then it was Beacon that was moved. There was -- charities were notified in February that, for $1 million, the HMIT was sold to an undisclosed, unknown person.
Q Do you believe that the entity in the Cayman Islands ever had the ability to control Hunter Mountain Investment Trust?
A Yeah. It was an asset in the portfolio.
Q And do you believe that that gives it the right to control HMIT?
A Yes. I think the Liquidators will prove that. I think they can go back in time on bad acts and bad behavior and they can regroup assets to their rightful owners.
Q So your concern here is not with corporate authority, it's with the bad acts. Is that fair?
A Well, no. I think you lose your corporate authority when you're fiducially irresponsible or commit corporate crimes.
Q Okay. But you've never -- you've never brought a lawsuit accusing him of that. Fair?
A I think you'll see a litany of stuff come out of the Cayman Islands.
MR. PHILLIPS: Objection. Nonresponsive.
MR. MORRIS: I'm sure we might someday.
THE COURT: Sustained.

THE WITNESS: Yeah. But, no. But I have not, no.
BY MR. MORRIS:
Q Yeah. But you personally, have you ever been the Administrator of Hunter Mountain Investment Trust?
A Not that I'm aware of.
Q Have you ever had any role whatsoever with respect to the Hunter Mountain Investment Trust?
A Not that I -- not that I recall.
Q Okay. Do you recall last December we were here on some litigation concerning HCLOM's scheduled claim?
A You have to give me more of a clue.
Q Remember HCLOM had that $10 million scheduled claim and Highland had filed a bad faith motion and we were all here in court and we wound up settling that matter and HCLOM got a Class 10 interest for $10 million?
A Yes, I vaguely remember that.
Q Okay. And you were here and you were representing HCLOM, right?
A Okay. I don't remember specifics, but, yes, go ahead.
Q Okay. And do you recall that Highland required Hunter Mountain Investment Trust's consent as part of the transaction?
A Vaguely.
Q And you personally authorized that consent back in December, didn't you?

A No.
Q Who did?
A Whoever would have spoke for HMIT at the time.
Q Okay. Let's take a look at Exhibit 68, please.
A So, Binder 2?
Q Yes, please.
A Sorry, this says Pat Daugherty. This is 1 of 3. This one. Okay. Did you say 68?
Q Yes.
A It's not in here, either. 68.
Q So you see that's an order of the Court?
A Yes.
Q And this resolves HCLOM's claim? Take your time.
A I'll leave it in case someone else needs it. Okay.
Q And do you see on the last page of the document there's an electronic signature by Deborah Deitsch-Perez at the Stinson firm as counsel for Hunter Mountain Investment Trust and Dugaboy Investment Trust? Do you see that?
A I'm sorry. I went to the very last page with Mark and I. Is there another page? Oh, okay. Yes. Okay.
Q So you see Stinson has signed both on behalf of you personally and HCLOM, and at the bottom, Stinson and Ms. Deitsch-Perez has also signed on behalf of Hunter Mountain Investment Trust and the Dugaboy Investment Trust? Do you see that?

A Yes. But then it's separate on 69, right?
Q Yeah. We're just looking at 68.
A Okay.
Q Do you know who authorized Ms. Deitsch-Perez to sign her name and tell the Court that the Dugaboy Investment Trust had approved this form of order both as to form and substance? Who acted on behalf of Dugaboy?
A I have no idea. I hope she keeps it straight when she's signing stuff.
Q Well, on whose behalf are you here today?
A Dugaboy's.
Q And are you a representative of Dugaboy?
A Representative? I'm primary beneficiary until I pass.
Q And who's the trustee of Dugaboy?
A I believe it's my sister at the moment.
Q Does she know you're here today testifying on behalf of Dugaboy?
A She knows I'm in court. I didn't -- I wasn't specific.
Q Did you talk to her about the Dugaboy -- does she -- does she even know about the Dugaboy objection?
A I don't know.
Q Okay. So how about Hunter Mountain Investment Trust? Do you know who authorized Ms. Deitsch-Perez to sign this document on behalf of Hunter Mountain Investment Trust?
A When was this? In December or January?

Q Yeah.
A I'm assuming -- I'm assuming Mark Patrick.
Q Late December.
A I'm assuming Mark Patrick. But I don't know.
Q Did you hear about a week later that Mr. Phillips called your lawyer and accused her of signing this document without authority from Hunter Mountain Investment Trust's authorized representative, Mr. Patrick?
A In hindsight, he's been in on it for a while, so --
Q What do you mean, he's been in on it for a while?
A I think he knows the plan Mark Patrick's been putting in place for quite a while.
Q But this document was signed without his knowledge or consent; isn't that right?
A I don't know.
Q And you had to sign a new agreement with Mark Patrick as the authorized representative of HMIT. Didn't you do that, sir?
A I don't know.
Q Okay. Let's take a look at guess I guess probably Exhibit 69. So this is an intercreditor and participation agreement. Do you see that?
A Yes.
Q And it's dated January 10th, 2025, correct?
A Yes.

Q And even though you -- even though Skyview had completed this investigation in which it was alleged that Mr. Patrick misused material nonpublic inside information and he had terminated his relationship with Skyview, you still entered into this agreement with him as the authorized representative of HMIT, correct?

A Those were different work streams, you know, so they were -- but yes.

MR. PHILLIPS: Objection. Nonresponsive.

THE COURT: Sustained.

BY MR. MORRIS:

Q That is -- that is your signature on the last page, correct?

A Yeah. I mean, --

Q It's a simple question. That's your signature, right?

A Yes.

Q And you understood that you were signing an agreement with Mark Patrick, correct?

A Yes.

Q And you signed this agreement in order to avoid Mr. Phillips filing a motion in this court for reconsideration of an order that she signed not knowing that Hunter Mountain had given its consent without authority. Isn't that right?

A No, I had no -- none of that --

Q So what's your memory? Why do you think you entered into

this agreement?
A Because the lawyers put it in front of me as a finished product from what had been going on recently.
Q And you had no understanding of what it was?
A Not with the innuendo and agenda that you were describing. No. I mean, I just -- I knew what it generally involved. That's it.
Q But you would agree with me that you entered into an agreement knowing that Mark Patrick was signing on behalf of Hunter Mountain, correct?
A Yes.
Q I mean, it's right below your name, right?
A Yes.
Q You couldn't have missed it.
A Yes. That part, I'll agree with.
Q Okay. And you signed the agreement with Mark acting as the authorized agent and representative of Hunter Mountain, notwithstanding all of the bad acts that you supposedly were aware of at the time. Correct?
A Object to aware of at the time. They were all coming together in parallel work paths.
THE COURT: Okay.
MR. PHILLIPS: Object. Nonresponsive.
THE COURT: Sustained. Like I told Mr. Patrick, the witness does not get to object.

THE WITNESS: Okay.

BY MR. MORRIS:

Q And just to close the loop, Mr. Dondero, you fully funded The Dallas Foundation's objection, correct?

A And I made additional donations so that they could pursue bad actors and get their money back.

Q You funded the litigation so that The Dallas Foundation could pursue their objection, correct?

A I made additional donations so that they could get some assets back so that they could be a charity again and make donations.

Q Do you get a tax deduction for that donation?

A Yes.

Q Okay. That's nice.

Let's just finish up with the Joint Official Liquidators. Have you spoken to them?

A I do not believe so.

Q Has anybody acting on your behalf spoken with the Joint Official Liquidators?

A I don't know. I think the Joint Official Liquidators are an accounting firm. I think they're Grant Thornton. I think people have spoken to the attorneys down there, but I don't know -- I haven't spoken to Grant Thornton and I don't know if anybody else has.

Q Okay. Did you see the letter that your counsel marked as

the exhibit, the one that was sent last night?
A I've not heard it -- I've not read it, but I've heard you guys read it today.
Q Yeah. Are you aware of the Joint Official Liquidators saying at any time that they didn't believe Mark Patrick had the authority to enter into the settlement agreement on behalf of the HMIT entities?
A I have not.
Q Okay.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Phillips?
MR. PHILLIPS: Yeah.
THE COURT: Wait. What are we at timewise?
THE CLERK: So their 30 minutes is over. If you intended to give them 30 minutes for Patrick and --
THE COURT: Yes. Yes. They collectively got 30 minutes.
THE CLERK: For both of those --
THE COURT: Yes.
THE CLERK: -- witnesses. Okay. Yes, they're out.
THE COURT: How much did Mr. Morris use?
THE CLERK: Well, I don't know. I just was --
THE COURT: No, no, no, no. 30 minutes for each side for each Patrick and Dondero.
MR. MORRIS: About eight minutes.

THE CLERK: Yes. Mr. Morris -- I think Mr. Phillips may have asked one question, but Mr. Morris mostly -- 30 minutes.

THE COURT: No. On this witness, Phillips hadn't gone.

THE CLERK: No, not this witness.

THE COURT: Okay. That's all I care about, this witness.

THE CLERK: I don't know this witness.

THE COURT: Okay. Do you have a question, Mr. Phillips?

THE CLERK: I was doing 30 minutes for the total.

THE COURT: No, no, no, no, no.

MR. PHILLIPS: Your Honor, I can resolve this. I can resolve this. We have no questions.

THE COURT: Okay. Thank you. Where are we? Mr. Lang, any redirect?

MR. LANG: I'm not sure.

THE COURT: Okay.

THE WITNESS: The last one.

MR. PHILLIPS: Your Honor, the witness is telling the lawyer what question to ask.

THE COURT: Okay.

MR. LANG: I believe I've already asked, which is the endgame.

THE COURT: Okay. Just let's move on. Anything else? What was the question?

REDIRECT EXAMINATION

BY MR. LANG:

Q Mr. Dondero, what are you looking to accomplish through this objection?

MR. PHILLIPS: Asked and answered.

THE COURT: Sustained. Sustained. He did. He was asked and answered.

BY MR. LANG:

Q The endgame in general.

MR. PHILLIPS: Asked and answered.

THE COURT: Answered and answered. Move on.

THE WITNESS: No, no. No, I haven't. No, I --

MR. PHILLIPS: Asked and answered. Move to strike.

THE COURT: You asked him this on your direct earlier.

MR. LANG: I did.

THE WITNESS: But, in general, regarding the --

MR. PHILLIPS: Your Honor?

THE WITNESS: Not just this.

THE COURT: Sustained. Ask another question.

MR. LANG: I don't have any more questions.

THE COURT: Okay. I have a question.

EXAMINATION BY THE COURT

THE COURT: Here is something that I want to understand. What I have before me is whether a settlement with Hunter Mountain, a settlement between the Highland entities, the Claimant Trust, the Subtrusts, and the Hunter Mountain entities, seven of them, is fair and equitable, is in the best interest of the estate. If you were the director, the manager, the representative of Hunter Mountain estate, what would your answer be?

THE WITNESS: It's not in the ZIP Code.

THE COURT: It's not in the ZIP Code?

THE WITNESS: Of fair. Yes.

THE COURT: Okay. Why do you think it's not in the ZIP Code of fair?

THE WITNESS: Okay. We filed in Delaware on a $100 million judgment. Pachulski was our counsel. They told us --

THE COURT: I know all this.

THE WITNESS: It just --

THE COURT: I'm talking about the settlement in front of me right now.

THE WITNESS: -- we'd be in and out in three months, right? We got liquidated instead. We got liquidated for over $850 million, which not enough people talk about. Okay? It would've been $950 million if Seery had done a good job, but it was $850 million we got liquidated for. Okay? The POCs were pumped up. People who supposedly had no claim, all of a

sudden, $300 million.

There's $700 million missing or misallocated from the estate. Okay? There was -- all the original creditors, all the original creditors sold 99 percent of their interest for $160 million. The Farallon and Stonehill went to the beach. There was enough money on the balance sheet. Seery could have given them the $160 million and tossed us the keys. Instead, he had relations, deep relations, undisclosed business relationships with Farallon and Stonehill, --

THE COURT: Okay. I do want you to know --

THE WITNESS: No, but --

THE COURT: -- I've read all this many times.

THE WITNESS: Okay. But so -- so these --

THE COURT: I promise I read every piece of paper submitted.

THE WITNESS: Okay. So, so he sold the POCs to them, and it's been -- they've tripled their money in two and a half years. The professional fees have been $300-odd million. There's interrelationships between all the professionals -- Farallon, Stonehill, Grosvenor, the Hellman & Friedman guys, the Millennium guys who took whatever. All this stuff has to come out.

We're on the edge of a giant RICO case eventually. We're -- that's -- we're on the edge of a giant RICO case. And they should not be giving up their rights for $10, $20 million.

It's crazy for them to give up their rights at Dallas Foundation for 10 or 20 million bucks.

There's $700 million missing. All the original creditors sold for $160 million. The estate was sold for over $850 million. Where'd all the money go? Where'd all the money go and why? You know.

We get updates quarterly, once in a while, well, this much went out to this law firm, this much went out to this, whatever, but no one looks at the gross amount and where'd all the money go? And why? Why did it have to -- why did it have to go down like that? Why do we have to fire --

THE COURT: Okay. I know you have an objection.

THE WITNESS: -- all the employees?

THE COURT: This is narrative.

MR. MORRIS: Yeah. And --

THE COURT: I understand all --

MR. MORRIS: -- I'm not going to cross-examine him, but this is -- this is not accurate.

THE COURT: I understand all of these arguments. You know, I --

THE WITNESS: But I'm just --

THE COURT: Your lawyers at least know, if you don't know, that we wrote a 100-plus-page opinion on the motion of Hunter Mountain to sue for all of this. Okay? So I promise I've heard this and looked at it. But right now, Hunter

Mountain, through Mark Patrick, you question his authority, but they are ready to lay down their swords and not pursue that motion for leave to sue based on the claims trading, and --

THE WITNESS: Have you seen all the insider trading, Farallon, Stonehill? Have you seen the trading and claims on insider information? Have you seen all that stuff?

THE COURT: I've seen the allegations but I --

THE WITNESS: Well, why would you release all those people right now before the RICO?

THE COURT: So I -- Dugaboy -- you've been asked what is your goal? Dugaboy a .18 limited partnership interest --

THE WITNESS: Correct.

THE COURT: -- that is subordinated to Hunter Mountain. I'm just trying to understand the scenario where it makes sense to keep fighting for years to come.

THE WITNESS: Well, RICO transcends this, right? I mean, RICO brings everybody in. Until we get --

THE COURT: Okay. You think it's -- and my question, why is this not fair and equitable and in the best interest of the estate, you think it's better to litigate several more years and maybe have a chance, you know, --

THE WITNESS: At $600 mill. At $600 million.

THE COURT: -- Hunter Mountain would have a chance to --

THE WITNESS: $600 million. Yes.

THE COURT: Okay.

THE WITNESS: Versus $20 million now. But you have to remember, it's all part of -- you have to pay attention to this Mark Patrick stuff.

MR. PHILLIPS: Your Honor?

THE COURT: Okay. Yes. I asked my question. I'm trying to understand why Dugaboy, why its position is this is not fair and equitable and in the best interest and in the range of reasonableness. Those are the buzz words that a judge has to focus on.

THE WITNESS: It's not fair to the charities. I still think no one's ever seen --

THE COURT: The charities aren't parties here.

THE WITNESS: Not yet. Give them a little time. They just heard about the settlement yesterday.

THE COURT: Well, isn't that what the Cayman Islands is all about? What I do doesn't necessarily affect what's happening there.

THE WITNESS: Well, no, but you're saying they're not here today. If you delayed this three weeks, they'd be here. It's just a couple --

THE COURT: They were here and they chose to withdraw.

THE WITNESS: One. One. Just one charity. But the

others, if you give them some time, they'll be here.

THE COURT: Okay. Okay. I think you've answered my question, your theory of how this should play out and how you want it to play out. Okay. All right.

THE WITNESS: Thank you.

THE COURT: That's all. Thank you.

THE WITNESS: Thank you for the time.

THE COURT: Uh-huh.

(The witness steps down.)

THE COURT: All right. I think that concludes our evidence, correct?

MR. YORK: Yes, Your Honor. At least from Daugherty and --

THE COURT: Okay. The Objectors rest. Any rebuttal?

MR. PHILLIPS: No, Your Honor.

THE COURT: Okay.

MR. YORK: Your Honor, would it be okay if we took a five-minute comfort break?

THE COURT: Yes. We may as well turn it into a 10-minute break because that's what's going to happen. All right. We'll be back at 3:40.

THE CLERK: All rise.

(A recess ensued from 3:30 p.m. until 3:44 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. We're back on the

record in Highland Capital. I will hear closing arguments. And I dangled something out there before lunch and I've never heard any follow-up. I guess no agreement with Daugherty could be reached on the reserve?

MR. YORK: Haven't had that conversation, Your Honor.

THE COURT: You didn't have that conversation? Oh, well. Why didn't you have that conversation?

MR. YORK: We were, during the lunch break, working busily to prepare the rebuttal to Mr. Seery's testimony, --

MR. MORRIS: Yeah.

MR. YORK: -- Your Honor. And so --

THE COURT: Okay. You told me you'd talk about it.

MR. MORRIS: May I proceed, Your Honor?

THE COURT: I guess I don't matter. Do I not matter when I suggest something like that?

Okay. Go ahead.

CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

MR. MORRIS: Good afternoon, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for Highland Capital Management, LP and the Highland Claimant Trust and on behalf of the Highland Litigation Subtrust.

I know that we've got Bob Loigman in the courtroom, but I know that -- at least I hope he joins me in this closing argument. I suspect he does.

I don't want to be too long here, Your Honor. We don't

have a high burden. This is a 9019 motion, for goodness' sakes. I've never been involved in such a contentious 9019 motion in my life. We had three depositions on Friday. We had two on Sunday. I think we had two on Monday. For a 9019, I've had one witness sit multiple times.

It's been an extraordinary experience. But at the end of the day, nobody's really challenging the settlement agreement. You've got people challenging, you know, the Cayman Islands. You've got people challenging, is it -- you know, can you jam it in under the plan? We're not jamming anything under the plan. We're following the plan provisions.

Nobody's challenging the bona fides of the motion. Nobody is challenging whether it's the product of good-faith, arm's-length negotiations.

You heard Mr. Seery testify at length about the process. You've got 55 different documents in the record proving that this agreement is the product of arm's-length, good-faith negotiations between parties represented by sophisticated counsel that resulted from an exchange of information, an exchange of proposals, back and forth, and here we are.

It's also in the best interests of the estate. Really not challenged by anybody. Nobody is contending that Highland is getting a raw deal here. Nobody. And the proof that Highland is getting fair consideration and that this settlement is in the best interest of the Claimant Trust and its stakeholders,

it's obvious we are terminating costly, wasteful, and I dare say frivolous litigation. We are disposing of several illiquid assets. We are getting litigation protections that will inure to the benefit of the released parties, the Highland release parties and it will, we believe, provide the protection that we deserve.

It's not just releases. It's covenants not to sue. It's all kinds of bells and whistles in there. Substantial benefits to the estate. And so nobody's really objecting to that.

Nobody's really objecting to the fairness of the settlement to the HMIT parties except for Mr. Dondero, and he's just mad that peace is breaking out. He's just mad because he's not going to be able to litigate anymore. It's not relevant to a 9019 motion. But even if it was, it's ridiculous. It's just ridiculous.

The settlement is fair and reasonable and in the best interest of the creditors. It's the product of good-faith, arm's-length negotiations. And on that alone, it should be approved.

We've had a lot of testimony today about Mark Patrick's authority. The only actual evidence that concerns Mark Patrick's authority are the exhibits in the binder and Jim Seery's testimony about the diligence that he did. And the exhibits in the binder all prove that Mark Patrick has the

authority to act and bind the HMIT entities to the settlement agreement. It's Paragraph 7 of the HMIT trust agreement itself.

Did the objecting parties point you to one single document to support their speculative argument, because it's not anything more than that, that somehow Mark Patrick isn't authorized to do this? There is not a scintilla of evidence that Mark Patrick is not authorized to do this.

And if Your Honor had any concerns about Mr. Patrick, I think he answered them at the end. That he understood exactly what the terms of the agreement are. That he had a reasonable opportunity to consult with counsel and to negotiate. That he knows exactly what he's doing on behalf of these entities. That he believes the best path forward from the HMIT entities is to grab the value today instead of letting it waste.

We welcome Mr. Patrick to the table. It makes a lot of sense. We've been trying to get to this point forever.

Mr. Daugherty. You know, I have no gripes with Mr. Daugherty. I don't know quite what's motivating him these days, but he admitted and the evidence is clear that when he was a Class 9 claim holder, I forget if it's two or three or four occasions, he accepted $3.7 million in multiple payments, without any concern at all as to whether or not it violated the plan, even though his Class 8 claim had remained unresolved.

He didn't send the money back. He didn't say, Mr. Seery, you can't do this because it violates the plan. He knowingly and willingly accepted the benefits of being a Class 9 claim holder. And now he comes and objects on the basis that somehow it's not fair to him as a Class 8 holder? This is what we call estoppel. Right?

I wasn't in a position to really make the argument because I didn't quite understand it until today. Like, how does he come in today and say you can't do this, Your Honor? You can't allow Class 9 and 10 to get a nickel until he's done, when he himself has accepted millions of dollars before his claim is resolved? That doesn't sound right to me. And I don't think the Court should accept that argument.

Just quickly, because I don't want to give it any weight, frankly, but this whole business of the Cayman Islands and the JOLs, the only facts Your Honor has to take into account are that they were appointed before this motion was filed. They've never appeared here. They've never objected. And there is no evidence in the record to suggest, let alone to prove, that the JOLs contend that Mark Patrick does not have the authority to enter into the settlement on behalf of the HMIT entities. There's no evidence of any kind.

What you need to know and need to remember, though, is that whole proceeding in the Cayman Islands is being brought on behalf of not The Kansas City Foundation or The Dallas

Foundation, but The Highland Kansas City Foundation, The Highland Dallas. It's Mr. Dondero, and he's funding it, and it says it in Paragraph I think 47 or 48 of his declaration. He's funding all of that. And he funded The Dallas Foundation's objection here.

And that's why he's upset, because they settled last night without telling him because they didn't want any part of this, Your Honor. That's the truth. That's why they're not here. And they, right, they're the people who suggested that maybe something untoward happened and maybe someday -- because this is the way their objection is characterized. Complete speculation.

If you go back and look at the objection, it's someday, somebody might do something and might someday set it aside. That wasn't a proper basis at the time, but we know that Mark Patrick remains in control of the HMIT entities today because nobody has told the Court otherwise. And we know that The Dallas Foundation has withdrawn its objection. As I asked Mr. Patrick, have you been, you know, removed or clipped or terminated or in any way restricted in your capacity as the Administrator and control person of the HMIT entities as a result of the settlement, and the answer was no.

There's nothing to see here, Your Honor, except the opportunity for the Highland Claimant Trust and its affiliated entities in moving this case forward in an enormously positive

and constructive direction.

We have the opportunity today to put to rest a lot of pending litigation. We have the opportunity today to put to rest a lot of future potential litigation that undoubtedly would have come to pass had these entities remained under the indirect control of Mr. Dondero, because we know that that was the case.

If you remember, Your Honor, we sat here two years ago, June 8th, 2023, on the evidentiary hearing on Hunter Mountain's motion for leave to bring the claims trading case. And if Your Honor will remember, Mr. Patrick at that time was forced to admit that the entirety of that case came in from Mr. Dondero, that he had no knowledge of any facts that related to anything.

I would ask Your Honor to go and compare The Dallas Foundation's objection with Mr. Dondero's declaration that he filed in the Cayman Islands. I'm not going to say they're verbatim, but they are largely, largely the same. This is just Jim Dondero being Jim Dondero, and that is not a basis to overrule or deny the motion under Rule 9019.

It's a product of good faith negotiations, it is clearly in the best interests of the estate, and we respectfully request that as soon as possible Your Honor grant motion.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Any closing from the Movant, Co-Movant?

MR. PHILLIPS: Your Honor, thank you very much. Louis M. Phillips on behalf of the --

THE COURT: I don't know if you're the Co-Movant. You're a party to the proposed settlement.

MR. PHILLIPS: I'm not a Co-Movant.

THE COURT: Okay.

MR. PHILLIPS: I'm a party to the settlement.

THE COURT: Uh-huh.

MR. PHILLIPS: I didn't quite make it to that status to be a Co-Movant.

CLOSING ARGUMENT ON BEHALF OF THE HUNTER MOUNTAIN ENTITIES

MR. PHILLIPS: But anyway, we appreciate the Court's time. We appreciate the Court's attention. This was, as the evidence established, we provided and were provided an immense amount of information.

Much of the information, certainly the information about Mr. Patrick's control of the HMIT entities, was provided by us. It was reviewed by Mr. Seery. And Mr. Seery made a very strong case for the amount of diligence he did on our side of the equation. It's not nearly as relevant to Your Honor's decision about whether to approve the settlement whether we got a good deal or not, but the deal we got, we think, is very fair.

The deal we got was negotiated with counsel, with

businesspeople who are very sophisticated. We have agreed on the methodology and of the calculation of our Class 10 claim. The Debtor and the Debtor estate or the Claimant Trust or whoever held the HMIT note got full value for the HMIT note. Any additional value from the HMIT note would come back to HMIT. The Kirschner Litigation would be for the benefit of HMIT. The Dugaboy Note would be for the benefit of HMIT.

All of that is being put into a package and is being resolved, affiliated, administered in a very effective and efficient manner. We are getting some money. We appreciate. We tried to get more. We couldn't. They tried to pay less. We made a deal.

So, Your Honor, I echo and thank Mr. Morris for all of his comments. I appreciate counsel being involved here today. We think this is a fair and equitable settlement. There is no question under 9019 that this settlement should be approved. And the suggestion that this Court should allow itself to just be a vehicle for continued litigation, when we have analyzed it, perhaps from a different perspective, and made the decision that it is time to make our deal now, it is time to take HMIT out of the litigation picture and into the fold of a party in interest of a fixed claim with fixed treatment that's different from the plan, authorized by the plan. And we appreciate it.

Thank you, Your Honor.

THE COURT: Thank you. All right. Mr. Loigman, we didn't mean to ignore you.

CLOSING ARGUMENT ON BEHALF OF MARC S. KIRSCHNER, LITIGATION TRUSTEE

MR. LOIGMAN: Thank you, Your Honor. Robert Loigman, Quinn Emanuel. You didn't ignore me. Louis was just quicker to jump up than I was.

And I step up solely because you asked whether the Co-Movant had anything to add. And we have nothing further to add to what Mr. Morris said. We agree with it wholly. We think this is a fair and complete settlement, and we would ask that the Court approve the settlement under the 9019 motion.

THE COURT: Thank you.

MR. LOIGMAN: Thank You, Your Honor.

THE COURT: All right. The Objectors?

MR. MORRIS: Your Honor?

THE COURT: Oh.

MR. MORRIS: Just to clarify, the motion was made under 9019 and Section 363. I just don't want that to get lost. That's all.

THE COURT: Okay. 363, use of property. Okay.

The Objectors?

CLOSING ARGUMENT ON BEHALF OF PATRICK DAUGHERTY

MR. YORK: Thank you, Your Honor. I'll be very brief.

I certainly appreciate that the Court desires to have this bankruptcy wrapped up, given how long it's gone on now, for six -- approximately six years in this court. The fact of the matter is that the settlement agreement that Highland proposes to enter into with Hunter Mountain Investment Trust entities violates the express terms of the plan, the confirmation order, and the Claimant Trust Agreement.

And they have not pointed to any language in there or to argue otherwise. Their only argument has been that they've set a reserve aside. And there's no provision in any of those documents that provides that that's an excuse for them to violate the express terms of the confirmation order, the plan, or the Claimant Trust Agreement, including specifically the language that Class 10 claims are not to receive or retain anything under the plan on account of their interest unless and until the Class 8 and Class 9 claims are paid in full plus applicable interest. And --

THE COURT: I really want to understand that argument. Mr. Seery correctly testified that, pretty much in every Chapter 11 plan we see, there's a disputed claim reserve. Well, I guess unless we have really unsophisticated creditors who don't insist on that. But we had sophisticated creditors. So why doesn't that mechanism, which I would call tried and true, we see it in most cases, why doesn't that resolve this issue you're raising?

MR. YORK: Well, --

THE COURT: And I focused in more than maybe I needed to about the nature of Mr. Daugherty's remaining claim, his Class 8 claim. What was the scope? What's the maximum amount it could be? When might it be resolved? Because I think we have a tried-and-true mechanism that addresses his concerns. Tell me why it doesn't.

MR. YORK: Well, --

THE COURT: Really, I want to understand what you think I'm missing.

MR. YORK: Well, so I think twofold, Your Honor. The first is that the dispute reserve that exists normally would be for whatever the amount of the disputed claim is. And here we're dealing with, as both sides have acknowledged, a claim that they at best could estimate, but they don't know for certain, given all of the machinations that could come out of the IRS audit.

And secondly, specifically with respect to the confirmation order, if it had said that the net 10 and 11 claims could be paid as long as the allowed 8 and 9 claims were paid, then the dispute reserve would provide that protection. But that's not what the language in the confirmation order says. It says claims, not allowed claims. And therefore it's referring to all claims, including disputed claims. And --

THE COURT: But we have a disputed claim reserve. Okay. We have a disputed claim reserve.

MR. YORK: There is, yes, there is a reserve.

THE COURT: So is it your argument that I can't approve a settlement like this until Mr. Daugherty's claim has been resolved with certainty, which might be in 2033 or whatever? I can't keep a bankruptcy estate open, allowing administrative expenses to continue to accrue, because of one contingent unliquidated claim that may never even develop.

MR. YORK: Your Honor, I appreciate the Court's frustration with that, but that's the way that the documents are written in terms of the confirmation order. And so it's an --

THE COURT: So the disputed claim reserve is meaningless?

MR. YORK: No, it is not -- a disputed claim reserve exists, but it does not, under the terms of the confirmation order, in terms of allowing the payment of Class 10 and Class 11 claims, those can't be done until the Class 8 claims are resolved.

THE COURT: You would have -- just a moment -- you would have me keep this estate open for as long as it takes, 2033, whatever, without allowing Class 10 and Class 11 theoretically to get anything?

MR. YORK: At least under --

THE COURT: Let's just let the -- with all respect to Mr. Seery, he's charging a handsome amount. It was agreed to or approved by the Court. Let's just let him continue accruing until 2033 because of Mr. Daugherty's prospect of the IRS saying you owe $1.4 million plus interest and penalties, when he's gotten the use of that all? Help me. This doesn't make sense to me.

MR. YORK: Sure. One way this could be solved is that the payments to -- the cash payments, for example, that are to be made to the HMIT entities, under the proposed settlement could be held in abeyance until the resolution of the Class 8 claim. The Court could modify the proposed settlement based on that. That's one way to deal with the issue, for example.

THE COURT: Do what? Hold it in abeyance?

MR. YORK: Yes. For -- the payments to be made to the Hunter Mountain Investment Trust under the proposed settlement could be -- could be done in accordance with the terms of the confirmation order. We'll just hold those payments until such time.

THE COURT: We who? Put it in the Court Registry?

MR. YORK: Or --

THE COURT: Where it will earn 0.18 percent?

MR. YORK: No. No. It can remain within the Claimant Trust until the time at which the Class 8 claim is

finally and fully resolved.

THE COURT: Okay. Meanwhile, I've approved the extension of the Trusts for one year, with Dugaboy saying, we don't think this should happen again and again and again. We reserve our rights. That's not a good solution.

MR. YORK: Your Honor, I understand the Court's frustration, but this is the terms of the plan and the confirmation order that were entered. Highland needs to follow it.

THE COURT: Okay. What about the estoppel argument that I heard Mr. Morris make?

MR. YORK: Well, sure. So, the first time they raise it is here today. And the one thing that -- the difference is that allowing this settlement to go forward is an effective liquidation of the estate versus where things are now, in which any payments that were made is not an effective liquidation. It doesn't expose anyone that would have priority to Class 10 with respect to anything that happens in the future from, you know, not having sufficient funds to deal with it. That's all.

THE COURT: Okay.

MR. YORK: Thank you, Your Honor.

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

CLOSING ARGUMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

MR. LANG: I'll be brief. Your Honor, there are

three issues that we've raised. One is the capital account balance being used for the claim for the Class 10 holders. The plan does not specify that the capital account balance is to be used. Allowing the $336 million claim to Class 10 ensures that Class 11 will not ever receive a dime. That's guaranteed.

Alternatively, upon the satisfaction of the Class 9, the $20 million approximately owed to Class 9, the holders of HMIT should receive 99.5 percent of the total residual. We think that would be a more fair outcome to the Class 11 claimants.

THE COURT: Wait, say again?

MR. LANG: That, so, of total assets, $70 million approximately, $20 million is owed to Class 9.

THE COURT: Uh-huh.

MR. LANG: Of the remainder from that, HMIT should receive 99.5 percent of those assets, whatever they are, the value, rather than a $336 million claim. That was the objection.

THE COURT: But I didn't get any evidence of a separate way of competing -- of doing that. I heard credible testimony from Mr. Seery about why he used the math he used and I didn't hear any countervailing evidence of, wait, this is a more fair, realistic way of computing it. And what I did hear is the .5 percent limited partnership interest of Dugaboy is subordinated in its payment rights under the limited

partnership agreement of Highland.

MR. LANG: It's subordinated under the plan, but yes, the plan does not say to use --

THE COURT: Under the partnership agreement is the reason the plan did it, is what I've been presented.

MR. LANG: I believe Mr. Seery -- and I could be wrong -- I think I heard him say that he has used the other method, but I could have misheard him in the testimony.

THE COURT: Well, that's not what I heard. I heard him emphasizing the fact that the Class 8 interests, including that of Dugaboy, are subordinated with regard to payment rights under the Highland partnership agreement. And so that's why he didn't think it made sense to just apply percentages.

MR. LANG: That's what he testified to.

THE COURT: So I'm just -- anyway, I'm just trying to figure out what the countervailing evidence is here to suggest his methodology is wrong.

MR. LANG: I believe the partner -- or, the plan says that the Class 10, when the GUC certification is a Class 10, and the Class 11 received pro rata, it doesn't specify the account balance is to be used as the number to determine what they receive.

THE COURT: Okay. You want to point out what you are focused on?

MR. LANG: I believe it's under Treatment.

THE COURT: Okay.

MR. LANG: Section --

THE COURT: I don't want to hunt. I want you to tell me what the language is that you think is supportive of that.

MR. LANG: And the second -- I guess the secondary issue that we probably should just get to is the release. We think it's broad, and just Dugaboy and Dondero are carved out. And Mr. Morris did send me a proposal last -- yesterday evening that I haven't gotten to. But that is an objection that we have, is just to make sure that the -- that nobody can argue that the release covers any claim Dugaboy might have, if any.

THE COURT: Okay. I think many hours ago I remember this being mentioned. I guess it was a little bit more broad than just -- I think it was Highland employees. I don't know.

What is the agreement, Mr. Morris, if you're awake there, on --

MR. MORRIS: I am awake, Your Honor. Apologies.

THE COURT: Okay. I didn't mean to be flippant.

MR. MORRIS: Yeah.

THE COURT: I get punchy and --

MR. MORRIS: That's okay. With respect to the release?

THE COURT: Right.

MR. MORRIS: We don't have an agreement. We have an agreement -- well, I sent a proposal last night, but it didn't get responded to. If they want to accept that proposal, that's terrific.

THE COURT: Okay. I don't know what the agreement says. Are you saying you want to accept what they proposed last night?

MR. LANG: No, I have edits to it. I just couldn't -- I was tied up on another filing last night. I have not been able to get to it today.

THE COURT: Okay. I'm going to make a ruling today. Okay? If it means y'all sit here in the courtroom a while, fine. But just like all of you, I have a mountain of other stuff waiting for me, so I really want to rule today. So, --

MR. LANG: Understood.

THE COURT: Yeah.

MR. LANG: Maybe we can work on it as soon as I'm done and I can get back to 'em --

THE COURT: Okay.

MR. LANG: -- and get back to you.

Your Honor, the -- it's on Page 23 of the plan. It talks about the Class 10 and Class 11, where the partnership interests, that their treatment, they shall receive as pro rata share of the contingent Claimant Trust interests. And all we're asking is that be used or applied as a 99.5/.5

distribution.

(Pause.)

THE COURT: I'm sorry. Go ahead.

MR. LANG: Oh, sorry. I thought you were looking for it.

And the last issue is authority. The only point of the authority argument, Your Honor, is that the Joint Administrators were appointed down in the Caymans to investigate the transaction that moved basically the entire ownership, because it's owned a hundred percent down to HMIT, out. They're investigating the transactions. They have not stipulated to authority. They're looking at everything. They've requested a 45-day delay on this motion. And that's all that -- not even asking to deny the 9019. They were just asking time to basically bless this transaction so that nobody could come back and make an issue of it. But I understand your desire to rule today.

THE COURT: Okay. Any rebuttal?

MR. MORRIS: Yeah, briefly, Your Honor.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE CLAIMANT TRUST

MR. MORRIS: I just want to point the Court to two provisions of the operative documents that I think --

THE COURT: Okay.

MR. MORRIS: -- will resolve even further the issues that we've presented today.

The Claimant Trust Agreement -- and I apologize, I don't know if the whole document is in evidence, but I will respectfully suggest to the Court that the Claimant Trust Agreement provides in Article 5, Section 5.1(c), --

THE COURT: Okay. Let me catch up.

MR. MORRIS: Yes.

(Counsel confer.)

THE COURT: It's not Debtor's Exhibit 5.

MR. MORRIS: Yeah.

THE COURT: Daugherty's Exhibit 5?

MR. MORRIS: It's Daugherty Exhibit 5?

MR. YORK: Yes.

THE COURT: Okay.

MR. YORK: So we have a full copy at Daugherty --

THE COURT: I've got it. Daugherty's Exhibit 5.

MR. MORRIS: Okay. So if you could just go to Page 27, Your Honor. And this is in response to Mr. Lang's argument about the calculation of the allowed claim. You'll see it deals with contingent trust interests. And the very last sentence says the equity trust --

THE COURT: Wait. What page again?

MR. MORRIS: 27.

THE COURT: Okay.

MR. MORRIS: Do you see Section C in the middle is Contingent Trust Interests?

THE COURT: No.

THE CLERK: It's 26 of the Claimant Trust Agreement, 27 of the --

THE COURT: Ah, it's 26. Yes. On the bottom, it's 26; on the top, it's 27 of 38.

MR. MORRIS: Okay.

THE COURT: Okay.

MR. MORRIS: And at the end of Section C, it says explicitly: The equity trust interests distributed to allowed holders of Class A limited partnership interests -- that's Dugaboy --

THE COURT: Uh-huh.

MR. MORRIS: -- shall be subordinated to the equity interests distributed to the allowed holders of Class B and C. That's Hunter Mountain. Okay?

So the trust agreement provides for exactly what we're doing here. Dugaboy is in fact subordinated to HMIT. It doesn't get paid until HMIT gets paid in full. And Mr. Seery I think compellingly testified as to the reasonable calculation that he did based on very objective numbers to determine each respective limited partner's capital account.

With respect to Mr. Daugherty, the plan, which is on the docket at 1943, has a definition of Disputed Claim Reserve. And it states, among other things, that the amount of the disputed claim upon which the disputed claim --

THE COURT: Give me the page number.

MR. MORRIS: I apologize, Your Honor.

THE COURT: I've got it right in front of me.

MR. MORRIS: It's Page 7 of the plan.

THE COURT: Okay. All right. I'm there. The Defined Term.

MR. MORRIS: So the Defined Term "Disputed Claim, Claims Reserve Amount" in the middle says: The amount of the disputed claim upon which the disputed claims reserve is calculated shall be -- they've got an A and then a B -- the amount agreed to by the holder of the disputed claim and the Claimant Trustee or Reorganized Debtor, as applicable. And then it says D: Or is otherwise ordered by the Bankruptcy Court, including an estimated -- an order estimating the disputed claim.

And that last provision is vital, Your Honor, because that is the hook upon which you can always hang your hat when you decide that we are not going to wait until 2023 [sic] when the IRS audit may be resolved, because you have the ability, as ordered by the Bankruptcy Court, including estimating the amount of the disputed claim. Which is one of the causes of action that we've asserted in the complaint. It's either to subordinate -- actually, it's to disallow, to subordinate, or to estimate. Because this case does have to end, Your Honor. We actually think he should be bound by the definition in B.

It is an agreed-upon amount.

I've heard the testimony from Mr. Daugherty that there was no negotiation, but he didn't deny that he signed a document that is called an agreement that sets forth the disputed claim amount. And that is an agreement, and I think that satisfies that definition. And even if it didn't, at some point this case has to end.

Thank you, Your Honor.

THE COURT: Okay. Thank you.

All right. Well, it's been a long day and even a longer case. I think a lot of people were on the receiving end of a little bit of my grumpiness at times today, and I apologize for that.

I always feel compelled to say to the lawyers and parties when I rule from the bench that I can assure you it's not knee-jerk. I can assure you my law clerk and I have read every piece of paper submitted. And we come in here I think well-prepared and we just want to listen to the evidence to see if it supports -- who it supports. So I am going to rule from the bench.

I first want to make clear that with regard to the motion before the Court, the motion which was filed May 19th at Docket Entry 4216, pursuant to Bankruptcy Rule 9019 and Bankruptcy Code Section 363, the Court is being asked to approve a very broad settlement that is between what are

defined as the HMIT entities, seven entities in all; Hunter Mountain Investment Trust; as well as Beacon Mountain, LLC; Rand Advisors, LLC; Rand PE Fund 1, LP; Rand PE Fund Management, LLC; Atlas IDF, LP; and Atlas IDF GP, PLLC. So this proposed compromise and settlement is between all of those Hunter Mountain entities as well as the Reorganized Debtor, the Highland Claimant Trust, the Highland Litigation Subtrust, and the Highland Indemnity Trust.

I first will note that notice has been fulsome, reasonable under the circumstances, to provide due process to anyone affected by the proposed compromise.

The Court would note that the legal standard is a very well-known and established legal standard here. Among other things, the Court is to look at whether the settlement is fair, reasonable, and in the best interest of the estate; whether it would appear reasonable business judgment has been exercised; is the compromise and settlement within the range of reasonableness?

And this involves looking at, among other things, the probability of success in the litigation -- that would be all the various litigation involving HMIT, if it were to go forward; the complexity and likely duration of further litigation and attendant expense, inconvenience, and delay; and all other factors bearing on the wisdom of the compromise. We know that's *Cajun Electric*, *Jackson Brewing*, *Foster*

Mortgage, among other cases. I probably left out *AWECO*.

Anyway, applying all of those legal standards here, I do think the evidence was very thorough in showing that the compromise is a product of good faith and arm's-length negotiations. Indeed, it was almost shocking to this Court when I saw the motion, having the history I have with all of the contested issues, adversary proceedings that have transpired over the past few years between Hunter Mountain and the Debtor.

I do think the evidence is that it's fair and equitable and in the best interest of the estate and within the range of reasonableness, given due regard for all of the expense, delay, and likelihood of success.

I'll just briefly recount that, as noted early today, there was an Exhibit B attached to the 9019 motion that listed nine unresolved pending pieces of litigation that the Highland entities are embroiled in. Two of those are now gone. This was filed May 8th, and as of January 25th, they're gone. So seven pieces of litigation, of which two will go entirely away if I approve this settlement. The Kirschner adversary claims against Hunter Mountain will go away.

We have very little, very little, relatively speaking, left in this bankruptcy case to resolve if I approve this settlement. That alone is very, very significant. Again, we have large shall I say issues with Hunter Mountain. Highland

says Hunter Mountain owes the Highland entities something like $57.69 million on a note that Hunter Mountain is payor on dated December 21st, 2015.

The flip side of that is that Hunter Mountain was sued by Kirschner in the Kirschner action on various claims, including this $57 million note. We have had Hunter Mountain file multiple motions for leave to sue Highland, the Claimant Trust, Mr. Seery. And those have been denied, but are in appeal status or remand status or some further litigation status.

And again, we have numerous issues. Hunter Mountain having sought valuation. The Court denied that. It's on appeal.

So, so much goes away, so much further litigation goes away and we make a monumental step in ending this long-running case if I approve this settlement.

Now, on the flip side of this, I know that Dugaboy, through the voice of Mr. Dondero today, expressed that Hunter Mountain is, I forget the words he used, but not -- this isn't close to being fair and equitable as far as he was concerned for Hunter Mountain. That Hunter Mountain, in addition to being through with litigation in this bankruptcy-land, would be paid $500,000 within five days. They would also be paid separately $10 million as an initial distribution, with the hope of two more $6.5 million distributions in '27 and '28.

And it would get a note, which I think has $24 million -- I think it was less than that, $17 or $18 million left on it, perhaps, on which Dugaboy is a maker. The debtor is one of the two payees. The Debtor gives up its rights in that note.

It looks like Hunter Mountain is getting a lot. And again, the way this estate has been liquidated, there is money that can flow to it as a Class 10 equity here, as the evidence has shown.

So I am approving the settlement. I am specifically overruling the remaining objections of both Dugaboy and Mr. Daugherty.

As far as Mr. Daugherty's argument that the settlement violates the absolute priority rule or violates the terms of the plan or the confirmation order or the trust agreement by, putting words in his mouth, skipping over the full payment of whatever his Class 8 claim is going to be and allowing a subordinate class, Class 10, to get paid, I have flipped and studied the wording of the plan and the confirmation order and the defined term for Disputed Reserve. And I referred to a disputed reserve as a tried-and-true provision in Chapter 11 plans. I think it does what needs to happen for precisely this kind of situation, that as long as an appropriate amount is being held in reserve, and the Court can decide what is an appropriate amount, we don't have to hold up a bankruptcy estate for years and years.

So the disputed claim reserve is what allows me to find this is fair and equitable and this isn't some sort of violation of the absolute priority rule. I think this is precisely the reason the disputed claim reserve mechanism is in place, so that we can get on with the business of getting more people paid sooner.

And based on the evidence I've heard, it is an appropriate amount, I think. We're doing a lot of crystal-balling, what may or may not ever happen when, but I think, based on all the persuasive evidence I've heard, the Daugherty objection should be overruled.

As far as Dugaboy, I, as noted, am overruling that objection. I didn't have any persuasive evidence, solid evidence to show me that Mark Patrick doesn't have appropriate corporate governance authority to enter into this settlement agreement.

I realize there's a lot swirling around in the Cayman Islands, and that's going to play out however it plays out. But as of today, I don't have any evidence that he doesn't have authority currently to enter into the settlement. And it speaks volumes that The Foundation backed down. It would seem that they have been convinced that the lack-of-authority argument was not one they wanted to press today. So that is overruled.

I feel like we have all seen this movie many times before.

I wanted to understand, perhaps I went deeper than I needed to, I know Mr. Phillips thinks I went deeper than I needed in hearing some of the testimony from Mr. Patrick and Mr. Dondero, but I'm just trying to understand what's happening here. Why people who were so lockstep and friendly for years of this case suddenly, when we're right on the brink of maybe the case being put to bed -- I'm optimistic; it's not quite that close -- all of a sudden they're at loggerheads.

And so how many times have I seen this over the years, whether it's a breakdown in business and personal relationships, Mr. Daugherty, Mr. Terry, Grant Scott, now Mark Patrick? I'm probably leaving out someone. I don't know. I feel like I'm watching the same movie. Okay, now these two have parted ways. Now these two have parted ways.

And then, as I recall, when Grant Scott withdrew his objection to the HarbourVest settlement all these years ago, 2020, 2021, which he had been lodging for Charitable DAF, I think it was, --

MR. MORRIS: Yes, Your Honor.

THE COURT: -- then what happens? Well, I think Mark Patrick came in to work or replace Grant Scott, and then a bunch of people ended up getting sued in a different court regarding the settlement I approved, the HarbourVest settlement I approved.

So why am I saying this? I just, I'm trying to understand

things I'll never understand. I wanted to maybe hear something that would make me better understand what's happened now between Hunter Mountain, Mark Patrick, and Dondero and Dugaboy, because it sure seems like they were on the same team for many years. But it was very likely irrelevant, as Mr. Phillips kept getting up and down and saying. I just was seeing if it would lead to something relevant that would bear on the wisdom of this compromise, since that's one of my other legal standards. I'm supposed to consider all factors that might bear on the wisdom of the compromise. And so I guess that's where I was going in allowing all of that to come in.

All right. Well, while everyone is not thrilled with this compromise and settlement, I heartily congratulate the human beings that made it happen, and they know who they are. Maybe I do, maybe I don't. But I think it's rather amazing. And I hope that we are not coming to court for hearings in 2032. I don't know who among us will be alive. I'm not going to be alive by then. Certain people might cheer if that's the case. But I congratulate the human beings who made this happen. And you know who you are. Maybe I do, maybe I don't, but I congratulate you.

All right. So I reserve the right to supplement or amend this oral bench ruling in a more fulsome written order. I am asking Mr. Morris and his team to be the scriveners on that order. And obviously, you're going to run it by the other

lawyers here who participated today.

Is there anything else before we wrap it up?

MR. MORRIS: Just one other thing, Your Honor. And I greatly appreciate your comments.

When we draft the order, are we authorized to say that this settlement is approved not only pursuant to 9019 but to 363? Because there are asset sales that are part of this. We moved under that provision, and I didn't hear Your Honor reference that, --

THE COURT: Okay.

MR. MORRIS: -- but we would like to include that in the order.

THE COURT: You may. And that is precisely why I said I reserve the right to supplement or amend, because many times I get out of here and look at this transcript and, ooh, I forgot to say whatever.

MR. MORRIS: Yeah.

THE COURT: So I meant to say that and I didn't, so you may add that.

MR. MORRIS: And I assume all Your Honor wants is a fairly simple form of order that incorporates --

THE COURT: I do not want a 40-page order.

MR. MORRIS: Right.

THE COURT: Okay?

MR. MORRIS: Just an order that incorporates your

comments on the record, and to the extent that Your Honor wants to amend that, you'll do so at your leisure?

THE COURT: Yes.

MR. MORRIS: Perfect.

THE COURT: All right.

MR. MORRIS: Thank you.

THE COURT: Thank you all. We're adjourned.

MR. PHILLIPS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 4:38 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 **06/27/2024**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	September 4, 2025
	)	9:30 a.m. Docket
Reorganized Debtor.	)	
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	**Adversary Proceeding 25-3055-sgj**
	)	
Plaintiff,	)	
	)	MOTION TO DISMISS ADVERSARY
v.	)	PROCEEDING [5]
	)	
PATRICK HAGAMAN DAUGHERTY,	)	CROSS-MOTION FOR RELIEF [10]
	)	
Defendant.	)	

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

WEBEX APPEARANCES:

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DEFENDANT'S EXHIBIT
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25-03055

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

DALLAS, TEXAS - SEPTEMBER 4, 2025 - 9:34 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated.

All right. We have a setting this morning in Highland versus Daugherty, Adversary 25-3055. We have both a motion to dismiss adversary of Mr. Daugherty and we have a motion -- the calendar says for leave -- it was actually a cross-motion for relief from a final order by Reorganized Highland.

All right. So we'll talk about sequence and all that. Who do I have appearing? First I see Mr. Morris on there. You're appearing for Reorganized Highland?

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

THE COURT: All right. Thank you.

So I see both Mr. York and Mr. Smeltzer. Which one of you will be representing Mr. Daugherty today?

MR. YORK: Good morning, Your Honor. Drew York. I will do the primary argument. Depending upon whether the Court has any questions concerning the IRS audit process and procedures, Mr. Smeltzer, who's one of our tax litigators, is prepared to address any of those questions for you.

THE COURT: All right.

MR. YORK: But otherwise, I'm the one that will be handling the argument.

THE COURT: Okay. These are the only parties we have on today's matter. Was there anyone else on the video wanting to appear?

(No response.)

THE COURT: All right. Well, have you all discussed -- I'm assuming we'll go first with Mr. Daugherty's argument since it's the first-filed main motion, I guess you'd say. Did you all have any housekeeping matters or different ideas about that?

MR. MORRIS: No, Your Honor.

THE COURT: Okay.

MR. YORK: No, Your Honor.

THE COURT: All right. Mr. York, I'll hear from you.

MR. YORK: Thank you, Your Honor. May it please the Court. And if I may share my screen, I've got a PowerPoint presentation.

THE COURT: All right. You may.

MR. YORK: So, Your Honor, we are here today on both motions. I'm going to talk about the motion to dismiss first. And the underlying basis of the adversary complaint that Highland has filed relates to a settlement agreement that the Court approved in 2022 between Mr. Daugherty and Highland. Among other things, the settlement reserved a general

unsecured claim to Mr. Daugherty that was tied to an IRS audit of Highland's 2008 and 2009 tax returns, potential liability that Mr. Daugherty had or might have concerning a cash bonus that he received during his employment at the time. And what the settlement agreement specifically says, Your Honor, is that any litigation between Highland and Mr. Daugherty concerning the validity and the amount of this reserved claim shall be stayed until the IRS makes a final determination with respect to the IRS audit dispute.

And in order to ensure fairness to both sides, as part of that language and settlement, Highland also reserved its rights to dispute the claim, subject to the stay language, that at the appropriate time it could file its dispute or objection to that claim.

Well, what we have in this adversary complaint is Highland seeking three things. One is a disallowance of that reserved claim. Alternatively, an estimation of that reserved claim. And then, thirdly, a subordination of that claim to a Class 11 status.

And so the critical question then is, for purposes of the motion that we filed, Your Honor, is whether Highland has actually pled allegations that there has been a final determination by the IRS. And they have not. In fact, their own pleading takes the opposite approach. They state that the 2008 tax return is currently subject to an IRS audit in

Paragraph 3 of their complaint. They state it's unclear when or how that 2008 audit will be finally resolved. And they state in Paragraph 23, on information and belief, the 2008 audit is not yet fully resolved.

There is not a single allegation anywhere in the complaint that the IRS has made a final determination with respect to the audit dispute that would alleviate Highland from its obligation to respect the stay provision that the parties freely and fairly negotiated between themselves that Highland said was part of a fair settlement to the Court and that the Court found just and reasonable as part of its order approving the settlement.

And because Highland has not pled such language, and because they incorporated the settlement agreement into the allegations in their complaint, the Court must dismiss this adversary action, without prejudice. And Highland is free to come back at a later date once it believes and can show that an actual final determination has occurred, and it can plead that and we can address the issue at that point. But it has not done so.

Instead, what Highland has done in response to our motion to dismiss is simply to say that it believes that the IRS has made a final determination with respect to the audit dispute such that the stay provision does not apply, but doesn't unequivocally state that that actually has happened. And in

fact, the evidence that Mr. Morris attached to his declaration that was part of the response shows that the qualified statement that Highland made is contradicted by that evidence.

The first is that the exhibits that they rely upon were exhibits that were issued by the Debtor in February of 2018, more than three years before the settlement agreement was entered into. And so that raises a fundamental question. If there was a final determination, as Highland believes, as of February 2018, then there would have been no need for the parties to include the stay provision in the settlement agreement. But they did, because, in fact, there had been no final determination.

And then, secondly, even those documents belie Highland's own argument that there was a final determination. Instead, the letter that Highland issued to Mr. Daugherty -- and it's only a letter to Mr. Daugherty; it's not from the IRS itself -- simply says that the Field Examiners for the IRS have proposed an adjustment to Highland's tax return, something that Highland points out in the letter that can either be accepted or rejected by Highland and that Highland intended to appeal.

And so the exhibits themselves do not establish that a final determination was made. In fact, all they show is that there was a proposal that the IRS Field Examiners had at the time of an adjustment to be made, not that the IRS had reached

a final determination.

And so because Highland has sidestepped its own pleading requirements, the Court must dismiss the complaint for failure to adequately plead the allegations to get around the stay provisions of the settlement agreement.

And I will, Your Honor, hold back on the arguments concerning the cross-motion until we get to that next. So, thank you.

THE COURT: Could you go, I think it was Slide 2. I was --

MR. YORK: Apologies.

THE COURT: I think it was Slide 2. The one that was quoting from Paragraph 9 of the settlement agreement. I have it in front of me, and --

MR. YORK: Is it showing, Your Honor? I apologize. Here you go.

THE COURT: No. I -- yes. Okay. Yes, I found that quote in Paragraph -- Section 9, but then that second, that was just your kind of paraphrasing?

MR. YORK: Yes, Your Honor.

THE COURT: I didn't see that second quote, so that's why I was double-checking that.

All right. Well, Mr. Morris, your turn.

MR. MORRIS: Thank you very much, Your Honor. I didn't take the time to prepare a PowerPoint for this. I want

to try to be brief, but I do need to provide just a little bit of context.

As Your Honor will recall, Mr. Daugherty filed substantial claims against Highland within the bar date, at the beginning of the confirmation hearing in early February 2001 [sic]. We actually announced settlement terms in principle with Mr. Daugherty. A few weeks later, the Court confirmed Highland's plan and, importantly, also approved the Claimant Trust Agreement.

Why do I bring that up? Because it's directly related to the cross-motion. And it's related to the cross-motion because there are two important provisions in the Claimant Trust Agreement that I know Your Honor is aware of. The first is that the Claimant Trust can't be dissolved until all disputed claims are resolved. This is one of two remaining disputed claims or interests, the other one being that which relates to Class 11, which is subject to a motion right now.

The other important feature of the Claimant Trust Agreement is the provision that says its life is limited to three years but subject to two one-year extensions. As Your Honor will recall, back in June the Court approved the second one-year extension to August 11, 2026. No further extensions are permitted, you know, absent, I guess, some extraordinary circumstance, which this can't possibly rise to that level.

And so the parties are obligated, Highland is obligated,

as the Claimant Trust Agreement provides, to commence dissolution by August 11, 2026, a step it cannot take until the claims are resolved.

That's a really important context. And I will get to why in a moment, although I suspect it's probably fairly obvious.

Mr. Daugherty's settlement didn't get consummated due to reasons that I don't think we need to get into right now. Negotiation (garbled) until November of 2021. While the Court didn't approve it until the following year, the settlement agreement was actually signed almost four years ago.

That settlement agreement resolved every single one of Mr. Daugherty's claims, with the exception of this IRS audit claim. Mr. York says, oh, gee, why did you -- why did you stay it, since we now contend that the IRS made a final determination in 2018? The answer for that is pretty simple, Your Honor. I'm not in the habit of doing work that I don't need to do. Mr. Daugherty wouldn't let go of this claim. We have done no work around it. We simply kicked the can down the road. There's very little road left today, and that's why we're here.

Your Honor focused on Paragraph 9 of the parties' agreement, and I want to highlight four provisions of that simple paragraph, because I think they're very important.

The first is it begins by saying that Mr. Daugherty contends that he has a contingent unliquidated claim against

the Debtor arising out of 2008, 2009 compensation. It continues by saying, Highland disputes the validity and amount of the reserved claim. So make no mistake: The parties agreed and understood that Highland reserved the right not only to contest the amount of the claim, but the validity of the claim itself.

That concept is embodied in the very next sentence, where Highland reserves the right to assert any and all defenses.

And then you have the stay provision. And the stay provision was not, as I think Mr. Daugherty suggests, related to the final determination of the IRS audit, but it's limited to the IRS's final determination with respect to that audit.

So we entered into that agreement many years ago, and with an eye towards wrapping -- but now, with an eye towards wrapping this case up in advance of the August 2026 deadline, Highland began to do some diligence, because we have to resolve the claim. And we began reviewing the substance of Mr. Daugherty's reserved claim, and we uncovered the documents that are attached to my declaration which was filed in the adversary proceeding at Exhibit 11.

Based on Highland's understanding that the IRS has made a final determination, Highland commenced this action to disallow, estimate, or subordinate the reserved claim.

And let me just respond to the suggestion that somehow the pleading is deficient. There is no challenge to the adequacy

of the pleading with respect to the three causes of action. I'm not even aware of a requirement that we needed to say anything about the stay itself. This is a motion to dismiss. We responded to the motion to dismiss. We've offered evidence as to why we believe the IRS has made a final determination.

But at the end of the day, the fact that we said repeatedly in our pleading that the audit is not resolved is completely irrelevant. It's irrelevant to the stay because that's not the standard under Paragraph 9. The issue is not whether the IRS audit has been resolved. The issue is whether the IRS has made a final determination, and we responded to the motion to dismiss with evidence.

Mr. Daugherty has moved to dismiss. As I mentioned, he did some not on the basis of the pleadings but in reliance on that singular sentence in the settlement agreement. Again, the stay provision does not require a final resolution of the IRS audit. Instead, it only requires that the IRS make a final determination, and we believe that that's exactly what the IRS did back in 2018.

Exhibit 3 to my declaration, Your Honor, is not a statement from Highland. It contains IRS Form 886-Z, which shows the IRS's determination that Mr. Daugherty's share of the partnership income was approximately $1.26 million.

Exhibit 4 is another IRS document, not something from Highland, where they -- and it constitutes a written offer

from the IRS to settle Mr. Daugherty's claim based on his allocable share of Highland's adjusted and corrected income. Just look at Exhibit 4. The adjustments are there. Right? Highland reported, I think, $3 million of partnership income. The IRS said no, no, no, you're just off by about $166 million. So it turned out to be about $169 million of untaxed income, and Mr. Daugherty is responsible for his allocable share as a partner.

And that's why, of course, we say his claim is not valid or otherwise should be subordinated, because he received this money 15 years ago, 18 years ago, whatever it is, I've lost count, in his capacity as a partner.

But I digress a little bit. The point here, Your Honor, is that with August 2026 coming up, with no communication about this matter at all, Highland did the responsible thing and sought to resolve Mr. Daugherty's claim. That's why we're here.

I understand that Mr. Daugherty disputes both the interpretation of Section 9 as well as what the IRS has done, and that's fine. We could litigate the issue, Your Honor. I could have served discovery. This is almost jurisdictional in nature, the nature of this particular motion to dismiss. It has nothing to do with the claims itself. And we could have taken discovery. But who wants to do that, Your Honor? I really don't want to spend the money. I don't want to get

experts. I don't want to subpoena Hunton & Williams. There are so many things we could do if we really had to get through this gating issue. We don't believe it makes any sense to do that.

And given the facts and circumstances that exist today that we did not pursue four years ago, we believe the Court should modify the prior order approving the settlement under Rule 60(b)(6) because justice requires. Under Rule 60(b)(6), courts have broad authority to relieve a party of an order that justifies relief. The Court should exercise this authority here and strike the stay provision.

No one anticipated that this matter would be unresolved four years after the original agreement was signed, and no one agreed, and I cannot believe the Court would ever have approved, that the life of the Claimant Trust Agreement would extend beyond August 11, 2026 because Mr. Daugherty's claim remained unresolved at this time. That's not what the parties expected. That's not what the parties foresaw. And yet here we are.

At this point, but for some appellate litigation, this case is nearly complete. Highland continues to take all steps necessary to commence its dissolution. Only two remaining disputed claims exist: this one, and as I mentioned earlier, the motion that we had filed to fix the amount of the Class 1 interests. That's it.

There's only two meaningful assets that remain to be liquidated. One concerns Korea, and the other is Highland's interest in an entity called HCLOF. We are hopeful that the Korean asset will be monetized by the end of the year. The HCLOF interest, regrettably, is the subject of Mr. Dondero-generated litigation. But that matter is subject to briefing at this time in the Second Circuit. We are optimistic of a positive result there, one that will allow us to liquidate that last remaining asset.

Highland intends to file a motion in the coming weeks -- I don't know if it will be a motion or a notice -- of its intention and desire to destroy a lot of books and records, historical books and records that are costing the estate a significant amount of money, but it's part of a wind-down process. We need to skinny this down.

We're going to be surrendering our office space at the end of the year, and the vital employees who remain will work remotely.

We are doing everything we can to complete this case, and Mr. Daugherty's reserved claim cannot be allowed to stand in the way. It was reserved, it was in a reserved amount that, you know, satisfied him at the time, so there's no question that the money is there to be had. Frankly, we think we should just get on with it today.

I know in response Mr. Daugherty said, well, stay it until

January or February, and then let's come back and let's do this all again. You know, that might make sense and it might be appealing, Your Honor, if Mr. Daugherty gave the Court or Highland any indication that the use of the next 90 to 120 days would be helpful in getting him wherever he thinks he wants to be with respect to the IRS.

But I don't think that's what's at play here, Your Honor. I think there are ulterior motives. And I think that for the following reasons. Your Honor will recall back in June, when we had the hearing on Mr. Daugherty's objection to the HMIT settlement, that we encouraged him, we recommended that he try to resolve his dispute by adjusting the amount in the reserve. Your Honor will recall he did not do that.

I'm going to tell Your Honor that we have made several settlement offers to try to resolve his claim. We even suggested to Mr. Daugherty that he go back to the IRS and see what Mr. York characterized as a proposal back in 2018, see if it was still on the table. Because we have learned since this litigation began that his exposure is not that $1.2 million number, but it's simply the application of the highest individual income tax rate to that number. Thirty-seven percent. Thirty-seven percent times $1.2 million comes out to approximately $440,000.

We said, why don't you go see if that's on the table? And, you know, he sat here in court in June and said, Your

Honor, I don't want to take a nickel I'm not entitled to, but I fear, I fear the risk that's associated with this dispute. Why not just pick up the phone and see if the IRS is willing to stand by the deal that they made, the offer that they made in 2018, and we could all go home? He refuses to do that. And instead he claims that he's entitled to other things. I'll just leave it at that.

We need to get on with this. The only claim that Mr. Daugherty has is this reserved claim. The parties dispute whether or not the IRS has made a final determination. I really don't want to litigate that issue, because it will be costly and it adds absolutely nothing.

This case needs to end. It has a final deadline of August 11, 2026. And whether we start the litigation today or in January or February, I'm not -- I don't feel terribly strongly about, but I have no reason to believe that waiting is going to change anything, and that's why I'd like to just get on with it.

So, you know, we respectfully request that the Court grant the cross-motion, modify the order approving the settlement, strike the stay provision, and then deny the motion to dismiss as moot.

Unless Your Honor has any questions, that's all I have.

THE COURT: Well, my only question is I just want a reminder. You've alluded to that there were multiple

components, shall we say, to Mr. Daugherty's proof of claim, and I know we talked about this in June, but my brain has already forgotten. Mr. Daugherty was allowed several million dollars and would have been paid by now several million dollars from the Highland estate for the other components of his proof of claim.

Can you refresh my memory on that? I think I even read it somewhere --

MR. MORRIS: Yeah.

THE COURT: -- in my material for this morning, but I've forgotten.

MR. MORRIS: Sure. My recollection, Your Honor, and I don't have the agreement in front of me, my recollection is that Mr. Daugherty was given an allowed Class 8 claim of some $8 million.

THE COURT: Uh-huh.

MR. MORRIS: That, I think that's all been paid in full.

He was granted an allowed Class 9 claim. I believe it is some $3-plus million. That's also been paid a hundred percent.

So he's already received over $11 million by my count.

He also received other valuable consideration and other assets, including the HERA shells that he's using now to litigate with other people. But he's gotten -- he's gotten --

he's gotten a lot. This is the last little stub. It was a difficult negotiation, as Mr. Seery has already testified to, and we thought the better part of valor there was simply take, you know, 95 -- resolve 95 percent of his claim and deal with the other five percent on another day. And that's what we're trying to do here, and that's all we're trying to accomplish. It's not personal. It's not vindictive. We have a fiduciary duty to wind up the estate, and that's all we're trying to do here.

THE COURT: Okay. As you were talking, I found it. It's in Paragraph 1 of the settlement agreement at Page 6, showing the allowed amount of his different claims, excluding this reserved claim.

All right. Well, Mr. York, your reply?

MR. YORK: Sure, Your Honor. Let me, first, let me start with this with respect to the IRS final determination issue. The proposal with the IRS is simply that, because it only becomes final once it's either agreed to by the taxpayer or, if not, the challenge has been completed. And what's clear in both Highland's own filings in the complaint as well its exhibits to its response is that that hasn't happened because it is being challenged by Highland.

THE COURT: Okay. And I --

MR. YORK: And then --

THE COURT: Let me stop you. I'm looking at the

February 3, 2018 letter that was one of the attachments to Mr. Morris' declaration. And I think here is the language that the Debtor suggests is basically a final determination, to use that term. The second sentence of the first paragraph: "Exam" -- which has been the defined term 'IRS Field Examiners,' --"concluded their audit and have proposed an adjustment to the 2008 return."

So I think that's one of the things we're arguing about today. Does that phraseology, "The IRS Field Examiners concluded their audit and proposed an adjustment to the 2008 return," does that constitute a final determination?

MR. YORK: It does not. And I'm going to defer to Mr. Smeltzer to explain why that is more specifically, Your Honor. But we laid that all out in our complaint to begin with, and Highland didn't challenge at all those procedures in its response, other than to say it didn't want to wade into the thicket of arcane regulations. And I'll let Mr. Smeltzer address the rest of that substantively.

THE COURT: And we'll come back to that thicket comment. But Mr. Smeltzer?

MR. SMELTZER: Sure. So, Your Honor, can you hear me?

THE COURT: Yes, I can.

MR. SMELTZER: All right. So, I do tax litigation and controversy all the time. I get it from DOJ, so on the

Government side, and as a private attorney as well.

MR. MORRIS: I'm sorry to interrupt, Mr. Smeltzer. I just want to note an objection here, Your Honor. You know, there's no witnesses. To the extent that this is being proffered effectively as expert testimony, I would object. The papers say what the papers say, but if we're now going to have an education, I really would have liked to have notice, because I would have called the partner at Hunton & Williams with whom I spoke.

But having said that, I don't want to stop him from speaking. I think that's for Your Honor to determine. But I do want to note the objection, that to the extent that this is kind of expert testimony, we had no notice, we didn't have an opportunity to bring our own expert here. I thought we were limiting ourselves to the papers.

THE COURT: Okay. Thank you.

As to that, I'm going to regard this as lawyer argument, not a fact expert. So, Mr. Smeltzer, you can say what you were going to say.

MR. SMELTZER: Absolutely. Absolutely fine, Your Honor.

And so when the IRS Exam, which is referred to in there, right, is a -- their job is to examine the return and propose adjustments. When they made that proposal, that proposal, not only is it subject to challenge, but we don't even know if

this has gone through the full IRS administrative process at all.

I've had my own cases that the proposed adjustment was changed by as much as $3 million once the final-final notice that can be challenged in court was actually received.

We have never been provided the final FPAA, which is what they have referred to, which is a Final Proposed Administrative Adjustment. That's what seals the IRS's position on what it thinks the appropriate adjustments are, subject to challenge.

We laid out in our motion to dismiss all the separate procedures that are involved there. It can be challenged by the tax matters partner, which is presumably the pleading that they weren't going to challenge that. It can also be challenged by partners, should the tax matter partner choose not to do it alone. And it only -- it's only when those adjustments are done that you can do that.

And it is very important, because at the lawsuit stage, it can, again, the numbers can be changed. The IRS can change. They could add penalties to it. They can do other things. The only thing that changes is they now bear the burden of proof on those issues.

But there is a lot of moving parts that happen in the litigation, both at the beginning, and then at the very end, because taxes are sometimes complicated and hard, there's a

computation that's done at the very end of Tax Court proceedings. That as well can change the computation. The IRS has computation specialists. The partnership has computation specialists. They don't often agree.

And I, again, in my experience, sometimes that can be off by millions that's involved. And that is why just a proposed adjustment -- isn't even necessarily a final proposed adjustment because nobody seems to have a copy of that one -- that alone can be significantly changed several stages along the way.

So what we have, in my opinion, Your Honor, is an IRS proposal that is a guess at what the final result might be.

THE COURT: Okay. A couple of follow-up questions. Mr. Morris, he made a comment that I think was a practical suggestion more than anything else: Why won't you all call up the IRS and get some information about what's going on?

MR. SMELTZER: Sure. I can answer that as well. I don't think Mr. Daugherty has the authority to get any information from the IRS --

THE COURT: Well, wait, I heard you say that --

MR. SMELTZER: -- under --

THE COURT: -- either the managing -- whatever the term of art is -- either the managing tax partner or words to that effect, which I read somewhere in the pleading was --

MR. SMELTZER: Yeah.

THE COURT: -- Strand, which I think Mr. Dondero --

MR. SMELTZER: Yeah.

THE COURT: -- probably has control of at this point in time, or a partner could get information.

MR. SMELTZER: So, so --

THE COURT: I thought I heard you say that.

MR. SMELTZER: Sure. Mr. Daugherty may have right to information, but only if the tax matter partner doesn't choose to exercise -- to file a lawsuit. Then he would inherit rights to do it afterwards. And he could potentially intervene in that lawsuit.

But until then, only a person with a power of attorney form is allowed to get information from the IRS. There's a specific Internal Revenue Code that subjects them to both civil and potential criminal penalties for disclosing information to an unauthorized party.

And so it's possible that Mr. Daugherty, he could call, but they probably wouldn't tell him anything so that they don't get themselves in any sort of disclosure heat of doing that.

THE COURT: Okay.

MR. SMELTZER: He would have to get --

THE COURT: Okay.

MR. SMELTZER: -- one of the --

THE COURT: Okay. Is there litigation pending right

now?

MR. SMELTZER: I don't think we know. We've been told, I think, in there that they --

THE COURT: Okay. Help me to understand that, because I'm used to courts being very transparent. Are you telling me that Tax Court dockets, or even the lawsuits, a file number, a case number, aren't something that you can get access to, that a member of the public can't get access to?

MR. SMELTZER: Well, and I'll have to defer to Mr. York a little bit here, just because I don't know where we are in the time frame now, if Mr. Daugherty has received anything there.

But right, like, the adjustments go through just the partnership. The partnership has the chance to file a lawsuit. There's a time frame for that. And if they file it, they may not provide him notice. Maybe we could search and try and see if it has been filed. But I don't even know if the time has come.

It would have been very helpful to have an FPAA, because that would allow our side to both know the deadlines for filing such lawsuits; it also would have come with all the computation forms --

THE COURT: Okay.

MR. SMELTZER: -- that would also allow us --

THE COURT: I just, really, all I'm asking is, if a

lawsuit is filed, it can't be publicly accessible, like any other federal court lawsuit?

MR. SMELTZER: The Tax Court has its own online system, and you can search for it, and as long as you have the right name you might be able to get it from there.

THE COURT: So you could easily search that, right?

MR. SMELTZER: I haven't searched for it, but presumably we could go for a name and see if it's there.

THE COURT: Okay. Well, I read somewhere in the paperwork that this was not anticipated to be resolved until mid- or sometime in 2028. Where was that retrieved?

MR. YORK: That was -- that statement first came up in the complaint in a footnote, I believe, Your Honor.

THE COURT: Okay.

MR. YORK: Let me -- give me one second and I will point you to it.

THE COURT: Okay. Where did it come from? I don't -- I read it. I couldn't remember where I read it. But where is that coming from?

MR. YORK: Your Honor, I'd have to defer to Mr. Morris. It's their allegation.

THE COURT: Do you know if there's a lawsuit --

MR. MORRIS: Your Honor?

THE COURT: Oh, Mr. Morris, go ahead.

MR. MORRIS: Yeah. I don't have any information on

that.

But I just have to take issue with what was just said, that there's nothing Mr. Daugherty can do here, so it's so sad and unfortunate.

If we just look at Exhibit 2 in my declaration that was sent to Mr. Daugherty, in 2018 Highland told him: At this time, no action on your part is required with respect to these documents unless you wish to agree with the Exam's proposed adjustments.

And then if you look at Exhibit 3, it relates only to Mr. Daugherty.

And then if you look at Exhibit 4, that is a proposal that is made to Mr. Daugherty and Mr. Daugherty alone.

Highland, as the tax audit partner, was telling Mr. Daugherty, you can settle the claim if you want. We recommend that you don't. And Mr. Daugherty decided not to.

We're just asking him, why don't you just go and try and see if that proposal is still on the table? Why don't you do that? They don't want to, Your Honor. This is not about resolution of this claim.

THE COURT: All right. Mr. York, you can say the rest of your reply.

MR. YORK: Sure. So, let's be clear, too. What Highland said in 2018 to Mr. Daugherty was, in the letter, You do not need to attend the closing conference. Highland will

handle the closing conference and appeal the proposed adjustment to the IRS Appeals Office.

There was no -- never -- contrary to what Mr. Morris is saying based upon a redacted document that somehow this was provided to Mr. Daugherty, this sort of -- this offer, there's no evidence of that other than they have a copy of this in their own files. That's it.

So let's go -- but let's go back to the rest -- the other issue they raised, which was the cross-motion under Rule 60(b)(6), because I need to address that. And I'm going to share my screen.

So, there are multiple reasons the cross-motion needs to be denied. First off, Your Honor, it's an extraordinary process, an extraordinary circumstance, to use Rule 60(b)(6). And the courts are clear that you're not to use motions to reform or nullify settlements because settlements represent the parties' negotiated allocation of risk. And it doesn't permit -- the Rule doesn't permit the Court to rescue a sophisticated party such as Highland from the predictable results of its own bargain.

And that's -- as the Fifth Circuit has said. And that is exactly what has happened here, because Highland claims, well, no one foresaw the IRS audit would take this long, except, Your Honor, to the extent that that is a mutual mistake argument, that's not a 60(b)(6) issue. That's a 60(b)(1)

issue. And under Rule 60(c)(1), that's got to be raised within one year, as the U.S. Supreme Court pointed out in the *Pioneer Investment Services v. Brunswick Associates* case. It's a one-year limitation.

Highland was also well aware, because it accepted the benefits of the settlement agreement's stay provision, because it secured four separate tolling agreements of its objection deadline along the way. And in fact, in the first tolling agreement that the parties entered into, the recitals specifically stated, the parties acknowledged that there was an absence of a resolution of the IRS dispute and it's unknown when the IRS dispute may be resolved.

Highland knew all of this at the time it entered into the settlement agreement. It could have asked for a specific time period by which the stay would be lifted in the settlement. It didn't do so. And the Court cannot rescue it under Rule 60(b)(6) from the bargain that it entered into.

And so, for all of those reasons, including the estoppel issue of Highland incurring the benefits of that stay through the extension of the claims objection deadline, the Court cannot strike the stay provision.

THE COURT: All right.

MR. MORRIS: Just very briefly in reply, Your Honor.

THE COURT: I guess you get to reply to his response on the Rule 60(b).

MR. MORRIS: Right. Just very briefly. Counsel continues to refer to our admissions that the IRS dispute remains unresolved and we don't know when it will be resolved. I confess to that admission. It's completely irrelevant. Look at the language of Section 9. It doesn't say it's stayed until the IRS dispute is resolved. It says it's stayed until the IRS makes a final determination. That's the issue before the Court.

So nothing that we've said about the indeterminate duration of the litigation concerning this IRS dispute is relevant at all. The admission is meaningless.

I have nothing further, Your Honor.

THE COURT: All right. Well, I didn't mean to get too bogged down on some of these technical issues. But I guess, at the same time, I felt like it was somewhat relevant here because, do we have extraordinary circumstances under Rule 60(b)(6)?

Rule 60(b)(6), it doesn't actually use the word extraordinary. It just, you know, any other reason that justifies relief. Are there grounds to grant relief from a final order after a laundry list of things like mistake, inadvertence, surprise, newly-discovered evidence, fraud, et cetera. As we all know, there's kind of a catchall phrase there, any other reason that justifies relief. And courts of appeals have put their gloss, if you will, on that, suggesting

you should only use this section when you have extraordinary circumstances.

I find extraordinary circumstances here. And just to put it in context, we have a very large bankruptcy estate that had a plan confirmed in 2021, February 2021. The plan went effective August 2021. November 2021, the settlement agreement was reached, signed by the parties, that allowed Mr. Daugherty certain claims on which he has been paid, it looks to me like it was close to $13 million.

And this settlement agreement essentially carved out, carved out this claim, this contingent unliquidated disputed claim of Mr. Daugherty. And whatever the correct interpretation of final determination, the fact is here we sit close to four years later with almost nothing left to happen at the Bankruptcy Court level, hopefully at the Appellate Court level. I never know from day to day what's still pending out there. But here we are, four years later. Could anyone have reasonably anticipated that we would be sitting here in the latter part of 2025 with this bankruptcy estate still open?

I think the answer is no, and we know that because of the Claimant Trust Agreement and what it anticipated would be the appropriate duration and possible extensions. The Claimant Trust Agreement and the orders subsequently entered by the Court authorizing extension require basically the bankruptcy

case and the associated trust to be wrapped up by August 11, 2026. I have heard nothing today to make me think -- to allow me to possibly assess, really, whether that's a possibility. And we cannot get in a situation where we're at August 2026 and I've entered an order saying it must be wrapped up, I've entered orders approving the Claimant Trust Agreement, I've entered orders extending.

I know that Mr. Daugherty wants me to honor the previous order approving the settlement agreement, which he thinks requires this reserve to be kept intact until some undetermined time. But I've really got a conflict of orders, right? I've got an order approving a plan that approved, as part of that plan, the Claimant Trust Agreement, which had a finite duration. I've got then an order extending the duration to -- I think we're at the end of the rope. I'm not even sure how much discretion there is to extend that further. And then I've got an order that might be an open order for 2028, 2029. I've really got a conflict of orders.

So I really do think it's extraordinary. It's extraordinary that we're down the road so far and this claim, this audit, has, we guess, still not been resolved, but I don't even have information to be clear about the status. Is there even a lawsuit?

So I don't like it, but I think clearly this Court has authority and should exercise its discretion to grant the

motion -- I forget the way it was phrased -- but a motion under Rule 60(b)(6) for the settlement agreement and the order approving the settlement agreement to be modified, so that we don't have to wait any further for whatever final determination, however it might be interpreted, to be completed with regard to this tax refund.

And I'm stating the obvious, but I think the record needs to be clear on this. Mr. Daugherty at one time was a limited partner of the Debtor. He received a tax refund for Year 2008, and this was because he was allocated his applicable losses for the entity Highland's Tax Year 2008 on account of his partnership interest.

We are now -- yes, do the math -- 17 years down the road. I understand Mr. Daugherty believes that Highland was obligated, I guess because of this 2019 benefit statement, or I'm not sure if there was other documentation, to make him whole if any portion of that tax refund is later clawed back by the IRS. Highland disputes that.

But we can't wait forever. That's not what the Bankruptcy Code, the bankruptcy process, is designed to do. 502(c) is because of this sort of situation, where at some point you've got to estimate the claim if you can't get to a final determination otherwise. And I refuse to keep this estate open for who knows how many more years. Okay? I've made it very clear in other hearings, in other contexts, we need to

wind this up.

So, based on everything I've heard, I do think it's appropriate to apply 60(b)(6). I do think it's fair to say this was an unforeseeable circumstance. I just don't think anyone thought, reasonably thought, this would still be hanging out there with who knows what status four years later.

So the Rule 60(b)(6) motion is granted. And because of that, I deny the motion to dismiss of Mr. Daugherty for failure to state a claim.

So I'll look, Mr. Morris, for a form of order on those matters.

And then I don't know if you have a viable scheduling order at this point or you'll need to talk amongst yourselves about a form of scheduling order. But I presume you will ask for a scheduling conference if that's what you decide you need to do.

All right. Anything further?

MR. YORK: No, Your Honor. And the parties did, in their, I guess, scheduling order previously submitted relating to the briefing, we did say that, depending on how the Court ruled, we would confer after that on a scheduling order for the remainder of the case.

THE COURT: Okay. I do remember that now. Thank you for reminding me.

Mr. Morris, you're on mute. Were you saying something

else?

MR. MORRIS: I was just going to say, I'm very confident that we'll be able to come to a consensual scheduling order in short order.

THE COURT: Okay. All right. Thank you. We are adjourned.

MR. MORRIS: Thank you.

THE CLERK: All rise.

MR. YORK: Thank you, Your Honor.

(Proceedings concluded at 10:26 a.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 **09/29/2025**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	March 1, 2022
	1:30 p.m. Docket
Reorganized Debtor.	
	- REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK DAUGHERTY [3088]
	- REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER FURTHER EXTENDING THE PERIOD WITHIN WHICH IT MAY REMOVE ACTIONS [3199]
ELLINGTON,	**Adversary Proceeding 22-3003-sgj**
Plaintiff,	
	STATUS CONFERENCE
v.	(NOTICE OF REMOVAL)
DAUGHERTY,	
Defendant.	

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

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DEFENDANT'S EXHIBIT
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25-03055

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

DALLAS, TEXAS - MARCH 1, 2022 - 1:33 P.M.

THE COURT: All right. We have settings in Highland. We have a motion to approve a settlement with Patrick Daugherty. We also had a status conference in a recently-removed adversary or state court action, but I'm not sure we're going to accomplish much on that one since there's a motion for remand that's set later in the month.

So let's start with the Highland Motion to Approve Compromise with Mr. Daugherty. And I'll get appearances. Who do we have appearing for the Reorganized Debtor?

MR. MORRIS: Good afternoon, Your Honor. It's John Morris from Pachulski Stang Ziehl & Jones for the Reorganized Debtor.

THE COURT: All right. Thank you. For Mr. Daugherty, do we have a lawyer appearance?

MR. UEBLER: Good afternoon, Your Honor. This is Tom Uebler on behalf of Patrick Daugherty. And Mr. Daugherty is also attending today.

THE COURT: All right. Thank you. That's U-E-B-L-E-R, correct?

MR. UEBLER: Yes.

THE COURT: Okay. All right. We have an objection from Scott Ellington, and we're going to talk about the standing, but who do we have appearing for Scott Ellington?

MS. DANDENEAU: Good afternoon, Your Honor. This is

Debra Dandeneau from Baker & McKenzie. I'm appearing here on behalf of Scott Ellington.

THE COURT: Okay. Do we have any other lawyer appearances before we get started?

(No response.)

THE COURT: All right. Well, I don't mean to steal your thunder, Mr. Morris, on how we proceed here today. As I've already alluded to, I have a standing concern right off the bat. But how did you want to proceed, Mr. Morris, before we address that?

MR. MORRIS: Before we address that, my intention was to make an opening statement, move my exhibits into evidence, put Mr. Seery on the stand in order to adduce evidence that we believe establishes the grounds for granting the 9019 motion, and then turning it over to Ms. Dandeneau.

THE COURT: All right. Well, obviously, I need to hear evidence and have a prove-up, whether we have a pending objection or not. So I'll let you go forward in that manner, and then we'll talk to Ms. Dandeneau about the standing of her client to pursue to the objection and see where we go from there. All right?

MR. MORRIS: All right. And I will mention the standing issue as part of my presentation. But we thought it was important, you know, the Reorganized Debtor's position, as stated in the papers, is that we don't believe that Mr.

Ellington has standing, but even if the Court found that he did, there is no basis to sustain the objection. So we're kind of prepared to proceed on that basis.

As Your Honor knows, the issue of standing has come up so many times in this case. The Court has observed countless times the tenuous nature of various individuals and entities who were pursuing various relief in this Court. And notwithstanding the tenuous nature, which, you know, respectfully, we didn't think it existed in certain circumstances, we've always gone to the merits. And so I'd like to tackle both issues today in case there is an appeal, in case, you know, we just want to -- we just want to button down the hatches and try to get done with Mr. Daugherty and notch another hole in our belt, so to speak.

So if I may, Your Honor, I'd like to proceed.

THE COURT: You may.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Okay. So, as Your Honor pointed out, we're here on a 9019 motion. The Debtor seeks the Court's authority to consummate a proposed settlement that it has negotiated with Mr. Daugherty. As the Court has also observed, there's only one limited objection on file, the one by Mr. Ellington.

As Your Honor may recall, just about a year ago, maybe a little bit more than a year ago, actually, at confirmation, we

had announced a settlement in principle with Mr. Daugherty. And it's taken some time to get to this point, and I'll describe some of the reasons for that, and Mr. Seery will certainly testify as to those issues.

But before I get into kind of the substance, I would like to just move into evidence the documents that are listed on the Reorganized Debtor's witness and exhibit list that can be found at Docket No. 3270. It's really a very modest set of exhibits, in contrast to some of the other hearings that we've had. It is the 3018 order that Your Honor may recall entering about a year and a half ago. It is the settlement agreement itself, which is attached to my declaration so that it would be admissible for evidentiary purposes. And it's the three proofs of claim that Mr. Daugherty filed initially: Claim 67, which was amended by 77, which was amended by 205.

So we'd move for the admission of those documents into evidence.

THE COURT: All right. I presume no one has an objection to that. Okay.

MS. DANDENEAU: That's correct, Your Honor. We don't -- we don't object.

THE COURT: Okay.

(Debtor's exhibits identified in Docket 3270 are received into evidence.)

MR. MORRIS: Okay. So, with that, we do intend to

call Mr. Seery. Mr. Seery is going to testify, you know, to his understanding of the nature of Mr. Daugherty's claims. He'll testify to the -- to some of the litigation. We're not going to go on at length here, but we do want to make a record.

He'll testify as to the litigation that took place in this Court, because it really was very important in establishing some of the strengths and weaknesses of the case. It was important because we actually received Your Honor's opinion, at least with respect to voting purposes. And we all acknowledge that that was for that limited purpose at that time.

He'll describe the negotiations, the participation of the Independent Board, the reasons why it took a little bit longer to get here than we had hoped a year ago.

And so he will -- he will give you the evidence that I hope the Court finds is sufficient to approve this settlement.

He'll also address the two issues raised by Mr. Ellington, the observer access issue as well as the transfer of HERA and ERA under the proposed settlement.

I just want to make sure the record is clear as to what claim is being compromised here and the status of the other claims. Mr. Daugherty -- and this is all laid out in the settlement agreement, so I don't think that I'm saying anything controversial here. But as set forth in the

settlement agreement, back in April of 2020 Mr. Daugherty filed his original proof of claim. That was denoted as Claim No. 67. A couple of weeks later, or maybe a week later, his claim was -- he amended his claim and superseded his claim. So Claim 67 is no longer an operable claim, and that was superseded by Claim No. 77. And then in the fall he made a motion for leave to further amend his claim. After a hearing, that motion was granted and Mr. Daugherty filed another superseding claim. This one was denoted as Claim No. 205, in the approximate amount of $40 million.

So Claim 205 is the operative claim here. The other two claims will be expunged as part of the order because they've been superseded. And that's, that's what we're here to compromise today.

Mr. Seery is going to testify that he and the independent directors, really early on in the case, familiarized themselves with Mr. Daugherty. You know, they communicated with him and introduced themselves to him. The evidence will show that there's -- there's just a really voluminous record that preceded the Highland bankruptcy filing. Mr. Seery is going to testify that, you know, he's somewhat familiar with that record, that his lawyers became very familiar with that record, and on the basis of that review he and the independent directors really began to understand kind of the nature of Mr. Daugherty's claims.

The attachments to the proof of claim, Your Honor, as you may recall from the 3018 hearing, are enormous. And they're enormous for good reason. For probably seven or eight years before I ever heard of Highland Capital, Mr. Daugherty and Mr. Dondero and Highland and Mr. Ellington were engaged in very lengthy, acrimonious litigation. The litigation started in Texas state court. You know, this is a story that's been told many times. It started in state court. There were claims. There were counterclaims. I think at the end of it Highland had a $2.8 million verdict against Mr. Daugherty and Mr. Daugherty had a $2.6 million verdict against Highland. And I think in a rational world, Your Honor, Mr. Daugherty would have paid Highland $200,000, everybody would have said we've taken our best shot, and people would have gone on with their lives.

Regrettably, as so much happened, you know, with Highland prepetition, that was not the case. And it wasn't even close, right? During that whole litigation, you had -- you had criminal contempt. You had appeals. And then Mr. Daugherty, you know, made good on his judgment and he actually paid his judgment to Highland, but Highland didn't return the favor. Didn't comply, frankly, with their legal obligation.

And so Mr. Daugherty took the litigation from Texas up to Delaware. He sued Highland. He sued HERA. He sued Mr. Dondero. And he was seeking not only to collect on his

judgment but he was also seeking to collect on assets that had been held on his behalf within HERA, which was, you know, a form of deferred compensation program that was established following the financial crisis in order to retain employees.

And during the course of that litigation -- again, this is all documented in the proof of claim -- Mr. Seery can testify not on the basis of personal knowledge but on the basis of his review, the advice that he's received, and the litigation that we've had before Your Honor -- I think the record is pretty clear that Mr. Daugherty then learned that Highland had not only stripped HERA of its assets but had, you know, engaged in other wrongful conduct, including taking the money that was in an escrow account that the Texas state court, I understand, was specifically told was earmarked for the benefit of Mr. Daugherty. They took that, too.

And so, you know, Mr. Daugherty continued to pursue his litigation. Before the petition date, the Delaware Chancery Court found that there was a likelihood of a fraud. They found an exception to the attorney-client privilege under the crime-fraud exception. And, again, all of this happened before Jim Seery, the independent directors, my firm, anybody came on the scene. This was the nature -- this was the life that these folks were living.

And then, you know, we got hired. We took Highland into bankruptcy as the trial was about to begin. The automatic

stay went into effect. And we moved, you know, obviously, in a very different direction a few months later after the Independent Board was appointed and put in place.

So, with that, you know, Mr. Daugherty had a very substantial claim, and -- and we worked very hard, and Mr. Seery is going to testify that he worked very hard to understand the claim and to try to get down to the strengths and weaknesses of the claim itself. And we engaged in substantial motion practice, as Your Honor may recall, particularly in the fall of 2020, before we had a plan confirmed.

We had -- Mr. Daugherty had the comfort motion, where he sought the Court's approval to continue to pursue his claims against nondebtor individuals and entities, and that motion was granted. We had another contested hearing where he moved to amend his claim again. The Court granted Mr. Daugherty's motion at that time, and that's what resulted in the preparation and filing of what became Claim No. 205 that we're here to compromise today.

Mr. Daugherty then sought permission to lift the stay so that he could go -- Highland -- go after Highland in Delaware, and that's where Your Honor drew the line and said no, the claims against the Debtor will be determined here.

And then, of course, we had the very lengthy contested evidentiary hearing on Mr. Daugherty's 3018 motion. And,

again, that motion was brought simply to allow his claim for voting purposes. That's where the two-thousand-some-odd-page appendix was, you know, first presented to the Court. And at the conclusion of that, Your Honor granted the 3018 motion and allowed his claim in the approximate amount of $9.1 million. I believe that's Exhibit 1 on our witness and exhibit list.

And so with that background, having litigated not the merits but pretty much -- pretty much everything but the merits, and I daresay as close to the merits as you can get, and with the Debtors at that point actively pursuing a viable plan, because by the time Claim No. 205 was filed the Court has approved the disclosure statement and we were trying to get to confirmation, negotiations with Mr. Daugherty began in earnest.

You'll hear Mr. Seery testify that, you know, he had a lot on his plate. The Independent Board had a lot on its plate. But one of the things on their plate was Mr. Daugherty and trying to get a resolution of his claim. And there was a lot of back and forth, you know, between the lawyers, between the principals, and we were able to announce at the commencement of the hearing -- I think Mr. Ellington quoted from it in the very first paragraph of his limited objection -- the presentation of the terms of the agreement as they existed at that time.

Mr. Seery will testify that, you know, it took another

nine months or so to actually document the agreement. He'll testify that, you know, Pat Daugherty's settlement wasn't the only thing that the Independent Board and that he were involved with, that they were working very hard to get to an effective date.

He'll testify that Mr. Daugherty is not an easy negotiator. And I mean this respectfully to Mr. Daugherty. But he personally engaged in negotiations directly with Mr. Seery. We did it through lawyers. We went through countless drafts. And Mr. Daugherty was a dogged negotiator. He asked for -- you know, the interesting thing here is we're having this hearing today, Your Honor, and Mr. Ellington did not seek any discovery at all. Had he done so, he would have found out that there were, you know, probably a dozen or more draft settlement agreements that went back and forth. And if you -- Mr. Seery will testify to some of the things that Mr. Daugherty asked for that we said no to.

And, again, you know, Mr. Daugherty has the right to ask for whatever he wants, and Mr. Seery and the Independent Board, now the Oversight Board, certainly in consultation with the Oversight Board, have the authority to decide what's in the best interest of their estate.

And so it was -- it was a -- it was a difficult negotiation. And at the end of the day, we did get to yes, and I think the Court will find that the settlement is very

modestly different from what was presented to the Court back in February of 2021.

And, you know, let's just talk about the two issues. Mr. Seery -- Mr. Ellington, rather, seems to suggest in his papers that somehow, you know, Mr. Seery just caved and gave him these observer rights in HERA and ERA in order to enable Mr. Daugherty to have more weapons to go after Mr. Ellington. Ms. Dandeneau is free to ask Mr. Seery any questions she wants today, subject to the attorney-client privilege, but I don't think there will be a scintilla of evidence that will show that Mr. Seery thought about any of these issues that Mr. Ellington is apparently taking quite personally. What Mr. Seery will testify to is that he was singularly focused on getting to yes, on getting a deal done with Mr. Daugherty.

And with respect to the observer rights, I want to just focus on that for a second because I think it's -- I think Mr. Ellington mistakenly characterizes what that is, because it's not a right at all. Mr. Daugherty has no rights whatsoever vis-à-vis the Oversight Board. It is a very simple and uncontro... it should be a relatively uncontroversial provision. It's Paragraph 3 of the settlement agreement, and it simply says that Highland will use reasonable efforts -- not best efforts, as Mr. Ellington's pleading says -- reasonable efforts to see if the Oversight Board will give him access to the meetings.

Mr. Daugherty has absolutely no right to be in the meeting. The Oversight Board has the "sole discretion" to let him into the meeting. And so they can restrict him arbitrarily. They can restrict him for no reason. They have the sole discretion on whether to let him in.

And, importantly, Mr. Daugherty, if he's permitted to participate or listen in or observe these meetings, he will be required to abide by the Oversight Board's policies, procedures, and agreements, including agreements concerning confidentiality.

Mr. Daugherty has no decision-making authority. He's not a member of the Oversight Board. He has no ability to bind the Oversight Board. He would merely be given access to observe Oversight Board meetings, at the discretion of the Oversight Board. And it's no more, no less. He has no rights whatsoever, no ability to control the Oversight Board, no right.

And I was actually thinking about this earlier. And, you know, Mr. Ellington's pleadings suggest that he's very concerned that, you know, he may share information or that kind of thing. You know, this is America. There's a First Amendment. Mr. Daugherty has the right to speak with whoever he wants to speak with who's willing to speak with him. And so there is nothing right now preventing Mr. Daugherty from picking up the phone and calling one of the Oversight Board

members and say, I want to share something with you. Absolutely nothing in the trust agreement that prevents that, nor should it. The Oversight Board should have the ability to hear views from anybody who they want to hear from. They just should.

The Oversight Board members are still going be bound by their fiduciary obligations. They are going to be bound by their -- all of the duties that they have. But we shouldn't sit here today and speculate that something untoward might happen in the future. It's not fair to the Oversight Board members. There is absolutely no evidence in the record to do it. And there's really no basis to suggest that this is somehow a plan modification. That's it.

The other piece is HERA and ERA. You know what? Before I leave that, I did want to point out where Your Honor started, and that is Mr. Ellington has no claims. He's withdrawn every single claim. Therefore, he's not a beneficiary of the trust. Therefore, the Oversight Board owes him no duty whatsoever. And so he really has no standing to challenge that portion of it. I don't think he has standing, frankly, to challenge the HERA/ERA portion, but that part of it is just crystal clear, because he has no interest in the trust itself.

And so I don't understand how his interest can be -- he may have a personal interest. But that's not -- that's not standing. That's not a legally cognizable interest that would

allow him to object to the access that might be given to him, subject to the Oversight Board's discretion.

HERA and ERA, Your Honor, is very simple. Mr. Seery will testify that, you know, Mr. Daugherty's claim itself seeks over $26 million of damages related to the dissipation of the assets from HERA, as well as Highland's acquisition of the interests of the other limited partners, his theory of the case. And, frankly, we -- we disagree with this very hard, and that's why the numbers don't bear any relation to what the claim is. But his theory is that Highland wrongfully bought out all of the limited partners. He became the last limited partner. And since Highland is not entitled to the assets that Highland took, they should be given to him.

Again, not a theory that we put a lot of weight on, but it is a theory. And at the end of the day, Mr. Seery is going to -- and this will be the most important part of his testimony, I think -- he's going to testify that the issue of HERA and ERA was of great concern to the Debtor, and it was of great concern because we have seen Mr. Daugherty litigate with Mr. Ellington, with Mr. Leventon, with Mr. Dondero, with Highland, for the better part of a decade, and we wanted to make one hundred percent certain that we were done with Mr. Daugherty in terms of litigation and claims.

And so Mr. Seery is going to testify that we tried two or three different ways to address the HERA/ERA issue, and this

is what we ultimately came up with. Let's just give it to him and get that release. Really, one of the most important aspects of the -- of the settlement agreement is attached as an exhibit. It's the HERA release itself, Your Honor. And that's what gives the Debtor finality with Mr. Daugherty. That is among the most important pieces of the settlement agreement. It's attached as an exhibit. It's all signed up and ready to go.

But that's, that's really -- you know, when Mr. Ellington says in his pleading that there's no basis for doing this other than to help Mr. Daugherty, respectfully, Mr. Ellington has it wrong. And if he had taken any discovery, he would have found that out and maybe we could have saved today's hearing. Because the Debtor had a vital interest in resolving the HERA and ERA issues because it was part and parcel of getting to yes -- it was part and parcel of both getting to yes as well as making sure that Mr. Daugherty had his allowed claim in the manner in which we've agreed but is otherwise done with the Debtor.

So, with that, Your Honor, I think the evidence ultimately is going to establish, you know, very, very easily that this settlement is fair, reasonable, and in the best interests of the Debtor and its stakeholders.

I have nothing further unless Your Honor has any questions.

THE COURT: All right. First, let's be clear for the record that I have admitted the Debtor's exhibits at Docket Entry 3270 that were earlier mentioned.

And next, I guess I'll hear any opening statement from a friendly party. Mr. Daugherty's counsel, did you want to say anything as far as an opening statement?

MR. UEBLER: Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

MR. UEBLER: I just want to say that Mr. Daugherty joins in Highland's request that the settlement be approved, but otherwise we'll rely on Mr. Morris's presentation today.

THE COURT: All right. Thank you. Ms. Dandeneau, we've obviously been speculating about the standing of your client. What did you want to say as far as an opening statement and addressing that?

OPENING STATEMENT ON BEHALF OF SCOTT ELLINGTON

MS. DANDENEAU: Your Honor, I would reserve any comments on the settlement until after Mr. Seery's examination.

But with respect to standing, we acknowledge that Mr. Ellington is no longer a creditor of Highland's estate. I understand the typical standing requirements to appear in bankruptcy court.

I would note that Mr. Ellington was very careful in terms of his objection to the settlement agreement. I thought it

was interesting that I've been criticized now for not taking discovery. That's probably a first in this case.

But he does not -- he made it very clear. He does not object to the economic terms of the Debtor's proposed settlement. And if you look at -- if you look at the nature of our objection, it was more that there are -- there are issues that we thought were important and should be considered by the Debtor in the exercise of its business judgment that we don't think it was raised.

And the reason why Mr. Ellington brought that to the Court's attention and to the Debtor's attention, Mr. Ellington -- what's unusual about this settlement is that, after the terms of the settlement were announced to this Court at the confirmation hearing, now over a year ago, the settlement was amended to give Mr. Daugherty observer status to the Oversight Board, but it also was amended to include the HERA provision. And I understand Mr. Morris's -- I hear Mr. Morris's arguments about that.

But the effect of the observer status provision with respect to -- on the Oversight Board is if the Oversight Board -- and, again, we don't challenge the fact that the Oversight Board, according to the settlement agreement, has the discretion on whether or not to allow Mr. Daugherty access -- but we believe the result of this is to give Mr. Daugherty access to confidential information about Mr. Ellington.

And also, by the way, Mr. Daugherty himself has stated that one of the purposes of the transfer of the HERA shares is to enable Mr. Daugherty to have access to nonpublic information about Mr. Ellington.

These are noneconomic provisions, so I would argue, Your Honor, whether Mr. Ellington is a beneficiary of the Claimant Trust or not should not be relevant to the standing issues with respect to these issues.

And Your Honor knows that Mr. Ellington has filed a complaint. He filed a complaint in state court against Mr. Daugherty, alleging that Mr. Daugherty has engaged in stalking activities with respect to Mr. Ellington, Mr. Ellington's family, including his elderly father, his sister, and her minor children. And we're not here to argue the merits of those, but we do think that those allegations and what the Debtor would have done with respect to those allegations and what the Debtor will do in light of those allegations is important to consider.

And Mr. Daugherty, by the way, chose to remove that action to this Court, but that's the subject of a separate adversary proceeding. It's subject to a remand and abstention motion.

But I do think, Your Honor, in light of everything that has occurred, or even allegedly has occurred, we feel that it is incumbent upon this Court and the Debtor to take notice of these allegations and to really not put these -- not put

themselves in a position where they could generate additional claims by providing Mr. Daugherty access to information that could enable the activities of Mr. Daugherty.

So, on that basis, I understand, Your Honor, this is an unusual argument, but we would respectfully request that we be able to at least make our record at the hearing and be heard on these issues.

THE COURT: All right. Well, with that, as I said earlier, while I find the standing to be extremely I guess I should say doubtful, the Debtor has to prove up the bona fides of the settlement in any event. Put on evidence for me to assess whether it's fair and equitable, in the best interest of the estate, and analyze it under all of the Fifth Circuit standards.

So I'll allow you to examine Mr. Seery on behalf of Mr. Ellington to ask him anything you think is pertinent to the settlement. I would hope we don't spend too much time in court on this, because, again, I'm really doubtful about whether a higher court would find standing in this situation where he's not a creditor, he has no pending proofs of claim, and, you know, is he a party aggrieved by this proposed settlement? Again, I think it's doubtful. But I will give Mr. Ellington the benefit of the doubt and let counsel ask questions that you think are pertinent to the issues here.

All right. Mr. Morris, do you call Mr. Seery at this

time?

MR. MORRIS: I do, Your Honor.

THE COURT: All right. Mr. Seery, if you could say "Testing, one, two; testing, one, two" so we can --

MR. SEERY: Testing, one, two. Good afternoon, Your Honor.

THE COURT: Good afternoon. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor. I'm going to try to make this much briefer than I had originally intended.

JAMES P. "JIM" SEERY, JR., REORGANIZED DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, can you hear me okay?

A Yes, I can.

Q Okay. Can you just -- are you generally familiar with the nature of Mr. Daugherty's claim against Highland?

A Yes, I am.

Q Can you just describe for the Court your understanding of, you know, in general terms, the nature of the --

A Basically, Mr. Daugherty has a claim that has one or more of the components, but distilled down to the essence, there's

five major components that come out of about 12 years' worth of litigation with the Debtor.

The first is the enforcement of the HERA judgment that he received in Texas state court. This was -- I think we call it Texas Litigation 1. Highland got a judgment, as Mr. Morris said in his opening, against Mr. Daugherty for about $2.8 million. Mr. Daugherty got a judgment against Highland for about $2.6 million. Rather than offset, the parties appealed, and it went on from there.

An important component of that piece is Mr. Daugherty's argument that, throughout the case in Texas, Highland and the other defendants maintained that there was an escrow that was going to benefit Mr. Daugherty in the event that he got his judgment.

And that relates to the second component of his claims, which is the transfer of the HERA assets. HERA was the Highland Employee Retention vehicle, it was put in place after the financial crisis, and it was purportedly designed to retain employees. Mr. Daugherty maintains that the removal of the assets from HERA and the transfer of those assets to Highland and perhaps other places was a detriment to him because not only did he not get his roughly 20 percent interest in HERA, he also had a claim that the structure of HERA was a last-man-standing structure, meaning that it was a pool of assets designed to hold a team of employees together.

If you left, the pool stayed the same. In his reading, other -- other employees -- the remaining employees picked up the assets that you left behind.

We have defenses to each of these, but that's his position.

The third component of his -- and that was a big piece. That's over $25 million. The first piece is, with interest, around four. The next piece is the indemnity. Mr. Daugherty maintains that he was a -- as a partner, he was entitled to certain indemnification for acts that he did and costs that he incurred in advancing the interests of Highland, and that's around a $5 million piece.

In addition, he's got a claim from the 2008 compensation -- this is from the 2007-2008 tax audit -- for about $2.7 million. He received -- Mr. Daugherty received a net loss from Highland that year which gave him an economic benefit by reducing his taxes. That tax year is still under audit at Highland. Amazingly. But maybe not for Highland. And we thought it would be resolved by now. That's -- that's, he claims, around $2.7 [million]. I think our thought, that even if it was -- there are a lot of defenses to it, but it would be a much lower number. That battle is still going on. We are not addressing that piece in this settlement.

And the final piece of his claim, distilled down, is fees, fee-shifting, fees on fees, related to mainly the Delaware

action. And I think the best support for that, for our defense, is that the best support for that is when you go through that materials that Mr. Daugherty received in the -- from production related to the Delaware judge exercising the crime-fraud exception to the attorney-client privilege, it's a pretty torrid tale of stripping of HERA -- HERA's assets, stripping of the so-called escrow. It actually looks like, frankly, the escrow was never really an escrow and it was a -- it was a fraud from the beginning. And that one's a pretty disturbing one. We think it's -- our defenses are it's very hard to shift fees in the American system, but it's -- it's not a bare claim.

And so that's the essence of his claim, distilled down.

Q And -- thank you, Mr. Seery. And just to move this along, do you recall, in the fall of 2020, we had the contested 3018 hearing?

A Yes.

Q And were all of these issues analyzed, debated, and presented to the Court, to the best of your recollection?

A They were. I would say that the fee-shifting one got shorter shrift. We probably had less information at the time than we do now. Mr. Daugherty clearly had the information. But because it was an estimation hearing, it was a little more truncated, and I think that at that time he was -- the fee shifting was, at least from the Court's perspective, and I

think following the traditional American rule, looked on a little bit -- with a bit of a jaundiced eye in terms of its validity. And he was going -- he was clear that he could in the future prove that up, but we didn't -- he didn't really explore that issue too often. Or too much.

Q Can you describe for the Court what you and the Independent Board did between the end of the 3018 hearing and confirmation to negotiate the agreement in principle that was announced to the Court in early February 2021?

A Sure. As a quick prelude to that, let me just say that the board, the Independent Board, along with counsel and financial advisors, spent a tremendous amount of time on Mr. Daugherty's claims as they evolved.

In addition, because the record is so voluminous, we spent a tremendous amount of time deciphering the record and trying to divine exactly where the risks were and where our better defenses were.

So, coming into the 3018, we felt pretty -- pretty good about where we -- where we were clearly exposed and where we had good defenses.

Where we were clearly exposed, and we actually acknowledged at the 3018, is on the HERA, the initial HERA piece, which was his $2.6 million judgment plus interest. There -- there really were no defenses to that. It had been affirmed on appeal. Highland simply didn't pay the judgment.

After the 3018, we brought a new focus to trying to resolve with Mr. Daugherty what the remaining components would be.

We'd hoped to get a holistic settlement, including with respect to the 2007-2008 tax piece, which is the loss carryforward that he was able to use and the value of that. We were not able to reach that conclusion, and I can go through that a little bit more later. But we did go through each of the other components and negotiate with Mr. Daugherty as we moved towards confirmation.

Q And what took so long to get from February of 2021 until the end of the year when you finally got signatures on the page? What was happening during that intervening period?

A Well, I would say, first and foremost, while Mr. Daugherty's claim was exceptionally important, he's a large claim, UBS's claim was bigger, and we were in intense negotiations with UBS.

As you'll recall, right around that time we discovered the Sentinel fraud, and that was extremely problematic because it upset the UBS negotiation. That led to us focusing on the -- what we could divine on what happened with respect to the transfers out of the Defendants of UBS and Highland's role in that and the negotiations, which led to a renegotiation around the terms of the UBS settlement. That wasn't completed until I believe it was March of '21.

We then turned to focus on the remaining claims, including with -- obviously, other issues in terms of asset monetization and trying to move towards effective date financing, indemnity trust. But we did turn to Mr. Daugherty and try to document the settlement we had.

Mr. Daugherty took the perspective that, well, wait a second, now that I see what happened with UBS and I see those transfers, I think my claims regarding asset stripping are even better. Where he thought his only good third-party support for asset tripping and the intentions of a personal vendetta and sweeping it for personal gain was really around Acis, he now -- he could now rely on both the Acis transfers and the transfers that we had exposed with respect to SOHC and CDO Fund, which were the two UBS defendants. And from Mr. Daugherty's perspective, that changed the nature of his claims and his risk profile. So, but I wouldn't say the negotiations began in earnest again, but there was a renegotiation around terms.

Q Okay. And during the negotiations, did the parties exchange numerous drafts of the agreement?

A It has to be at least a dozen. And it was -- really, the focus around those, after we got into negotiation, argument, I don't think it's fair to call it a dispute, but certainly healthy argument our respective positions, we still settled on a Class 8 claim and a Class 9 claim. I was very firm on where

I thought the maximum exposure was on the Class 8/9 -- Class 8 claim, and then we settled on -- negotiated around the Class 9 number and not wanting to move, because our cash was tight, any other kind of distribution to Mr. Daugherty. And we had healthy arm's-length negotiations with respect to each of those components.

We then focused on the other terms. Mr. Daugherty's always been clear from the start that he was not releasing anybody who wasn't a current employee at the time we settle. He didn't want to do that. That was -- that was my insistence, and I had a team that I wanted to make sure we were protecting, because we also have some obligations to them as current employees. But he was -- he was certainly keeping his litigations against Mr. Dondero, Mr. Ellington, some third parties, as well as HERA and ERA.

And what he was looking for in the negotiations around the terms were -- was as much flexibility around HERA and ERA, because he had a judgment against HERA and ERA. And he wanted to make sure that he could -- I believe it's the only creditor from our records of HERA and ERA -- that he could control that entity, and he was going to try to do that through an involuntary, if that's what it took. And he wanted to be able to use that in his continuing litigation against the other parties that he thinks defrauded him with respect to the so-called escrow.

And then the other component was I think he really was pushing hard on the structure of the settlement so that it might provide some value to him from an evidentiary perspective, even around things like the whereas clauses.

So we took the perspective that I can only put in the whereas clause what I have personal knowledge or that I have been able to decipher from our own records, and that anything else would be an assertion of his. And Mr. Daugherty took the perspective that if I had -- if he has court records in Delaware, why can't I simply affirm those? And that was a rather healthy negotiation around those types of items.

Q Before entering into the agreement, did you consider the potential costs, and I think you've described some of the risks, but if you could just perhaps concisely let the Court know if you considered the costs and risks of litigation as the alternative to the settlement before deciding that this was the right thing to do.

A Absolutely. In all of our settlements, you know, we weigh the risk of winning versus the cost of settling. We also factor in the cost of litigation.

To describe the various litigations that have gone on here as acrimonious and personal and bitter is to grossly understate how vituperative and how dug-in the parties are. These are exceptionally deep-cutting litigations and personal issues between the respective parties. And our objective was,

frankly, to extricate ourselves from that at what we think is a reasonable price. If the risk-reward wasn't balancing correctly, we would have litigated on the components.

But litigating here would have been extremely difficult. And the reason I say that is because we're talking, as I mentioned, about a ten-plus year litigation record. We're talking about three separate litigations that are currently either outstanding or have various components that have to be dealt with. Multiple parties in each of them. A very voluminous record. And from our perspective, our witnesses we don't think would have been -- one is they're hostile to us, but two, we don't think that they would have been the best witnesses from a credibility perspective. So we would have been weak on witnesses, relying on docs, a giant record. It would have been exceptionally expensive.

Q All right. Let's just finish up with the issues that Mr. Ellington has raised. Are you generally familiar with the two issues that Mr. Ellington is objecting to?

A I am, yes.

Q Can you describe for Judge Jernigan how the issue of oversight access came to be and what your understanding is of the Reorganized Debtor's obligation under Section 3 of the proposed settlement agreement?

A Sure. Mr. Daugherty has the perspective of a senior partner at Highland. And many of the assets that we own,

oddly, are still there from when he was there.

Now, to be fair and to be sure, they are very different assets ten-plus years later. But it's not unusual for settlements, particularly creditors of entities that are stressed, to want to give their input into how they think an asset should be monetized, what's the best way to bring that value, because that's going to inure to their benefit as a settling creditor.

Mr. Daugherty had the perspective that he could bring a significant amount of expertise to that endeavor. Frankly, since, as I said, he's been out for a long time, he does have significant business acumen, and he put many of these investments on, including MGM and Trussway, at Highland. They were his. But the world has changed, but that's not an unusual ask.

So I couldn't promise to him that I could put him on the Oversight Board because I'm not on the Oversight Board. I couldn't promise him that I could even give him observer status, because, again, I'm not on the Oversight Board. I have the -- I'm overseen by the Oversight Board in many respects, and I do -- I am entitled to attend the Oversight Board meetings. But he asked for observer status, and I said I would ask for it, but it would be entirely up to the Oversight Board to make a determination if it should be granted, how it should be granted, whether it can be

rescinded, how -- what the terms would be.

Like any board that I've been around in these types of situations, there are often observers. They are either contractual or granted other -- for other reasons. And their status is limited. If -- oftentimes, if it's anything to do with that particular creditor or anything that might be extremely sensitive, they'll usually -- the boards go into executive session without observers.

Q Does --

A So I agreed -- I agreed to ask for it.

Q Okay. Before getting to that agreement, did Mr. Daugherty initially demand an actual seat on the Oversight Board?

A I don't recall. It would not surprise me at all, but I just don't recall.

Q And I appreciate the candor. Under the settlement agreement, does Mr. Daugherty have any right to participate in any Oversight Board meeting?

A No. Again, it's -- I was very specific that I'm not the Oversight Board. I can't grant observer status. I can simply ask for it in good faith and the board will make its own determination.

Q Okay. Does Mr. Daugherty have -- withdrawn. Let's move to the HERA and ERA. Can you explain to the Court how, you know, the issue of the treatment of HERA and ERA evolved and how you wound up at the point of actually agreeing to transfer

those entities to Mr. Daugherty?

A Yes. So, recall that Mr. Daugherty has a judgment against ERA. And ERA is the management arm of HERA, but it has no other business or assets. And I think it has a very small few hundred dollars, maybe a few thousand dollar checking account. I don't recall what it is, but minimal assets. So, really no value to the estate.

One of the components, critical components to Mr. Daugherty from the start was that he was not going to release his claims against HERA and ERA, only the claims against Highland, because if that Delaware -- I think we call it Delaware 1 Litigation, but it might be Delaware 2 -- was still outstanding, and he wanted to continue to pursue that litigation with Highland severed off.

My concern was that if he was continuing to sue HERA and ERA and he had a -- he has a judgment against HERA and ERA or he has a joint and several judgment, HERA and ERA could find itself in an insolvent situation, and then either Mr. Daugherty or a trustee acting for Mr. Daugherty might come after Highland or the estate. I think it would be attenuated and hard to do, but there was a risk of that.

So we initially started negotiations around a structure where he would -- he could maintain his claims against HERA and ERA, but if he received anything from Highland on account of anything that happened to HERA and ERA, he had to turn it

back over to us, so that he can use it to continue his litigations with nonsettling parties but he couldn't back-door that into something against the Reorganized Debtor or the Highland estate.

The problem with that was that we were set up to effectively maintain HERA and ERA as the owners of the GP and the -- it effectively is a GP, but I believe it's an LLC structure -- and the other membership interests.

He then wanted us to turn it over to him, because I think he thought that was a more effective way to accomplish what he wanted to anyway without having to go through the step of a bankruptcy. It was certainly more efficient for us. But what that led to was then negotiation around making it clear that, once again, none of the -- since we're a settling party, we're bringing those claims, none of the actions out of HERA and ERA come against the former owner of HERA and ERA, either directly or indirectly.

And so we structured it with a rather detailed and extremely broad release of HCMLP and any of the Highland -- Highland Limited -- Capital Management Limited Partner related parties. And that's the structure of the deal that you see now.

When the deal was originally announced in court, we had not yet started to document. We were just on the financial terms. But it was clear that these -- he wanted to maintain

his litigations, and we were -- we were focused on the key financial terms, the Class 8, the Class 9, the cash component, which was really covering the expenses, some of the expenses he's had, as well as the releases related to anybody who's going to be a continuing employee at the Reorganized Debtor.

When we got into the documentation, it went to this structure where he'd maintain his claims, but if he received anything on account of a Highland loss, any Highland party related loss, he would have to turn it over. And then it evolved to the structure where we are now, which is we'll give him HERA and ERA. They have no value to Highland. And we want to make sure that we are extricated completely from any of the litigations or costs.

Q And last question on this topic. I guess last two questions. You're familiar with the HERA release that is attached to the settlement agreement?

A Yes.

Q Okay. Last question. Is that an integral component of the settlement agreement from the Reorganized Debtor's perspective?

A Essential to the transaction. The basic terms of the deal were initially approved by the Independent Board. And that included the initial deal that was announced in court as well as the evolving financial terms. But before the document was done, the Independent Board -- we had the effective date, the

Independent Board is gone, and it's been approved by the Oversight Board. I believe it's a component of the trust agreement that this type of settlement has to be approved by the Oversight Board, that I can't do it on my own, but we're running it so that I use the Oversight Board -- or rely on the Oversight Board; I shouldn't say use -- as a true board of directors. This is a critical component, both to me as the CEO of HCMLP, to me as the Claimant Trustee, and to the Oversight Board sitting above me and observing and monitoring my activities.

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

THE COURT: All right. Friendly parties first. Mr. Uebler, do you have a question or questions of Mr. Seery?

MR. UEBLER: I do not, Your Honor. Thank you.

THE COURT: All right. Ms. Dandeneau, do you have cross?

MS. DANDENEAU: Yes, I do, Your Honor. And thank you again for your indulgence. I will attempt to streamline my examination of Mr. Seery as much as possible.

If I may, Your Honor, could the Court allow Laura Zimmerman to share her screen for purposes of this examination?

THE COURT: All right. That's fine.

MS. DANDENEAU: Okay. And so I would just ask Ms.

Zimmerman to put on the screen what is Exhibit 1 to the Debtor's Exhibit 2, which is the settlement agreement attached to Mr. Morris's declaration that's been admitted into evidence. It's at Docket 3270-2. And let's just go to Page 5 of the -- 5 of the PDF, which is Paragraph 3 of the settlement agreement. And if we can maybe just make it larger for some of us to see.

CROSS-EXAMINATION

BY MS. DANDENEAU:

Q All right. Mr. Seery, I just wanted to -- this is, when we talk about the observer rights, this Paragraph 3, I'm not going to read it out loud, but this is the document, the paragraph that has the heading Observation Access, is what you've been referring to with respect to the provisions relating to the observer status on the Oversight Board. Is that correct?

A That's correct. Just one clarification, again. And I hope it may just be nomenclature, but to the extent that there's weight to it, it's observation access. There are no rights. The rights vest with the Oversight Board and how they'll grant access or not.

Q Okay. Thank you for that clarification. And just for simplicity, can we refer to this provision when we're talking as the observer provision, --

A Yes.

Q -- or would you -- okay. Thank you.

MS. DANDENEAU: And so, Ms. Zimmerman, if we could please turn to Page 10 of the settlement agreement, which I believe is Page 14 of the PDF, and just look at the Paragraph 8.

BY MS. DANDENEAU:

Q And again, I'm not going to -- I will spare everyone a dramatic reading of the provision, but is this what we would refer to as the HERA provision?

A That's correct.

Q Not really intending to leave ERA out, but just it's hard enough to pronounce HERA. So let's talk a little bit about the changes made to the settlement agreement.

MS. DANDENEAU: If we could please, Ms. Zimmerman, pull up Docket -- Exhibit -- what we have marked as Exhibit SE-5, which is found at Docket 3088.

I would note that Highland did incorporate in its witness and exhibit list all pleadings in the case. This is just Highland's motion to approve the settlement agreement. And we are marking this as Exhibit SE-5. No need, I believe, to move it into evidence. This is just as a demonstrative.

If we could please turn to Page 9 of the motion, which I believe is Page 12 of the PDF. And if we could just blow up those bullets on Paragraph -- under Paragraph 40. And maybe move it down, just to make sure we've captured all of the

bullets.
BY MS. DANDENEAU:
Q These bullets -- in these bullets, Highland recites the material terms of the settlement. Correct, Mr. Seery?
A I believe so, yes.
Q And the fifth bullet, okay, refers to what we call the HERA provision. Correct?
A Yes.
Q Now, there's -- there's -- if we scroll down a little bit, there is a Footnote 5.
MS. DANDENEAU: And maybe we can blow that up a little bit.
BY MS. DANDENEAU:
Q And the Footnote 5, but I'll read it, says, "With two exceptions, the settlement terms are materially the same as those announced on the record on February 2, 2021 in connection with the confirmation hearing on the Debtor's plan. The two exceptions are that (a) the Class 9 claim was increased by a million dollars; and (b) the Reorganized Debtor agreed to transfer its interests in HERA and ERA to Mr. Daugherty."
Did I read that correctly, Mr. Seery?
A I believe so, yes.
Q Okay. And the granting of the observer provision, let's say, is not within these two exceptions mentioned in this

footnote, correct?
A That's correct.
Q Okay. And in fact, nowhere in the motion itself is there a reference to the observer provision, correct?
A I don't know, but I'll accept that.
Q Okay. When -- I don't think you testified to this. When did Highland agree to the observer provision?
A Now, remember, we agreed to ask the board to give Mr. Daugherty observer access. So the -- if it's okay, I don't recall the exact date; I can elaborate on the evolution of the provision.
Q Well, why don't we just agree, was it prior to the confirmation hearing or after the confirmation hearing?
A It would have been after.
Q Okay. And so just for what it's worth, if it's after the confirmation hearing, the Footnote 5 is somewhat inaccurate, correct, without -- because it does not reference the observer provision?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: I would disagree with you, --
THE COURT: Sustained.
THE WITNESS: -- Ms. Dandeneau, because I don't think it's material.
BY MS. DANDENEAU:
Q Okay. Thank you. Did you review the settlement motion

before it was filed?
A Yes.
Q Okay. And did you review any prior drafts of the settlement motion?
A I don't recall. Typically, and I apologize for elaborating, but typically counsel sends me a very well-developed draft. Typically, I have comments. And so I go -- I review virtually every pleading that's filed, probably every pleading, and I comment on virtually every pleading.
Q I have no doubt, Mr. Seery, that you get a well-developed draft, and I sympathize with Mr. Morris. Did anyone request -- did any of the prior drafts contain an express reference to the observer provision? To your recollection?
A Not that I recall.
Q And to be clear, and I believe you testified to this, Mr. Daugherty is the one who requested that the observer provision be included in the settlement agreement, correct?
A Yes.
Q And also so the record is clear, the HERA provision, and I believe this is what's stated in Footnote 5, is -- was agreed to post-confirmation as well. Is that correct?
A I think, the way the provision works now, in that I couldn't -- that is correct. The evolution I described earlier, I don't recall, other than he wasn't going to maintain his claims against HERA and ERA, if that started

before or after confirmation. Certainly, before confirmation, there was not a written agreement. There was only agreement in principle.

Q All right. Thank you. And at the time of the confirmation hearing, in accordance with the terms announced on the record, Mr. Daugherty already was going to get under his settlement a substantial claim against the estate pursuant to that settlement. Correct?

A That's correct.

Q Mr. Seery, I'd like to turn to the Claimant Trust Agreement. And this is a document that we have marked as Exhibit SE-2. It's at Docket 3265-2. I would represent to you and to the Court we were unable to locate a publicly-available copy of the executed form of the Claimant Trust Agreement, but this is the copy that was included in the plan supplement. I understand that there was an amendment that changed, like, two provisions that are not material to what we're going to discuss.

But I would ask, Mr. Seery, do you recognize this agreement? Or this form of agreement?

A I do recognize the form, yes.

Q Okay. And you are the Claimant Trustee as that term is used in this agreement, correct?

A (no audible response)

Q Okay.

MS. DANDENEAU: Your Honor, I would move for admission of the document that's been marked as SE-2 into evidence.

THE COURT: All right. Any objection?

MR. MORRIS: No objection.

THE COURT: Okay. So, --

MR. MORRIS: No, Your Honor.

THE COURT: -- it's admitted, but let's be clear where it's found on the docket.

MS. DANDENEAU: Your Honor, it is at 3265-2.

THE COURT: Okay. So that is admitted. Thank you.

MS. DANDENEAU: Thank you, Your Honor.

(Scott Ellington's Exhibit SE-2 is received into evidence.)

BY MS. DANDENEAU:

Q Mr. Seery, the Claimant Trust Agreement is the organizational document for the Claimant Trust, correct?

A Yes.

Q And you would agree with me that one of the purposes of an organizational document of an entity is to govern the management and operations of that entity, correct?

A Yes.

Q All right.

MS. DANDENEAU: So let's turn, Ms. Zimmerman, please, to Section 4.1. And, again, I'm going to try to spare

everybody from dramatic readings of these sections.
BY MS. DANDENEAU:
Q So, Section -- so just so we -- before we start, Article 4 is the provision that sets forth the rights and responsibilities of the members of the Oversight Board, correct?
A Essentially correct, yes.
Q Okay. And so Section 4.1 describes the initial members of the Oversight Board, and I'm just going to ask you, and I'll ask you this for every provision: Is there anything in this section that expressly allows the appointment of a third party as an observer to the Oversight Board?
A I don't believe so, no.
Q And I believe you've talked about observation access as opposed to observer. And so we're clear, when I say observe -- well, I can ask you, is there anything in here that allows the Oversight Board to grant -- expressly allows the Oversight Board to grant observation access? So let's go with your terminology with that question.
A I think we can -- we can use them interchangeably. No. So, --
Q Okay.
A -- observation access, observer status, the concepts are similar and quite common in most corporations.
Q Thank you, Mr. Seery. That will greatly ease the

questioning.

All right. Well, then let's go to Section 4.2. I will ask you the same question. Is there anything in this Section 4.2 that expressly permits the Claimant Trustee to share information with a person not associated with a member of the Oversight Board?

A I don't believe there was a -- it's not -- it's not a section dealing with sharing of information, but it does reference myself, who's not a member of the Oversight Board, obviously, and the Litigation Trustee, who's not a member of the Oversight Board. We do receive quite a bit of information from the Oversight Board and share information with the Oversight Board. But I don't think this provision actually deals with that.

Q And I believe what you're referring to is Paragraph 4.C, correct, where you as the Claimant Trustee are required to provide the Oversight Board with information sufficient to enable the Oversight Board to meet its obligations under the Claimant Trust Agreement, correct?

A That's, that's part of it. There's also -- the way that the structure of the board works is -- and it was highly negotiated in terms of how each of the entities or persons would function -- I'm entitled to be at Oversight Board meetings, but the Oversight Board can exclude me if it's in their reasonable determination to do so. I'm entitled to

bring advisors, I believe is the term, and I forgot where it is in the -- exactly in the section, but I certainly can bring my advisors.

Q Okay. Thank you, --

A The Oversight Board, once again, provided they're acting reasonably, can reasonably exclude me or my advisors.

Q Thank you, Mr. Seery. And now let's go to -- I was just -- Section 4.4 and 4.6, which deal with meetings of the Oversight Board. We'll start with 4.4. Is there anything in Section 4.4 that expressly permits an observer or any other third party that is not acting as a representative of the Claimant Trust, the Litigation Sub-Trust, or the Oversight Board to participate in meetings of the Oversight Board?

A Not that I recall.

Q And same question, if we can move to Section 4.6. Is there anything in Section 4.6 that expressly permits an observer or any other third party that is not acting as a representative of the Claimant Trust, the Litigation Sub-Trust, or the Oversight Board to participate in any meetings of the Oversight Board?

A I don't believe so.

Q Okay.

A Uh, --

Q And to -- I'm sorry. I did not mean to --

A I apologize, because I didn't read the top section. Some

of the former creditors have some specific reference in there, but I think that's really dealing with excluding Redeemer or Acis and/or UBS, depending on what the particular issue being discussed would be and how a quorum would work. I think that -- I don't think there's a specific provision that allows you to bring somebody else in, and that doesn't surprise me at all. I don't know that I've ever seen one.

Q Okay. Thank you. And just so that we're clear, at the time the Claimant Trust Agreement was drafted, those specific creditors who are referenced, those were contemplated to be members of the Oversight Board; is that correct?

A I believe that is correct, yes.

Q Okay. And by the way, when I say participate, can we agree that participate includes observing?

A For -- for -- if we need to distinguish, we can.

Q For --

A Yeah. I mean, typically, participating one would think would be someone who's active, has a vote, has a discussion. Observers, in my experience, whether they be creditors, whether they be regulators, whether they be large shareholders, only get to watch, unless asked something.

Q So, so let's talk about attend, I guess. There's nothing -- because I didn't mean to (overspoken) --

A Yeah, no, I'm not trying to (overspoken) the distinction.

Q Okay.

A There's nothing in the agreement that would say some third party can come in or that the board can invite some third party in, just like there's nothing in the agreement that says you -- the board could serve lunch at the meetings.

Q All right. Thank you, Mr. Seery. Let's skip to Section 4.9. And, again, this section purports to allow the removal of a member of the Oversight Board for cause or disability. Is that -- is there anything in that section that expressly permits the Oversight Board to remove someone to whom it has granted some form of observer status?

A No.

Q Now, Section 4.10, which sets forth in detail how a successor member of the Oversight Board will be appointed following the removal, death, or resignation of a member, does this Section 4.10 expressly contain anything that would permit the Oversight Board to grant observer status to any third party?

A No, not that I recall.

Q Okay. And Section 4.12 requires each member of the Oversight Board to hold strictly confidential and not use for personal gain any confidential trust information. Is that correct?

A That's correct.

Q Okay. Is there anything in this Section 4.12 that sets forth the same requirements for an observer or another -- a

third party attending an Oversight Board meeting?
A I'm sorry, Ms. Dandeneau. I got lost in reading the section. But I apologize; I missed the question.
Q Oh, I'll repeat it. And it was a long question. Sorry for that. Is there anything in this Section 4.12 that sets forth the same confidentiality requirements for an observer or any other third party who is attending a meeting of the Oversight Board?
A I don't recall. I would expect that if an Oversight Board member brought a colleague, whether that be a junior colleague or an outside professional because they had outside counsel or expert, that that colleague or affiliate, if you will, small A, will be bound by the confidentiality that binds the member. But there's -- it doesn't deal with observer status. I don't think that's something in the document at all.
Q Okay. Thank you. So, so in your view, I'd like to understand how the sharing of confidential information with a third party by the Oversight Board would work. Does the Oversight Board need to make a decision to share confidential information with a third party, collectively, the Oversight Board?
MR. MORRIS: Objection, Your Honor. This is a hypothetical and it's being asked of a person who's not even a member of the Oversight Board.
THE COURT: Sustained.

BY MS. DANDENEAU:

Q Is there anything in the Claimant Trust Agreement that actually contemplates the sharing of confidential information with a third party?

A Not that I recall, except the sharing with professionals, which is clearly contemplated, and perhaps my employees. When I mean mine, I mean the Reorganized Debtor. It's not expressed that I recall, but employees of the Reorganized Debtor can and do attend Oversight Board meetings and they are bound by confidentiality, as am I, on confidential issues. There may be things that aren't particularly confidential that are discussed at times.

Q And Mr. Seery, I believe you testified that the Oversight Board in your view would impose reasonable protections if they were going to allow a third party to attend an Oversight Board meeting or observe an Oversight Board meeting. Is that correct?

A I apologize. I don't recall actually saying that. But I would expect such.

Q Okay. Thank you. Are you, sitting here today, prepared to vouch to the Oversight Board that Mr. Daugherty is likely to comply with confidentiality requirements imposed on him?

A No.

Q Now, for the sake of completeness, let's take a look at Article 10 of the Claimant Trust Agreement. Now, this allows

amendments to the agreement, correct?
A Yes.
Q Okay. And for anything other than clarifying nonmaterial provisions of the Claimant Trust Agreement, an amendment requires an instrument signed in writing by you as the Claimant Trustee, correct?
A I haven't looked at the provision in a while, but I would expect such, yes.
Q Okay. And an amendment to the Claimant Trust Agreement requires the unanimous approval of the Oversight Board, correct?
A It -- that's -- that's what it appears to say, yes. I apologize. I just haven't looked at the provision in a long time.
Q I'm not trying to rush you through this, so if you need time to look at it --
A No, that's okay. I believe you're correct.
Q Okay. And then, finally, an amendment requires the approval of the Bankruptcy Court, after notice and a hearing. Is that correct?
A A material amendment. That's correct. It seems a little odd to me, as an aside, that, depending on when this happened, whether the Court would undertake to hear that, but that's what it says.
Q Okay. Well, just so we're clear, it says the Oversi...

may amend this agreement to correct or clarify any nonmaterial provisions. And then it says, it may not otherwise be amended, et cetera, without these components. So, I believe that that's -- that is how -- how it works. I don't know if that changes your answer, Mr. Seery.

A No. I believe my answer is sufficient.

Q Okay. Now, you've previously testified, and as the observer provision states, whether Mr. Daugherty will be granted observer access and any continuing access will remain at the sole discretion of the Claimant Trust Oversight Board. Correct?

A Yes.

Q And nothing in the observer provision actually references your approval in your capacity as the Claimant Trustee for granting observer -- what I'm going to say, observer status on the Oversight Board to Mr. Daugherty. Correct?

A That -- that's correct. I think it's presumed, since I'm asking for it.

Q Okay. Have you signed anything in writing agreeing -- agreeing to grant Mr. Daugherty observer access or observer status?

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

THE WITNESS: No, I've simply --

THE COURT: Overruled.

THE WITNESS: I'm sorry.

THE COURT: Overruled. You can answer.

THE WITNESS: I simply -- I've simply signed the settlement agreement which says that I will use my reasonable efforts to request that the Oversight Board grant observer status to Mr. Daugherty, and the terms, limitations, provisions are for the Oversight Board, or even -- even granting it.

BY MS. DANDENEAU:

Q And as the Claimant Trustee, you have fiduciary duties to the Claimant Trust and its beneficiaries, correct?

A Correct.

Q And nothing in the Claimant Trust Agreement or Delaware trust law allows you to delegate those fiduciary duties, correct?

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

THE COURT: Sustained.

BY MS. DANDENEAU:

Q Nothing in the observer provision that's included in the settlement agreement references any amendment to the Claimant Trust Agreement; is that correct?

A Yes.

Q And nothing in the observer provision references the requirement for further approval of an amendment by the Bankruptcy Court after notice and a hearing; is that correct?

A That's correct.

Q Okay. And I know you testified to this already, but is there anything in the Claimant Trust Agreement that prohibits the Claimant Trust from consulting with Mr. Daugherty if he is not a member of the Oversight Board or granted some kind of observer status?

A I believe Mr. Morris testified to that, but the answer --

Q Oh, I'm sorry. I get confused sometimes when Mr. Morris testifies.

A No, the answer -- the answer, there's -- there is no prohibition from consulting with whomever the Oversight Board wants to consult, whether they're a professional, whether they're Claimant Trustee, Litigation Trustee, whether they're an observer, or whether they're someone on the street.

Q And is there anything in the Claimant Trust Agreement that prohibits the Claimant Trust from receiving information from Mr. Daugherty?

A No.

Q Now, Mr. Daugherty stopped being employed by Highland in 2011; is that correct?

A That's my recollection, yes.

Q Yes. With respect to the pending actions that are being -- let's start with the Reorganized Debtor -- being pursued by Highland as the Reorganized Debtor, does the estate require any assistance from Mr. Daugherty?

A I apologize. I missed the first part. You said with

respect to the pending actions that Highland has brought. Meaning litigation actions?

Q Yes. Mr. Seery, let me -- let me rephrase that terrible question. With respect to whatever litigation is currently pending that is being pursued by Highland as the Reorganized Debtor, as opposed to a Litigation Sub-Trust, does the estate require -- does Highland require any assistance from Mr. Daugherty?

A No.

Q Okay. And in fact, Reorganized Highland and the Claimant Trust are represented by the Pachulski firm, correct?

A That's correct.

Q And --

A Generally, yes.

Q Okay. And in your view, does the Pachulski firm require any assistance from Mr. Daugherty in connection with the matters on which it is representing the Reorganized Highland or the Claimant Trust?

A No. Those -- those matters are all wrapped -- packed and ready to go.

Q Okay. Are you familiar with the action being generally commenced by Mr. Kirschner as the Trustee of the Litigation Sub-Trust --

A Yes.

Q -- against numerous defendants, including Mr. Ellington?

A Yes.
Q Now, I will represent to you that there are certain counts -- namely, Counts 1 and 2 -- that include causes of action for the recovery of equity distributions going back as far as April of 2010. But putting those aside, would you agree with me with respect to the Kirschner action that nearly all of the relevant facts in that action arose after 2011?
MR. MORRIS: Objection to the form of the question. Just relevance, Your Honor.
THE COURT: Okay. What is the relevance?
MS. DANDENEAU: Your Honor, what it is going to show, and I think this is consistent with what Mr. Seery has testified, is that nobody really needs the advice of Mr. Daugherty with respect to whatever the Reorganized Debtor is doing and also with respect to whatever the Litigation Sub-Trust is doing.
THE COURT: What does advice of Mr. Daugherty have to do with anything? Isn't it access, observer access?
MS. DANDENEAU: Well, I believe that it is also having him attend -- having him attend and do whatever observers do with respect to the Oversight Committee. But I do believe that there was testimony that he might be useful in connection with certain facets of liquidating Highland's -- kind of the longstanding, long-held assets. But I think it is worth at least getting -- having it recognized that there is

really no utility served by having the Litigation Sub-Trust or even having Highland have "access" to Mr. Daugherty.

THE COURT: All right. Well, I think it's of dubious relevance, but I'll allow the question.

Mike, how long have we been going with this cross-examination, by the way?

THE CLERK: Approximately 29 minutes, Judge.

THE COURT: Okay. Twenty-nine minutes. All right. You may proceed.

THE WITNESS: I think I have the gist of the question. I don't purport to understand exactly what Mr. Kirschner's strategy is on every point, but I don't think additional information from Mr. Daugherty is required for Mr. Kirschner or the Quinn Emanuel firm to pursue the cause of action. Whether he would be helpful or not for certain aspects, he may be, but I don't have specific information on that and that would depend on the give and take of what happens in the litigation.

And to clarify, I said earlier that Mr. Daugherty believes that he could be useful in providing advice around certain of the positions that he's familiar with that he put on. But aside from public information, which is certainly his right to receive, and some of it is available for some of the companies, he hasn't been involved with those companies for ten years, so I don't -- I don't purport to say that he is

necessary for me to monetize those assets.

Q Thank you, Mr. Seery. Now, has Mr. Daugherty been assisting the bankruptcy estate through his own investigations?

MR. MORRIS: Objection to the form of the question. Your Honor, we've got -- we've got two -- we've got an objection about access and we've got an objection about HERA and ERA. I don't think it's appropriate or relevant to try to get discovery for a different lawsuit here.

MS. DANDENEAU: Your Honor, I'm -- may I respond?

THE COURT: Please.

MS. DANDENEAU: Your Honor, first of all, this is a quote from Mr. Daugherty's joinder to the motion, where Mr. Daugherty says he's been assisting the bankruptcy estate through his own investigations. And we are particularly concerned, we've made no surprise about it, with respect to the observer -- granting of the observer status, the potential granting of the observer status, and potentially giving Mr. Daugherty access to confidential information.

And what we'd like to establish is whether the estate -- and we're not -- I'm not going to go in a lot of detail, but this is what Mr. Daugherty has said, and we'd like to know whether he has shared information with the estate up until this point, personal nonconfi... you know, personal confidential information that is -- that's not public --

MR. MORRIS: Your --

MS. DANDENEAU: -- with the estate.

MS. DANDENEAU: Your Honor, if I may just briefly.

THE COURT: You may.

MR. MORRIS: Mr. Daugherty -- Mr. Ellington does not have standing to challenge the access. He's not a beneficiary of the trust, number one.

Number two, to the extent that they contend that it's a plan modification, make the argument that it's a plan modification. You know, what discussions were had, I don't understand how this is relevant. It's clear that Mr. Ellington thinks that somehow Mr. Seery is, you know, aiding and abetting, I guess, whatever wrongdoing Mr. Ellington alleges Mr. Daugherty is engaged it. It's exactly why we're trying to extricate ourselves from this. Challenge -- challenge the provision. You know, we've heard the analysis and the questioning on the provision itself. But we're going very far afield, and it's just -- it's not relevant.

THE COURT: Okay. I agree --

MS. DANDENEAU: Mr. Morris, I mean, I do --

THE COURT: I agree we're going very far afield. This feels like it's discovery relevant to what I'm going to call the stalking action. So, anyway, I sustain the objection.

MS. DANDENEAU: All right. Thank you. And for

record, Your Honor, I just want to make clear that we are not trying to allege in any respect -- I mean, to the contrary -- that the Debtor was somehow kind of in cahoots with Mr. Daugherty with respect to any of the allegations. So I do want to make that clear on the record.

MR. MORRIS: I appreciate that.

THE COURT: Okay. Anything else?

MS. DANDENEAU: Well, Your Honor, there are -- I'd like to ask some questions, and maybe I -- I will try to simplify them. But -- and then wrap up very quickly. And then Mr. Morris is free to object, obviously.

BY MS. DANDENEAU:

Q Mr. Seery, if prior to the execution of the settlement agreement somebody had told you that there were allegations that Mr. Daugherty had been observed outside someone's office, residence, sister's residence, father's residence, no less than 143 times, often taking photographs and video recordings, or that Mr. Daugherty had been observed at least eight times outside the home where Mr. Ellington's sister resides with her husband and children, or that Mr. Daugherty was observed at least seven times outside the home of Mr. Ellington's widower father, again, putting aside whether those -- just on the basis of those allegations, would any of those allegations have changed your view about agreeing to the inclusion of the observer provision in the settlement agreement?

MR. MORRIS: Objection; calls for a hypothetical.

THE COURT: Sustained.

BY MS. DANDENEAU:

Q Well, just so I can clarify for the record, let me ask this. Have you, Mr. Seery, have you read or has somebody explained to you the allegations that were contained in the state court petition filed against Mr. -- filed by Mr. Ellington against Mr. Daugherty?

A I read enough of the -- I'm sorry. Did I cut you off, John?

MR. MORRIS: I was just going to say yes or no, to the extent it involves attorney-client communications. But you can --

MS. DANDENEAU: I'm only asking for a yes or no.

THE WITNESS: It's hard to say yes or no. But I don't -- I don't recall (inaudible) under the state court proceedings that I -- that I know of. I have read the -- at least glanced at the remand -- removal and remand documents that have been filed in this Court.

BY MS. DANDENEAU:

Q Okay. And would you agree that one of the effects of giving Mr. Daugherty observer status could be that Mr. Daugherty will have access to confidential information that is not otherwise publicly-available?

A Around the assets, I don't -- I don't know what the

limitation -- I don't know because I don't know what the limitations, if any, the Oversight Board would put on access for Mr. Daugherty if they grant it. It would be up to them. But I would -- I would -- if there was confidential information regarding either assets or regarding litigations, we would -- I would assure and I'm sure the board would assure that confidentiality agreements are in place and that materials like that could not be released or used otherwise.

Q But as we sit here today, there's nothing in the Claimant Trust Agreement or the settlement agreement that provides assurance that no member of the Oversight Board will share confidential personal information with Mr. Daugherty?

A I don't think that's true. I think there's a specific confidentiality provision that you have in the -- in the trust agreement, and the language that we included in the settlement agreement, which was that I would request that the board grant Mr. Daugherty observer access or status, it's subject to the types of confidentiality that one would typically expect from a board-type deliberation.

So if one were to breach that, that would be a breach of the agreement, would certainly abuse whatever observer status, even as limited that you might have been granted. But it would also subject somebody to potential damages for breaching the agreement if it hurt the Trust.

Q And Mr. Seery, sitting here today -- this is my last

question -- are you prepared to recommend to the Oversight Board that they agree to grant observer status to Mr. Daugherty?

A I -- I don't know if I would recommend. I said I would ask, and I'll do it in good faith, and I'll provide my views as they evolve depending on the discussion we have. I certainly think a significant creditor appearing -- observing board deliberations around the monetization of assets is nothing unusual, having done this for it seems like forever. I have been an observer. I've had observers at boards that -- observers on boards that I've been on. It's a pretty typical construct, where you have assets that are being monetized, as opposed to necessarily -- or a straight board with an operating committee, although you see them as well. And I -- I don't know that the limitations we're talking about, how they would pertain, but it would depend on each thing.

Obviously, the sensitivity around confidentiality and attorney-client privilege and common interest related to Litigation Trustee issues and note litigation issues, et cetera, is a little bit different than the sensitivity and confidentiality around private companies and their operations, although that is still sensitive and we want to make sure it's protected.

Q All right. Thank you, Mr. Seery.

MS. DANDENEAU: I have no further questions at this time.

THE COURT: All right. Mr. Morris, redirect?

MR. MORRIS: Yeah. Just a couple of quick questions.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, in Paragraph 3, the observer access provision of the proposed settlement agreement, did Mr. Daugherty agree that he would be bound by all policies, procedures, and agreements, including confidentiality agreements of the Oversight Board, if he's given access?

A I don't recall the specifics of the provision in that regard, but the terms of the request would be that, if he gets it, --

Q All right.

A -- he will be bound by whatever strictures the Oversight Board puts on him. And that -- again, this is -- I understand the sensitivity by counsel, but it's a pretty common provision.

It's also common that an observer's access is circumscribed. It's not something where it's just sit and watch all the proceedings. For example, if there's employee discussions or how some -- the company, the Trust, might deal with certain claims or taxes or things that may not deal with or impact the observer's realization on their claim, I would

expect there would be limitations. There typically are.
Q Okay. And can you just confirm that Paragraph 3, in Paragraph 3 Mr. Daugherty agreed that he would have absolutely no right of access to Oversight Board meetings unless the Oversight Board made that determination in its sole discretion?
A That, that is correct. I couldn't promise him something that I can't deliver, and I wanted to make sure that I wasn't in any way limiting the rights of the Oversight Board to determine who, if anyone, could observe their deliberations.
Q Okay. Ms. Dandeneau took you through certain provisions of the trust agreement and asked you whether or not certain things were expressly authorized. Do you recall that?
A Yes.
Q And you're generally familiar with the trust document; is that right?
A I am, although clearly from my testimony not as sharp as I need to be.
Q Okay. Do you recall that there's anything in the trust agreement that expressly prohibits the granting of observer status to third parties?
A I'm quite certain there isn't.
Q Do you recall if there's anything in the trust agreement that expressly prohibits the sharing of information with third parties?

A I'm quite certain there isn't.
Q Are you aware of anything in the trust agreement that expressly prohibits the Oversight Board from deciding that it doesn't want to grant observer access to third parties?
A There is not.
Q Okay. Is there anything that you're aware of in the trust agreement that prohibits the observer access provision in Paragraph 3 of the proposed settlement agreement?
A No, there isn't. And just, again, nor would there be. There are observers at boards of directors or trusts. It's common. I've never seen, never seen a corporate organizational document or trust organizational document that prohibits observers if the trustee or an oversight board or a board of directors wants to have them.

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

THE COURT: Any recross on that redirect?

MS. DANDENEAU: No, Your Honor. Thank you.

THE COURT: All right. Thank you, Mr. Seery.

THE WITNESS: Thank you, Your Honor.

(The witness is excused.)

THE COURT: Mr. Morris, anything else?

CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

MR. MORRIS: Just really briefly, Your Honor. The Reorganized Debtor doesn't believe that Mr. Ellington has

standing to prosecute his objection because he holds no claim against the Debtor, the Reorganized Debtor, the Trust, or any aspect of the estate.

We believe that we've easily met the standard under 9019. We believe this settlement is fair, reasonable, and in the best interests of the estate. We believe the evidence conclusively shows that the proposed settlement is the subject of arm's-length negotiations; that after doing an exhaustive cost-benefit analysis, that the Debtor, in an exercise of its reasonable judgment, believes that the benefits of the proposed settlement greatly outweigh the costs and expenses of litigation.

We believe specifically that with respect to the two items that Mr. Ellington has objected to, that there's absolutely no foundation for characterizing Paragraph 3 of the settlement agreement as a plan modification. It grants absolutely no rights to Mr. Daugherty whatsoever. It simply allows the Oversight Board to exercise, in its sole discretion, whether to give him access. And if he's ever given access, it will be subject to the policies and procedures and agreements of the Oversight Board, including confidentiality.

HERA and ERA was an integral part of Mr. Daugherty's claim. You heard testimony from Mr. Seery that that issue was debated and morphed several times into different types of resolutions before ultimately settling on the final

resolution.

It's clear from Mr. Ellington's papers, from Mr. Daugherty's papers, that the two of them are going to continue their litigation pattern in the future whether or not the HERA/ERA aspect is part of the agreement or not. I mean, if somehow that were not part of the agreement, I don't think there's any evidence, I don't think there's any basis, and indeed, it's contrary to what both of them have said, that that would somehow end litigation between them.

So it doesn't really matter. What does matter, Your Honor, is that the Debtor had a very rational business reason for agreeing to that particular term, and that business reason is reflected not just in the transfer of the asset, but most importantly, in the exhibit to the settlement agreement, the HERA release.

So, on that basis, Your Honor, we respectfully request that the Court overrule the objection and grant the motion in its entirety. Thank you.

THE COURT: All right. Mr. Uebler, any closing argument from you?

CLOSING ARGUMENT ON BEHALF OF PATRICK DAUGHERTY

MR. UEBLER: Your Honor, just that Mr. Daugherty requests that the motion be approved. Thank you for your time this afternoon.

THE COURT: All right. Ms. Dandeneau, what would you

like to say as far as closing argument?

MS. DANDENEAU: Thank you, Your Honor.

CLOSING ARGUMENT ON BEHALF OF SCOTT ELLINGTON

MS. DANDENEAU: We fully understand that the standard for approval of a compromise under Bankruptcy Rule 9019 focuses on what is in the best interest of the debtor's estate. And we know that the Court typically defers to the debtor's business judgment.

As outlined in our objection, though, Mr. Ellington has two principal concerns with the proposed settlement. The first raises a legal concern. Mr. Morris addressed that, his view of it, which is that Highland incorporated the Claimant Trust Agreement into its plan. The Claimant Trust Agreement is the document that governs the management and operations of the Claimant Trust. That includes the activities of the Claimant Trust Oversight Board.

Article 4 of the Claimant Trust Agreement has extensive provisions dealing with the appointment of the board, the replacement of members, and their rights and responsibilities. And those rights and responsibilities include fiduciary duties and a duty to keep confidential information confidential and not use it for personal gain. And nowhere in the Claimant Trust Agreement is the granting of observer status to a third party contemplated.

The Claimant Trust Agreement never reserved to the

Claimant Trust the right to invite third parties, otherwise unassociated with the Claimant Trust or the Oversight Board or the Litigation Sub-Trust, to obtain access to confidential information. And granting that kind of provision substantially deviates from the terms of the Claimant Trust Agreement.

Indeed, nothing in the Claimant Trust Agreement, other provisions of the plan, or even the settlement agreement even ever mentioned, much less truly defined, what an observer is. That's a significant part of the problem. We have a Claimant Trust that goes to great lengths to lay out the rights and responsibilities of all parties and to protect the Claimant Trust from breaches of confidentiality. And now what we have is really Mr. Seery's word for what will happen with an observer to the Claimant Trust, because those provisions are not included in any document.

What are the duties of an observer? What are the rights? What is to prevent Mr. Daugherty from accessing confidential information and then using it? And why does Mr. Daugherty even need access to confidential information?

Moreover, Highland would argue that the Claimant Trust has the ability to grant observer status through an amendment. Well, again, we don't believe -- I know that they're not saying that, but we don't believe an amendment can be accomplished through simply the exercise of the Oversight

Board's sole discretion. Among other things, an amendment to the Claimant Trust Agreement requires notice and a hearing before this Court for this Court to expressly approve that provision.

The second issue, Your Honor, goes to the issue of whether Highland was fully and properly informed of the relevant facts in exercising its business judgment to agree to the inclusion of the observer provision and the HERA provision. The effect of both of these provisions is to give Mr. Daugherty, who has been accused of stalking Mr. Ellington and family members and other people closely associated with Mr. Ellington, including children, of giving Mr. Daugherty access to information about Mr. Ellington that is not otherwise publicly available. And there is nothing that we've heard today that provides assurance that the Oversight Board will not provide that access to Mr. Daugherty.

No one disputes, at least with respect to the observer provision, that that is a -- that is a significant potential effect. And Mr. Daugherty himself has stated that he wants the HERA equity so he can access otherwise-privileged communications between HERA and its counsel. Those are also likely to include confidential information.

And I recognize Highland sits here today and says, we had no idea when we signed, our hands are tied, well, this doesn't really hurt Highland's estate. Should the Court, which is a

court of equity, really allow a settlement to be approved when one of the purposes of two provisions that were added after the agreement in principle is to give an alleged stalker better access to his victims? Should the Court really allow a settlement to be approved when Mr. Daugherty insisted on these provisions that never disclosed to Highland what his so-called investigations of Mr. Ellington and others entailed?

Maybe Highland decided to humor Mr. Daugherty, and maybe Highland decided it just wanted to put Mr. Daugherty and all his litigation against Highland behind it. We get that. But did Highland really intend to do so in a manner that could pose risk to individuals?

We would respectfully submit, Your Honor, that even if Highland was humoring Mr. Daugherty, this is no laughing matter.

And moreover, shouldn't this Court question why Mr. Daugherty requested these provisions? We've heard no credible explanation for why Mr. Daugherty needed the observer provision as a result of the so-called revelations following the confirmation hearing. I mean, we know that the only effect on the estate from the Sentinel -- so-called Sentinel transaction was that Highland agreed to give UBS a larger claim. But Highland also agreed to give Mr. Daugherty a larger claim following those "revelations."

And if Mr. Daugherty, by the way, is not willing to do a

settlement with Highland unless the observer provision is included, what does that tell us about Mr. Daugherty and his motivations?

We would respectfully submit, Your Honor, that Mr. Daugherty was less than candid with Highland Capital in requesting these provisions. Highland should have the opportunity to reject those provisions in light of the allegations, or at least have the opportunity to assure itself and to assure the Oversight Board, by whatever means it deems necessary, that the allegations are not a concern before Highland is bound to the terms of this settlement agreement.

Accordingly, Your Honor, so long as the observer provision and the HERA provision remain in the settlement agreement, we would respectfully ask Your Honor to refuse to approve Highland's settlement with Mr. Daugherty.

MR. MORRIS: Your Honor, can I have 15 seconds?

THE COURT: Fifteen seconds. Timer's on.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Okay. I think the -- I think the rebuttal is to simply point Ms. Dandeneau to the two questions she asked Mr. Seery, and that is, is there anything that prohibits the members of the Oversight Board from consulting with Mr. Daugherty outside a meeting? Mr. Seery testified no.

Mr. Seery was asked whether there was anything that prevented Oversight Board members from receiving information

from third parties outside of the Oversight Board meeting. Mr. Seery said no.

That's it. They -- this is form over substance. They can do exactly what she's trying to stop outside of -- there's just no substance here. There's no reason for an amendment. There is no plan modification. Thank you.

THE COURT: All right. Thank you.

All right. This will be the Court's ruling on the Reorganized Debtor's motion for an order approving its proposed settlement with Patrick Daugherty.

First, the Court has jurisdiction over this contested matter pursuant to 28 U.S.C. Section 1334, and this is a core proceeding under 28 U.S.C. § 157(b). Bankruptcy Rule 9019 is the governing rule, as well as a multitude of cases, including *AWECO*, *Foster Mortgage*, *Jackson Brewing*, and *TMT Trailer* from the U.S. Supreme Court.

What those cases dictate is that a bankruptcy court, when presented with a proposed settlement, should look at is it fair and equitable and in the best interest of the estate, when considering the probability of success if there were to be further litigation, with due consideration of uncertainty of law and fact; the complexity and likely duration of the litigation and any attendant expense and delay; and all other factors bearing on the wisdom of the compromise, keeping in view at all times the paramount interests of creditors, with

deference to their reasonable views.

Here, the Court obviously just -- well, I'm going to say that reasonable notice has been given of this proposed compromise. The motion has been on file since December 8, 2021, so close to three months. And during that time frame, we only had the one objection of Scott Ellington, who is the former general counsel of Highland and holds no claim as a creditor in this case. At one time, he had pending proofs of claim, but they have been disallowed.

So, with regard to the Ellington objection, we've talked about standing or no standing. I am of the view that he does not have standing, either statutory or constitutional. It would not appear to be that he is a person affected by the settlement in that he does not have a claim that remains against the estate. He does not seem to qualify as a person aggrieved under case law interpreting that standard.

But if I'm wrong about this, I nevertheless overrule the objection as having no merit. This Court is in a unique position to evaluate the bona fides of the settlement, that being that the Court has had many hours of court time in which it has seen evidence and heard argument from Patrick Daugherty.

Significant, in the fall of 2020, there was a lengthy multi-hour hearing on what we call a Rule 3018 motion to estimate Mr. Daugherty's claim for voting purposes, for plan

voting purposes. In hindsight, I cannot remember how many hundreds of pages of exhibits I looked at in that multi-hour hearing, but after that multi-hour hearing this Court ruled, I think much to the Debtor's dismay and maybe other party in interest dismay, that Mr. Daugherty should be given a claim for voting purposes in the amount of $9,134,019.

Of course, that was an estimation based on some evidence but not all evidence. But again, it puts the Court in a unique position today to not simply look forward on how on how this Court might rule if there was litigation on the remaining proof of claim and how a Court of Appeals might rule; I've actually seen a lot of evidence.

So, based on that, I do find the settlement to be certainly within the range of reasonableness, and fair and equitable and in the best interest of the estate.

Again, despite what the Court earlier ruled on the 3018 motion, Daugherty is going to be given an $8.25 million general unsecured claim, a subordinated general unsecured claim of $3.75 million, a lump sum payment of $750,000 cash in the short term, and then the various releases and transfer of HERA and ERA to Daugherty, as well as this new provision that -- to make sure I've got the wording -- Debtor will use reasonable efforts to petition the Oversight Board to give Daugherty observer access.

I find this all, again, to be within the range of

reasonableness. The testimony was credible that there had been not just arm's length but hard-fought negotiations over a very long period of time. Again, it's been a year, or 13 months, almost, since the settlement was orally announced. The testimony was credible that there were many drafts, many written drafts of the settlement documents that have gone back and forth since the oral announcement.

With regard to the modifications that are objected to here, the observer access to the Oversight Board that may or may not actually happen and the transfer of Highland's interests in HERA and ERA, and then I guess there was a slight increase in the subordinated unsecured claim, none of these, in this Court's view of the evidence and testimony, are materially different from what was orally announced. But more importantly, they certainly don't rise to the level of plan modifications.

And I will add just another word or two about this observer access that has been such a trouble spot for Mr. Ellington. If this is granted, not only does it not seem materially inconsistent with what might be construed to be allowed under the Claimant Trust Agreement, but during the hearing I couldn't help but think about a Bankruptcy Code statute that I wondered if anybody was going to mention. No one did. But it's 1102(b)(3). Okay?

So the bankruptcy nerds on the WebEx will remember that in

October 2005 1102(b)(3) was added to the Bankruptcy Code. And it's a provision that deals with official committees of unsecured creditors during the pendency of the Chapter 11. So it technically doesn't apply to the Oversight Board, this post-confirmation Oversight Board. But it provides, 1102(b)(3), in case you don't have it in front of you, that a committee, meaning an official unsecured creditors committee, shall, quote, provide access to information for creditors who hold claims of kinds represented by that committee and are not appointed to the committee. It shall solicit and receive comments from the creditors that I just described, and be subject to a court order that compels any additional report or disclosure to be made to creditors described in Subparagraph A.

So I guess my point is, even though we're in a post-confirmation phase, what we're dealing with is an oversight board that basically substitutes in many respects for an official creditors committee when you're in a post-confirmation stage of a Chapter 11. And if Mr. Daugherty is given access to deliberations, meetings, information of the Oversight Board, it certainly doesn't feel offensive to me, because in a pre-confirmation stage we have a Bankruptcy Code section that is designed to give access to creditors like Mr. Daugherty. And certainly, you know, we see protocol orders all of the time in Chapter 11s where, you know, people will be

worried, okay, yes, we have to give access, but we want to require this person to sign confidentiality agreements if there's something confidential about the information.

The point is, there are workarounds to deal with concerns about confidentiality and sensitive information.

So not only do I determine that this observer access concept is not by any stretch something that should be viewed as a plan modification, but it is within the spirit of the Claimant Trust Agreement, it doesn't run grossly afoul, or afoul, I think, of anything in there. And, again, it's just observer status. And it seems to be consistent also with the spirit of this provision of the Bankruptcy Code I just cited.

So the Court reserves the right to supplement and amend in the written form of order. I direct, Mr. Morris, you to submit a form of order, but I do hereby approve the compromise as presented to me.

All right. Well, we do have one other matter on the calendar, as I mentioned in the beginning. It is in the adversary *Ellington v. Daugherty*, Adversary 22-3003. This was a routinely-set status conference after removal. Okay? This was a state court action that was removed by Mr. Daugherty's counsel to the Bankruptcy Court. And we did here what we always do: Roughly 30 days after removal, we set a status conference to see do we need a scheduling order, what kind of case matters do we need to address, and are we going to have

consent to Bankruptcy Court adjudication or are we going to have a motion for remand.

So I don't know what we're going to attempt to accomplish here because later in this month we have set a hearing on Mr. Ellington's motion for remand and abstention. So I'll ask counsel, did you all view this setting as something that, you know, we needed to address issues on, or is it premature before we have the hearing on the motion for remand and abstention?

MR. YORK: Your Honor, this is Drew York from Gray Reed. I represent Mr. Daugherty in the adversary action. And I agree with the Court that it is, based upon the motion to abstain and remand that was filed, it's premature. We set the status conference at the Court's request immediately after we filed the removal notice. I think we can address all of the issues at the hearing at the end of the month.

THE COURT: All right. Ms. --

MS. DANDENEAU: Your Honor?

THE COURT: Go ahead.

MS. DANDENEAU: We agree with Mr. York and the Court, Your Honor.

THE COURT: Okay. Well, so I guess we will see you at the end of the month. I think, what is it, maybe March 28th, something like that? March 29th?

MS. DANDENEAU: I believe it's March 29th.

THE COURT: Okay. And you know that I tend to sometimes share my views just to see if it will spur a fit of reasonableness or encourage people to settle or walk away. I'm pretty exasperated with that attempt in this case. But this litigation is -- I'm going to call it the stalking lawsuit. Okay? Every time -- I don't know how much longer it will be in my court, but as long as it's in my court I'm going to call it what it is, a stalking lawsuit. It is one grown man accusing another grown man of stalking. You know, it's just embarrassing to me, and it should be embarrassing to those involved.

Now, I have read the lawsuit and I have read that Mr. Ellington accuses Mr. Daugherty of driving by his house, driving by his father's house, driving by his sister's house, driving by his office, 143 sightings, he's taking pictures. And you know, if that's true, again, that's embarrassing. If -- I don't even know what to say except this is embarrassing. One grown man accusing another grown man of stalking. Okay? A statute, by the way, that was designed to protect, you know, ex-wives, girlfriends, battered women, from abusive men. You know, gender doesn't matter, but wow. It's just -- I don't know what to say except people should be embarrassed, and so that's what I'm going to say.

I don't know if it's going to make a whit of difference in anyone's litigation posture. But we'll come back on March

29th and we'll do what we need to do on the motions before the Court.

(Proceedings concluded at 3:41 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 **03/07/2022**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

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HIGHLAND CAPITAL MANAGEMENT

July 13, 2021

Re: IRS Appeals Office Conference – 2008 Tax Year
Highland Capital Management, L.P.

Dear 2008 Tax Year Partner of Highland Capital Management, L.P.:

This correspondence is to notify you of recent developments in the IRS's audit of Highland's 2008 tax year. As previously advised, a team of IRS field examiners ("IRS Exam") conducted an audit of the 2008 partnership tax return filed on behalf of Highland Capital Management, L.P. ("Highland"). Exam concluded their audit in 2017 and proposed an adjustment to the 2008 return with respect to Highland's treatment of a hedging transaction. In early 2018 Highland provided to you a copy of the IRS's Form 886-Z showing your proportionate share of the adjustment as determined by IRS Exam and notified you of the opportunity to attend the IRS closing conference scheduled for March 2, 2018. After the IRS issued its audit report in May 2018, Highland protested and appealed each of the IRS's proposed adjustments to the IRS Appeals Office. After considerable delays in IRS Exam's processing of the appeal and further delays because of COVID-19 and scheduling conflicts, the IRS Appeals Office has scheduled the Appeals hearing for September 14-16, 2021, 10:00 AM CDT. IRS Exam is scheduled to present their case on the first day, Highland is scheduled to present its response on the second day, and the third day is reserved for discussions between Highland and Appeals Office personnel. At this time, it is not clear whether the Appeals hearing will be conducted by videoconference (tentatively planned) or held in person in Dallas, Texas. The purpose of the IRS Appeals hearing is to attempt to resolve or settle the IRS's proposed adjustments without litigation. We will update you with any further information regarding the Appeals hearing when it is received.

Sincerely Yours,

Strand Advisors, Inc., tax matters partner

300 Crescent Court, Suite 700, Dallas, TX 75201
Tel (972)628-4100 · Fax (972)628-4147 · www.highlandcapital.com

DEFENDANT'S EXHIBIT
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25-03055

10/04/2013
09:59 AM

Summary of Patrick Daugherty's Compensation
Replication of DAUGHERTY 001154

Highland Capital Management, L.P., et al. v. Patrick Daugherty v. Sierra Verde, LLC, et al.

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Description	Feb 2006	Feb 2007	Feb 2008	Feb 2009	Feb 2010	Feb 2011	AVG 2006-2011	AVG 2010-2011
Salary:								
Base salary	$250,000	$250,000	$250,000	$333,333	$500,000	$500,000	$347,222	$500,000
Bonus:								
Bonus	1,286,600	623,334	761,502		1,473,750	1,390,000		
Spot bonus		37,500	37,500		50,000			
Tax refund				1,475,816				
Loan forgiveness				506,354				
	1,286,600	660,834	799,002	1,982,170	1,523,750	1,390,000	1,273,726	1,456,875
Retirement:								
401(k)			4,000	4,000	4,200	4,400		
Profit sharing			24,750		22,050	19,845		
Defined benefits pension plan	56,366	59,748	64,320					
	56,366	59,748	93,070	4,000	26,250	24,245	43,947	25,248
SALARY, BONUS & RETIREMENT	1,592,966	970,582	1,142,072	2,319,503	2,050,000	1,914,245	1,664,895	1,982,123
Incentive based/deferred compensation								
Option IT	500,000	3,300,000						
STIP			3,900,000					
Vessel				2,076,479				
LTIP			2,001	8,304	1,253			
HFP	500,000							
Board fees					87,500			
	1,000,000	3,300,000	3,902,001	2,084,783	88,753	0	1,729,256	44,377
TOTAL COMPENSATION	$2,592,966	$4,270,582	$5,044,073	$4,404,286	$2,138,753	$1,914,245	3,394,151	2,026,499

File: Highland Capital

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25-03055

[redacted]

From: Brian Collins <BCollins@hcmlp.com>
Subject: Separation Documents - Daugherty
Date: October 17, 2011 at 4:55:24 PM CDT
To: "'phdaugherty@gmail.com'" <phdaugherty@gmail.com>
Cc: Pat Daugherty <PDaugherty@hcmlp.com>

Hi Pat,

Attached are soft copies of the three documents I gave you earlier.

- Highland Separation Agreement
- Cornerstone Separation Agreement
- Sierra Verde Consent

The document are in draft format and are not available for execution at this time. After we have agreed on the terms we can finalize and execute the documents.

Please let me know if you have any questions.

Brian Collins
Director of Human Resources
Highland Capital Management, L.P.
13455 Noel Rd, Suite 800
Dallas, TX 75240
(o) 972-419-4438
(f) 972-628-4137
(e) bcollins@hcmlp.com

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it.

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

October 17, 2011

Mr. Patrick H. Daugherty
[redacted]

Re: Separation Offer and General Release Agreement

Dear Pat:

As we discussed, this Separation Offer and General Release Agreement (this "***Agreement***") will address certain matters related to your termination of services to Cornerstone Healthcare Group Holding, Inc., a Delaware corporation (collectively with its subsidiaries, the "***Company***"), as co-Chief Executive Officer, Chairman of the Board and/or as a member of the Company's Board of Directors (the "***Board***"). Your eligibility for the benefits offered hereby is conditioned upon your execution and non-revocation of this Agreement and compliance with its terms. This Agreement shall be effective on the seventh day after it is executed and returned by you (as more fully set forth in Section 4(a)(v)(C) below, the "***Effective Date***").

1. Background; General Termination Issues.

(a) Prior Positions; Resignation. Since May 6, 2008, you have served as a member of the Company's Board and as its Chairman of the Board. Effective September 1, 2011, you were elected as the Company's co-Chief Executive Officer and its co-Chairman of the Board. Effective October 5, 2011 (the "***Termination Date***"), you tendered your resignation as a director of the Company and ceased to serve in all other positions with the Company and/or its subsidiaries, including your positions as co-Chief Executive Officer and co-Chairman of the Board of the Company.

(b) Payment of Current Salary and Other Amounts. You acknowledge that you have received all and/or are not entitled to vacation, leaves, wages, commissions, bonuses, monies, benefits, perquisites, and any other benefits and/or compensation you contend or may contend are due to you from the Company except as provided in Section 2 of this Agreement.

(c) No Equity Rights. You do not own any equity of the Company or its Affiliates (as defined below), nor do you have, nor have you been promised by the Company or its Affiliates, any right to acquire any shares of the capital stock of the Company or its Affiliates, or any "phantom stock", "stock appreciation right" or other incentive based on the equity of the Company or its Affiliates. Any other equity or other similar rights you may indirectly own or have any rights to

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DEFENDANT'S EXHIBIT 43 25-03055

are not addressed in this Agreement and shall be addressed between you and those third parties.

(d) Expenses. If you have any business expenses for which you wish to seek reimbursement from the Company, you must submit on the Company's standard forms your receipts to the Company for approval no later than thirty (30) days following the Termination Date. The Company reserves the right to not reimburse expenses submitted later than 30 days following your termination or which were not proper or in accordance with Company policies.

(e) Benefits, 401(k) and Insurance. You are not a participant in any of the Company's existing benefit plans, including health care coverage, the Company's 401(k) or any other pension and welfare benefit plan provided by the Company to its employees, and you will not be entitled to any participation in such plans for any period of time after the Termination Date.

2. Separation Payment. Upon the Effective Date, in consideration for your execution and non-revocation this Agreement and timely compliance with your promises and other agreements made in this Agreement, the Company agrees to provide you the following (the "***Separation Payment***"):

(a) Separation Payment. $600,000.00 (less any applicable withholdings and deductions) paid in ratable monthly installments of $33,333.33 over the 18 months following the Termination Date, beginning on the first Company payroll date following the Effective Date (such 18-month period being, the "***Separation Payment Period***"); provided that upon the final settlement of, or a final, non-appealable judgment with respect to, the Reliant Litigation (as defined below) (the "***Reliant Completion Date***"), the remaining unpaid amount of the Separation Payment shall be paid in full on or before the first regular Company payroll date occurring on or after the 30th day after the Reliant Completion Date. Notwithstanding any accelerated payment of the Separation Payment, your other obligations under this Agreement shall remain in effect in accordance with their terms.

(b) The Separation Payment will not be treated as compensation under the Company's 401(k) Plan or any other retirement plan, nor shall you be considered or deemed to be an employee of the Company for any reason during the period in which Separation Payment is made. Each installment payment and any other benefits to be provided hereunder are conditioned on your compliance with the terms of this Agreement. The Company's obligation to pay any Separation Payment ceases upon your material breach of this Agreement. In the event of your material breach of this Agreement, you agree to and shall return to the Company all Separation Payment and other benefits made to you under this

Agreement no later than seven (7) days after the Company's demand to you for the return of the Separation Payment or other benefits.

3. Your Agreements.

(a) Resignation; Termination of Duties. By executing this Agreement, you hereby confirm your resignation, effective as of the Termination Date, as a member of the Company's Board, as the Company's co-Chief Executive Officer and its co-Chairman of the Board, as well as your resignation from any and all other positions as an officer, director, manager, employee or agent with or on behalf of the Company and each of its direct or indirect, owned or controlled, subsidiaries and Affiliates. You agree to execute any additional documents which may be necessary to effectuate the intent of this paragraph.

(b) Transition Assistance. You agree, during the Separation Payment Period, to make yourself available at reasonable times and upon reasonable prior notice to provide assistance to the Company in a smooth and orderly transition following your departure, advising the Company's executive management team and Board regarding strategic and operational matters as requested from time to time, and other services as the Company from time to time may reasonably request and you may agree.

(c) Cooperation. You agree to cooperate with the Company, at the Company's reasonable request and without further consideration, except as provided below in this Section 3(c), in all respects concerning any matters which require your assistance, cooperation or knowledge, including communicating with persons inside or outside the Company and assistance/availability for any agency, board, and legal investigations and proceedings. Specifically, you consent to and agree to cooperate in a reasonable manner in those certain lawsuits (including any appellate or related actions) captioned (i) *Cornerstone Healthcare Group Holding, Inc. et al v. Reliant Hospital Partners, LLC, Nautic Partners LLC, Michael Brohm, Patrick Ryan, Kenneth McGee, Jerry Huggler and Chad Deardorff, et al*, pending in the District Court of Dallas County, Texas, 68th Judicial District (Cause No. 11-04339) (the "***Reliant Litigation***"), (ii) *Cornerstone Healthcare Group Holding, Inc. v. Samtech Consulting Services, LLC d/b/a Samtech Healthcare Services, Inc.*, pending in the District Court of Dallas County, Texas, 95th Judicial District (Cause No. 11-12847), (iii) MHC Holding Company v. Highland Capital Management, L.P., Cornerstone Healthcare Group Holding, Inc., CS Healthcare Holdco, Inc., pending in the Supreme Court of the State of New York, County of New York (Index No. 652498/2011), and/or (iv) any other predecessor, successor or other proceedings, wherever located, in any way arising from or in connection with or otherwise reasonably related to the foregoing or any facts giving rise to the dispute among the parties in the foregoing, including formal or informal proceedings or

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negotiations. In connection with this cooperation, you may be asked to provide sworn written statements or testimony under oath, and you will cooperate with the Company regarding the preparation of or for such sworn written statement or testimony. You will not be entitled to any additional compensation for your litigation cooperation other than reimbursement for (i) your actual and reasonable out-of-pocket expenses for travel, food and lodging for any travel outside a 75-mile radius of the Company's current headquarters in Dallas, Texas, for which the Company agrees to pay, subject to your compliance with the Company's travel and expense policies and submission of appropriate invoices on Company-approved forms, and (ii) upon submission of detailed invoices, your reasonable and actual attorneys' fees, if any, incurred in furtherance of your compliance with this Section 3(c), provided that such attorneys' fees shall not exceed $10,000 without the Company's prior consent.

(d) Mutual Non-Disparagement. You agree that you will not, directly or indirectly, disclose, communicate, or publish any disparaging or critical information concerning the Company, its business, financial condition, professional skills or expertise, suppliers, customers or clients, products or services, operations, market position, performance, technology, employees, officers, directors, consultants, representatives, agents or investors, or proprietary or technical information whatsoever, or directly or indirectly cause or encourage others to disclose, communicate, or publish any disparaging or critical information concerning the same. The current officers and directors of the Company will not, directly or indirectly, disclose, communicate, or publish any disparaging or critical information concerning you or your performance of services for the Company. Nothing contained in this paragraph is intended to prevent any person from testifying truthfully in any legal proceeding in which such person is under a subpoena or other court order to do so.

(e) No Interference. You agree that you will not act in any manner that might damage the business of the Company. You agree that you will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against the Company and/or any officer, director, employee, agent, representative, stockholder or attorney of the Company, provided that nothing herein shall prohibit you from testifying truthfully in any legal proceeding in which you are under a subpoena or other court order to do so.

(f) Return of Company Property and Proprietary Information. You agree to turn over to the Company all property belonging to the Company (in tangible written form or electronic form), including, without limitation, any material containing or disclosing any Company Work Product, Third Party Information or Proprietary Information and all other confidential and proprietary information; computer files;

computer discs; documents; notes; correspondence; keys and/or access cards; laptops; pagers; cell phones and PDAs; and corporate credit cards. You acknowledge that you have not and agree that you will not make or retain a copy of any Company property. If you should find yourself in possession of any property of the Company, you will return such property to the Company immediately.

(g) Restrictive Covenants. You recognize and agree that: (1) the Company has devoted a considerable amount of time, effort, and expense to develop its Confidential and Proprietary Information and business goodwill; (2) the Confidential and Proprietary Information and the Company's business goodwill are valuable assets to the Company; (3) any unauthorized use or disclosure of the Company or any Affiliate's Confidential and Proprietary Information would cause irreparable harm to the Company for which there is no adequate remedy at law, including damage to the Company's business goodwill; and (4) your agreements under this Section 3(g) are reasonable and necessary, both in scope and duration, to protect the business and goodwill of the Company and its Affiliates. Accordingly, you agree that to protect the Company's Confidential and Proprietary Information and business goodwill after the Termination Date it is necessary to enter into the following restrictive covenants. You, either individually and in your capacity as a principal, partner, stockholder, manager, agent, consultant, contractor, employee, lender, investor, or as a director, officer, consultant or agent of any corporation, person or other association, or in any other manner or capacity whatsoever, agree that during the Restricted Period and in the Restricted Area, you shall not, whether directly or indirectly, without the express prior written consent of the Company:

(i) Non-Recruitment. Hire, solicit for employment, induce or encourage to leave the employment of or service with the Company or otherwise cease his or her employment or service relationship with the Company or any Affiliate, any employee or any former employee or contractor of the Company or Affiliate whose employment or service relationship with the Company or Affiliate voluntarily ceased less than six (6) months earlier.

(ii) Non-Compete. Be employed by, establish, provide services to, consult for, engage in or participate in the ownership, management, operation, financing, or control of, or otherwise render services to, any Competing Business in the Restricted Area. Notwithstanding the foregoing, you are permitted to own up to one percent (1%) of any class of securities of any corporation in competition with the Company that is traded on a national securities exchange or through NASDAQ or other public trading system. In addition, notwithstanding the foregoing, upon your written request specifying the name and other reasonable business information regarding

the entity for which you are making such request, as well as any other rationale for the requested exception, in its sole discretion the Company may (but shall not be obligated to) consent in writing to your work for a Competing Business during the Restricted Period and in the Restricted Area.

(iii) Confidential Information. You agree and acknowledge that all of the Company's Confidential and Proprietary Information, along with all Company's business goodwill are the exclusive property of the Company; and you agree not to use or disclose any such information, or to take any action that is intended, or could reasonably be anticipated, to impair, harm or diminish the value of any such information or business goodwill.

(iv) Purpose and Intent. You may not avoid the purpose and intent of the restrictions in this Section 3(g) by engaging in conduct within the Restricted Area from a remote location through means such as telecommuting, written correspondence, computer generated or assisted communications, or other similar methods.

(v) Certain Definitions. As used in this Agreement, the following terms have the following meanings:

"***Affiliate***", when capitalized, means any subsidiary, entity, or organization wholly or partially owned or controlled by the Company.

"***Company Work Product***" means all work product that (i) relates to business or proposed business of the Company and that is discovered, developed, created, conceived, reduced to practice, made, learned, or written by you, either alone or jointly with others, in the course of your service with the Company or any Affiliate; (ii) utilizes, incorporates, or is otherwise related to Proprietary Information; or (iii) is discovered, developed, created, conceived, reduced to practice, made, or written by you using Company property or equipment.

"***Competing Business***" means (i) any business involved in the operation of long-term acute care facilities, inpatient rehabilitation facilities, skilled nursing facilities, or any other post-acute care or related facilities; and (ii) any other lines of business that, as of the Termination Date, the Company has taken steps to establish with a continuing intent to conduct business, has acquired or has entered into.

"***Confidential Information***" includes, but is not limited to: (i) information concerning customers, clients, marketing, business, research and development and operational methods of the Company or any Affiliate

and their customers or clients, contracts, financial or other data, technical data, email and other correspondence or any other Confidential or Proprietary Information possessed, owned or used by the Company or Affiliate; (ii) pricing and management methods and information; and (iii) names, arrangements with, or other information relating to, any of the Company's or Affiliate's customers, clients, suppliers, financiers, owners, representatives and other persons who have business relationships with the Company or any Affiliate or who are prospects for business relationships with the Company or any Affiliate, as of the date of termination.

"***Proprietary Information***" means any information owned by the Company or any Affiliate, or licensed from third parties regarding (i) research, development, products, services, marketing, selling, business plans, budgets, unpublished financial statements, licenses, prices, costs, contracts and other agreements, suppliers, customers, and customer lists; (ii) the identity, skills and compensation of employees, contractors, and consultants; (iii) Specialized Training; and (iv) information related to inventions owed by the Company or any Affiliate, or licensed from third parties.

"***Restricted Area***" means, given the scope of the Company's business, the United States of America.

"***Restricted Period***" means a period of 12 months following the Termination Date; provided that if you violate the terms of any of the restrictive covenants set forth in Section 3(g), then the Restricted Period with respect to such restrictive covenant(s) will be extended by one day for every day of your noncompliance with any such provision.

"***Specialized Training***" includes, but is not limited to: (i) training the Company provides to its employees that is unique to its business and enhances your ability to perform your job duties effectively, including disclosure and access to Confidential Information; and (ii) orientation training, sales methods/techniques training, operation methods training, and computer and systems training.

"***Third Party Information***" means confidential or trade secret information that the Company or any Affiliate may from time to time receive from third parties or information related to inventions of third parties, which is subject to a duty on the Company or any Affiliate's part to maintain the confidentiality of such third party information and to use it only for certain limited purposes.

4. Releases.

(a) By Daugherty.

(i) Release and Waiver of Claims. By signing and not revoking this Agreement, to the full extent permitted by law, you (for yourself, your spouse, executors, heirs, beneficiaries, representatives, agents, attorneys, assigns, insurers and assurers, and anyone claiming by or through you), do immediately, irrevocably, unconditionally completely, knowingly and voluntarily RELEASE, ACQUIT AND FOREVER DISCHARGE, covenant not to sue, and waive any right to recover from the Company and each of its current and former Affiliates, officers, directors, employees, agents, accountants, attorneys, predecessors, successors, divisions, subsidiaries and assigns (the "***Company Releasees***") from any and all manner of actions, causes of action, suits, charges, claims, complaints, counterclaims, defenses, demands, damages or liabilities whatsoever, including, without limitation, attorneys' fees, known or unknown, accrued or which may ever accrue, whether based in contract or tort, statutory or common law, of every kind and nature whatsoever, arising from the beginning of time to the execution date of this Agreement, whether or not relating to or arising from your service and termination of service with the Company and any act that has occurred as of the date of the execution of this Agreement in connection with any service that you may have rendered or may have been requested to render to or on behalf of the Company at any time, other than the rights and obligations under this Agreement. This release shall be construed as broadly as possible and shall include without limitation: (a) any contractual or other claims of employment, benefits, or payment you may have; (b) any claims arising out of or in connection with the initiation, termination or existence of your service with the Company or any service performed on behalf of the Company; (c) any claims regarding wages and/or compensation in any form whatsoever, vacation, leaves, bonuses, commissions, monies, perquisites, benefits, severance, or any other item attributable to or arising in connection with your service with the Company; (d) any right to asset any ownership or claim to any capital stock of the Company or its Affiliates, including with respect to any stock option, or other stock-based equity incentive plan or arrangement; and (e) without limitation, claims, if any, arising under the following:

- Title VII of the Civil Rights Act of 1964, as amended;
- The Americans with Disabilities Act of 1990, as amended;
- The Fair Labor Standards Act of 1938, as amended;
- The Family and Medical Leave Act of 1993;

- The Employee Retirement Income Security Act of 1974 (ERISA), as amended (non-vested rights);
- The Occupational Safety and Health Act of 1970 (OSHA), as amended;
- The Age Discrimination in Employment Act (ADEA);
- any other federal, state or local civil or human rights law or other local, state or federal law, regulation or ordinance;
- any public policy, contract, tort, or common law (including, without limitation, those relating to fraud, whistleblower, retaliation, negligent or intentional conduct of any nature, constructive discharge, emotional distress, personal injury); or
- any allegation for damages, costs, fees, or expenses, including expert witness and attorneys' fees.

(ii) Release of Unknown Claims. You understand and agree, in compliance with any statute or ordinance which requires a specific release of unknown claims or benefits, that, except where expressly prohibited by law, this Agreement includes a release of unknown claims, and you hereby expressly waive and relinquish any and all claims, rights or benefits that you may have which are unknown to you at the time of the execution of this Agreement. You understand and agree that if, hereafter, you discover facts different from or in addition to those that you now know or believe to be true, that the waivers and releases of this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of such facts.

(iii) Indemnification. Nothing in this Section 4(a) is intended to be construed as a release of your rights of indemnification and exculpation for actions as an director, employee or officer of the Company you have at law or under the governing documents (charter and bylaws) of the Company or any of its Affiliates, any written indemnity agreement with regard to the foregoing, or any D&O insurance coverage under which you may be covered by in connection with the foregoing; *provided* that in no event shall you be entitled to make any claim thereunder, under the Company's or its Affiliates' governing documents or insurance policies, or otherwise in defense of, or for exculpation, indemnification or advancement with respect to your compliance with this Agreement or your breach or alleged breach of this Agreement.

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(iv) No Other Claims; Ownership of Claims. You represent and warrant that you do not presently have on file, and further represent and warrant to the maximum extent allowed by law that you will not hereafter file, any lawsuits, claims, charges, grievances or complaints against the Company and/or any of the Company Releasees in or with any administrative, state, federal or governmental entity, agency, board or court, or before any other tribunal or panel or arbitrators, public or private, based upon any actions or omissions by the Company and/or any of the Company Releasees occurring prior to the Effective Date. To the extent that you are still entitled to file any administrative charge with any governmental agency, you hereby release any personal entitlement to reinstatement, back pay, or any other types of damages or injunctive relief in connection with any civil action brought on your behalf after your filing of any administrative charge. Finally, you represent and agree that you are the sole and lawful owner of all rights, title and interest in and to all released matters, claims and demands arising out of or in any way related to your service with the Company and/or the termination thereof.

(v) Older Workers Benefit Protection Act. In accordance with the Older Workers Benefit Protection Act ("***OWBPA***"), you should be aware of the following:

A. You should consult with an attorney before signing this Agreement;

B. You have up to 21 days from the date of this Agreement to consider whether you wish to accept the consideration enumerated herein in exchange for signing this Agreement. You have the right to sign this Agreement at any time during such 21-day period;

C. Even if you do sign this Agreement, you may change your mind and revoke this Agreement and forego the receipt of the consideration set forth herein, provided that you notify the Chairman of the Board, or his designee in writing within seven (7) days following the date you sign this Agreement; this Agreement will not be effective until the day after the expiration of that 7-day revocation period, provided that you have not revoked this Agreement (such date thereafter being, the "***Effective Date***");

D. Any revocation within this period must be submitted in writing no later than the seventh day after you sign this Agreement to the Chairman of the Board, or his designee and state, "I hereby revoke my acceptance of our Agreement";

E. You hereby acknowledge and agree that: this Agreement was negotiated at arm's length; this Agreement is worded in a manner that you fully understand; you specifically waive any rights or claims under the ADEA; you knowingly and voluntarily agree to all of the terms set forth in the Agreement; you acknowledge and understand that any claims under the ADEA that may arise after the date of this Agreement are not waived; and the rights and claims waived in this Agreement are in exchange for consideration over and above anything to which you were already undisputedly entitled; and

F. You assume any risk of non-delivery should you choose not to deliver any revocation or acceptance notice hereunder personally. If the last day of the revocation period is a Saturday, Sunday, or legal holiday, then the revocation period shall not expire until the next following day which is not a Saturday, Sunday or legal holiday.

(b) By the Company.

(i) Effective as of the Effective Date (the "***Company Release Date***"), the Company, on behalf of itself and each of the Company Releasees, hereby irrevocably and unconditionally RELEASES, ACQUITS AND FOREVER DISCHARGES and covenants not to sue you and each of your agents, attorneys, assigns, insurers and assurers (collectively the "***Daugherty Releasees***) from any and all manner of actions, causes of action, suits, charges, claims, complaints, counterclaims, defenses, demands, damages or liabilities whatsoever, including, without limitation, attorneys' fees, known or unknown, accrued or which may ever accrue, whether based in contract or tort, statutory or common law, of every kind and nature whatsoever, arising from the beginning of time to the execution date of this Agreement, and hereafter, other than your rights and obligations under this Agreement.

(ii) Any material breach by you of any of your agreements, covenants and other obligations under this Agreement, shall result in the Company Release being null and void, shall terminate the Separation Payments, and shall give the Company the right to demand return of any previously paid Separation Payments pursuant to Section 2(b).

(iii) Effective as of the Effective Date, the Company hereby acknowledges and agrees, in compliance with any statute or ordinance which requires a specific release of unknown claims or benefits, that this Agreement includes a release of unknown claims, and the Company hereby expressly

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waives and relinquishes any and all claims, rights or benefits that it may have which are unknown to it at the time of the execution of this Agreement. The Company understands and agrees that if, hereafter, it discovers facts different from or in addition to those that it now knows or believes to be true, that the waivers and releases of this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of such facts.

(iv) The Company represents and warrants that it does not presently have on file, and further represents and warrants to the maximum extent allowed by law that it will not hereafter file, any lawsuits, claims, charges, grievances or complaints against you and/or any of the Daugherty Releasees, in or with any administrative, state, federal or governmental entity, agency, board or court, or before any other tribunal or panel or arbitrators, public or private, based upon any actions or omissions by you and/or any of the Daugherty Releasees occurring prior to the date of this Agreement. Finally, the Company represents and agrees that it is the sole and lawful owner of all rights, title and interest in and to all released matters, claims and demands against you and/or the Daugherty Releasees arising out of or in any way related to your service with the Company and/or the termination thereof, or any of the issues addressed in this Agreement.

5. Other Important Terms.

(a) No Re-Employment. You agree that you relinquish any right to re-employment or other service with the Company. You further agree that you will not seek, apply for, accept or otherwise pursue employment with the Company, and acknowledge that the Company's refusal to hire you based on this provision will provide a complete defense to any claims arising from your attempt to seek employment.

(b) Waiver of Jury Trial. IN ANY DISPUTE BETWEEN YOU AND THE COMPANY REGARDING THE TERMS OF THIS AGREEMENT AND/OR ANY ALLEGED BREACH HEREOF, BOTH THE COMPANY AND YOU HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THE COMPANY OR YOU MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT. THE COMPANY AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT EACH, RESPECTIVELY, HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COMPANY ENTERING INTO THIS AGREEMENT.

(c) Injunctive Action. It is agreed and understood that monetary damages would not adequately compensate the Company for the breach of this Agreement by you, that this Agreement shall be specifically enforceable by the Company, and that any breach or threatened breach of this Agreement by you, shall be the proper subject of a temporary or permanent injunction or restraining order. Further, you waive any claim or defense that there is an adequate remedy at law for such breach or threatened breach. Therefore, if you breach any provision of this Agreement, including your agreements in Section 3 and Section 4(a), the Company shall be entitled to seek specific performance or other injunctive relief in court in addition to any other available legal or equitable remedies; provided that in the event an injunction is sought by the Company, a $500.00 bond shall be deemed sufficient relief. Each party hereto may recover, by appropriate action, the amount of the actual damage caused to such party hereto by any failure, refusal or neglect of the other party hereto to perform his or its agreements herein contained, together with any and all costs incurred by such party hereto, including reasonable attorneys' fees, in seeking such relief. The remedies provided in this Agreement shall be deemed cumulative and the exercise of one shall not preclude the exercise of any other remedy at law or in equity for the same event or any other event.

(d) Non-Admission of Liability. Nothing in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of the Company, the Company Releasees, you and/or the Daugherty Releasees.

(e) Consultation with an Attorney; Tax and Legal Advice. You acknowledge that you have been advised to consult with an attorney of your choice prior to entering into this Agreement. You acknowledge that you have had an opportunity to consult with legal counsel and tax and other advisors regarding the preparation of this Agreement and the matters related thereto, including the release and waiver provisions. You understand and acknowledge that Andrews Kurth LLP has acted solely as legal counsel for the Company with respect to the preparation of this Agreement and the other matters related thereto, and has not acted as legal counsel for you. You agree to indemnify and hold the Company and the Company Releasees harmless from any taxes or other liability you may incur with respect to the agreements contained herein.

(f) Confidentiality. The terms and existence of this Agreement are strictly confidential and may not be disclosed to anyone except your lawyer, spouse and/or financial consultant. Without in any way limiting your agreement that this Agreement is confidential, you expressly understand that you shall not disclose the existence or content of this Agreement to any third party, such as a press organization, an internet site or chat room, or employees or former employees of the Company.

(g) Successors and Assigns. You may not assign this Agreement. This Agreement and all of its terms shall be binding upon your representatives, heirs, executors, and administrators.

(h) Attorneys' Fees. In any dispute between you and the Company regarding the terms of this Agreement and/or the enforcement hereof, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees arising out of such dispute.

(i) Tax Obligations. You are personally responsible for the payment of all federal, state and local taxes that are due, or may be due, for any payments and other consideration received under this Agreement. You agree to indemnify the Company and hold the Company harmless from any and all taxes, penalties and/or other assessments that the Company is, or may become, obligated to pay on account of any payments and other consideration made to you under this Agreement.

(j) Headings. The headings in each paragraph herein are for convenience and reference only and shall be of no legal effect in the interpretation of the terms hereof.

(k) General Creditor Status. All cash payments and other benefits to which you may become entitled hereunder will be paid, when due, from the general assets of the Company, and no trust fund, escrow arrangement or other segregated account will be established as a funding vehicle for such payment. Accordingly, your right (or the right of the personal representatives or beneficiaries of your estate) to receive such cash payments hereunder will at all times be that of a general creditor of the Company and will have no priority over the claims of other general creditors.

(l) Governing Law; Resolution of Disputes; Service of Process. This Agreement shall be construed according to the laws of the State of Texas. All disputes relating to the interpretation and enforcement of the provisions of this Agreement shall, at the choice of the Company, be resolved and determined exclusively by the federal or state courts in Dallas, or in the federal or state courts in the state where you worked for the Company. The parties hereto agree your sole remedy for any claim, liability or obligation of any nature, arising out of or relating to this Agreement or an alleged breach of this Agreement, or for any other claim arising out of or in connection with your service with the Company or the termination of such service (collectively, "***Claims***") shall be against the Company, and that you shall have no claim or right of any nature against any Affiliate, owner, or existing or former director, officer or employee. You hereby release and covenant not to sue any person other than the Company over any Claims. The individuals and entities described above in this section (other than the Company) shall be third-

party beneficiaries of this Agreement for purposes of enforcing the terms of this Section 7(l).

(m) Severability. If any provision, or portion thereof, of this Agreement is held to be invalid or unenforceable or to be contrary to public policy or any law, for any reason, the remainder of the Agreement shall not be affected thereby. With respect to the provisions of Section 3(g), if any portion of the restrictions set forth therein should, for any reason whatsoever, be declared invalid by a court of competent jurisdiction, the validity or enforceability of the remainder of such restrictions shall not thereby be adversely affected, but rather such court shall reform the provision deemed invalid so that it shall be as near to the terms of this Agreement as possible and still remain enforceable under applicable law.

(n) Notices. All notices, requests, and other communications hereunder must be in writing and will be deemed to have been duly given only if (i) delivered personally or by overnight courier, (ii) delivered by facsimile transmission with answer back confirmation, (iii) mailed (postage prepaid by certified or registered mail, return receipt requested) (effective upon actual receipt), or (iv) delivered by electronic communication to you at the address set forth on the signature page hereto or to the Company at the company's then-current principal executive office, attention: Chairman of the Board. An electronic communication ("***Electronic Notice***") shall be deemed written notice for purposes of this letter if sent with return receipt requested to the electronic mail address specified by the receiving party. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a non-electronic form ("***Non-electronic Notice***") which shall be sent to the requesting party within five (5) days after receipt of the written request for Non-electronic Notice. Any party from time to time may change its address, facsimile number, electronic mail address, or other information for the purpose of notices to that party by giving written notice specifying such change to the other party hereto.

(o) Voluntary Agreement. YOU UNDERSTAND AND AGREE THAT YOU MAY BE WAIVING SIGNIFICANT LEGAL RIGHTS BY SIGNING THIS AGREEMENT, AND REPRESENT THAT YOU HAVE ENTERED INTO THIS AGREEMENT VOLUNTARILY, AFTER HAVING THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF YOUR OWN CHOOSING, WITH A FULL UNDERSTANDING OF AND IN AGREEMENT WITH ALL OF ITS TERMS.

[Signature page follows]

We wish you the best in your future endeavors. Please do not hesitate to contact me if you have any questions or comments regarding the offer contained in this Separation Offer and General Release Agreement.

Cornerstone Healthcare Group Holding, Inc.,
a Delaware corporation

By: _____
James Dondero
Chairman of the Board

THE UNDERSIGNED HAS READ AND FULLY CONSIDERED THE GENERAL RELEASE LANGUAGE HEREIN AND DESIRES TO ENTER INTO THIS AGREEMENT. PATRICK H. DAUGHERTY ALSO HAS BEEN ADVISED HEREIN IN WRITING TO CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT. HAVING ELECTED TO SIGN THIS AGREEMENT AND RECEIVE THE CONSIDERATION DESCRIBED IN THE AGREEMENT, PATRICK H. DAUGHERTY FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST THE COMPANY AND THE OTHER COMPANY RELEASEES AS OF THE DATE HE SIGNS THIS AGREEMENT.

AGREED AND ACCEPTED:

_____
Patrick H. Daugherty

_____
Date

Address:

Email Address:

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DRAFT
October 17, 2011

Mr. Patrick Daugherty
[redacted]

Dear Pat:

This letter confirms our discussions with you concerning your resignation from your employment with Highland Capital Management, L.P. (hereinafter referred to as "Highland Capital"); and Highland Capital's offer and, by your signature, your acceptance of this proposed General Release and Separation Agreement (this "Agreement") on the terms set forth below. On behalf of Highland Capital, I want to wish you success in your future endeavors.

1. Voluntary Resignation. You hereby voluntarily resign from your position as Partner and from any other positions for Highland Capital Management, L.P. ("Highland Capital") and its affiliates effective as of the close of business on October 31, 2011 ("Separation Date"). Your last day of service as an active employee and Partner will be October 31, 2011. In order to memorialize your resignation as a Partner and to transfer your Interest in the Partnership back to the Partnership, concurrently with the execution hereof you shall execute the Assignment of Interest attached hereto as Appendix B and shall cause your spouse to execute the Spouse's Agreement constituting a part thereof.

2. Salary and Benefits. You have received or will receive regardless of whether you execute this Agreement, the following payments and benefits related to your employment with Highland Capital:

(a) Payment of your regular base salary through the Separation Date;

(b) Payment of accrued and unused vacation leave benefits as of October 31, 2011;

(c) Payment of your monthly medical and dental insurance premiums through October 31, 2011 in accordance with Highland Capital's existing policies; and

(d) Present or future payment or other entitlement to any benefits to which you have vested entitlement under the terms of the employee compensation or benefit plans established by Highland Capital as set forth in Appendix A.

The amounts paid in accordance with subparagraphs (a) and (b) are gross amounts, subject to lawful deductions, including any deductions you have previously authorized, and will be paid to you in accordance with applicable law.

Your paid group health insurance benefits will continue through, October 31, 2011. After the termination of your health insurance benefits on that date, you are entitled at your option to continue your group health insurance coverage in accordance with the health insurance plan and applicable law. Please complete a COBRA election form, which will be furnished to you, and

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return it to Discovery Benefits at your earliest convenience, in accordance with the terms of the election form, if you elect to continue such insurance coverage.

You acknowledge that your eligibility for any other employee benefit programs maintained by Highland Capital for current employees will cease as of the Separation Date, except as provided in Section 3 below.

3. Special Separation Compensation. Contingent upon (i) your acceptance of the terms of this Agreement, (ii) your and your spouse's execution of this Agreement (including Appendices), (iii) your execution and delivery of a written consent of members of Sierra Verde, LLC ("Sierra Verde") acceptable to Highland Capital and Sierra Verde approving the termination or rescission of all compensation agreements, services agreements and/or equity interests or awards to which Sierra Verde is a party or recipient (the "Sierra Verde Agreement"), and (iv) your execution and delivery of an agreement mutually acceptable to you and Cornerstone Healthcare Group Holding, Inc. ("Cornerstone") related to the termination of your services to Cornerstone (the "Cornerstone Agreement"), and in consideration of your undertakings as set forth in this Agreement, Highland Capital offers you, in addition to the pay and benefits you will receive or have received pursuant to Section 2, the following Special Separation Compensation:

(a) Lump sum payment of the equivalent of six weeks base pay (approximately $57,692) paid within 10 business days following the later of either the Effective Date of this Agreement or your Separation Date. This payment is in accordance with and in full satisfaction of any severance payments owed to you per the terms of your Employment Agreement dated on or about December 31, 2004 (the "Employment Agreement").

(b) Tax:

(i) Tax Payment for 2011. Highland Capital will pay you the Federal Income Tax due that relates to the Federal 2011 K-1 issued for Highland Capital. If a tax refund is generated in 2011 or any previous years as a result of a 2011 Highland Capital Net Operating Loss or Capital Losses, you, shall remit such amounts back to Highland Capital within 10 business days of receipt of refund.

(ii) If you receive a "Notice of Tax Due" or other such letter from a governmental taxing authority demanding payment for taxes that relates to an Internal Revenue Service audit, or State audit, or other governmental agency audit of Highland Capital relating to a tax year during your tenure as a Partner of Highland Capital, Highland Capital agrees to timely payment of the tax, interest, and any penalties associated with the tax obligation upon final resolution of the obligation. Correspondingly, you agree that in order to receive such payment, you will submit via certified mail within 10 business days to

Highland Capital's Director of Human Resources a copy of the Notice of Tax Due or such letter from the governmental authority demanding payment. If after such payment, a subsequent refund is issued by the governmental authority, you agree to remit such amount back Highland Capital within 10 business days of receipt of refund.

(iii) In addition, if any tax refund issued to you that relates to your partnership interest in Highland Capital (excluding refunds associated with estimated and superseded HCMLP 2008 K-1s), you will remit such amount back to Highland Capital within 10 business days of receipt of refund.

The Special Separation Compensation specified in this Agreement will be provided to you, on the express condition that you have executed this Agreement and delivered a copy of this Agreement to Highland Capital in accordance with this Agreement, that you have fulfilled all your obligations under this Agreement, that you have not violated any of the requirements and prohibitions set forth in this Agreement, and that you have met all other specific conditions for the receipt of any particular payment or benefit set forth in any subparagraphs in this Agreement.

These amounts are gross amounts, subject to lawful deductions, including any deductions you have previously authorized. You agree that you will be responsible for paying all state, federal, and local taxes owed in connection with these payments.

By executing this Agreement, you acknowledge and agree that neither Highland Capital nor any of the other Released Parties (as defined in Section 4 of this Agreement) has any prior legal obligation to provide the Special Separation Compensation to you. You also acknowledge and agree that your acceptance of the Special Separation Compensation and attendant obligations as described in this Agreement is in consideration of your promises and undertakings as set forth in this Agreement.

If any provision of this Agreement (or of any award of compensation) would cause you or Highland Capital to incur any additional tax or interest under Section 409A of the Internal Revenue Code or any regulations or Treasury guidance promulgated thereunder, Highland Capital may reform such provision; provided that it will (i) maintain, to the maximum extent practicable, the original intent of the applicable provision without violating the provisions of Section 409A of the Code and (ii) notify and consult with you regarding such amendments or modifications prior to the effective date of any such change.

4. General Release. In consideration of the Special Separation Compensation described in Section 3 of this Agreement and all promised contained herein, you for yourself and on behalf of your spouse, heirs, successors, and assigns hereby release, acquit, and forever discharge any and all claims and demands of whatever kind or character, whether vicarious, derivative, or direct, that you individually, collectively, or otherwise, on behalf of your spouse, heirs, successors, and assigns, may have or assert against: (i) Highland Capital Management, L.P.; (ii) Highland Capital Management Services, Inc.; (iii) any parent, subsidiary, or affiliated

or related entity of Highland Capital Management, L.P. or Highland Capital Management Services, Inc., including but not limited to any funds managed by Highland Capital or any of its affiliates; (iv) James Dondero in his individual and official capacities; (v) Mark Okada in his individual and official capacities; (vi) any fiduciary, agent, insurer, attorney, spouses, or any successors and assigns of any of the foregoing entities and individuals, and (vii) any other past or present respective shareholders, partners, officers, directors, employees, independent contractors or representatives of any of the foregoing, in their individual and official capacities (collectively the "Released Parties"). This General Release includes but is not limited to any claim or demand based on any federal, state, or local statutory or common law or constitutional provision that applies or is asserted to apply, directly or indirectly, to the formation, continuation, performance, or termination of your employment relationship with Highland Capital, including but not limited to any claims under that certain Employment Agreement. This General Release also includes but is not limited to claims arising under federal, state, or local laws prohibiting employment discrimination, including but not limited to rights or claims under the Age Discrimination in Employment Act (ADEA). Thus, you agree to waive to the maximum extent permitted by law any claims, liabilities, demands, or causes of action, known or unknown, fixed or contingent, that you may have or claim against Highland Capital or any of the other Released Parties growing out of, resulting from, or connected in any way with your employment, the Employment Agreement and/or the termination from your employment with Highland Capital, and you do hereby agree not to file any lawsuit or other cause of action to assert any such claim.

This release includes any claims or demands for damages (actual or punitive), back wages, future wages or front pay, commissions, bonuses, severance benefits, workers compensation benefits, accrued vacation leave benefits, relocation expenses, or other employment benefits (except as contemplated by this Agreement), compensatory damages, liquidated damages, penalties, equitable relief, attorney's fees, costs of court, disbursements, interest, and any and all other loss, expense, or detriment of whatever kind or character, resulting from, growing out of, connected with, or related in any way to the formation, continuation, performance, or termination of your employment relationship with Highland Capital.

5. General Release of Employee. Contingent upon your acceptance of the terms of this Agreement, and in consideration of your promises and undertakings set forth in this Agreement, Highland Capital hereby releases, acquits and forever discharges any and all claims and demands of whatever kind or character, whether vicarious, derivative, or direct, that relate to the formation, continuation, performance, or your resignation from your employment relationship with Highland Capital that Highland Capital now has against you, except for: (i) any rights or claims against you that may arise by reason of any act, conduct, or omission by you which occurs after the date this Agreement is executed, or which Highland Capital becomes aware of after the date this Agreement is executed; or (ii) that relate in any way to Highland Capital's enforcement of any provision of this Agreement, regardless of when the alleged breach of this Agreement occurred.

6. Return of Property. Whether or not you accept the terms of this Agreement, you must return to Highland Capital or destroy by no later than the close of business on the

Separation Date, if you have not already done so, or as soon thereafter as is possible with respect to any items not then immediately available, any and all items of Highland Capital's property, including without limitation keys, access cards or devices, computers, software, calculators, equipment, credit cards, telephones, books or other publications, forms, files, manuals, correspondence, business records, lists of fees, personnel data, lists of employees, salary and benefits information (other than relating to you), investor, principal, client or other customer and prospect records, notes, lists of suppliers and vendors, lists of investors, principals, clients, and other customers and prospects, contracts, contract information, brochures, financial data, catalogs, training materials, marketing plans, computer tapes and diskettes or other portable media, computer-readable files and data stored on any form of storage media whether portable or installed, and data processing reports, and any and all other documents (including both originals and all copies of any documents) or property which you have had possession of or control over during the course of your employment with Highland Capital, regardless of the manner in which you acquired possession of the documents or property, and which you have not already returned to Highland Capital. By your signature, you represent that you have complied with these requirements, and that you no longer retain in your possession any such documents or other property or you have destroyed such. You further agree that should you discover any such property still in your possession, you will immediately return such property to Highland Capital, through the Human Resources Director, Highland Capital Management, L.P., 13455 Noel Road, Suite 800, Dallas, Texas 75240.

7. Use of Confidential Information. You acknowledge that during your employment with Highland Capital, Highland Capital and the other Released Parties disclosed to you and/or you learned or came into possession of privileged communications, trade secrets, and proprietary and confidential business information of Highland Capital and the other Released Parties, including but not limited to (i) information pertaining to specific business transactions in which Highland Capital or any of the other Released Parties were, are, or may be involved; (ii) information pertaining to specific legal or compliance matters in which Highland Capital or any of the other Released Parties were, are, or may be involved; (iii) any matters protected by the attorney-client privilege and/or work product doctrine; (iv) information concerning salary and benefits paid to current or former employees of Highland Capital or those of any of the other Released Parties, or any other personnel information relating in any way to current or former employees of Highland Capital or those of any of the other Released Parties; (v) any information, including names, relating to any investor, principal, client, supplier, financier, customer, or other persons who have business relationships with any of the Released Parties or who are prospects for such relationships; (vi) tear sheets, industry comparative analyses and information regarding products of the Released Parties and any Confidential Information possessed by any of the Released Parties; (vii) fee structures or arrangements; (viii) information pertaining to specific contractual matters in which Highland Capital or any of the other Released Parties were, are, or may be involved; (ix) any computer systems, or compilations of information, whether in written, printed or digital form; (x) business, pricing and management methods and information and finances, strategies, systems, research, plans, reports, recommendations and conclusions; (xi) information regarding Highland Capital's or any of the other Released Parties' business continuity plans, security plans and procedures, personnel policies and procedures, and

marketing methods and techniques; (xii) other documents and information described in Section 6 above; (xiii) in general, the business, financial and legal affairs, business methods, and operations of Highland Capital or any of the other Released Parties; (xiv) the personal, civic, family, and business activities of James Dondero, Mark Okada and their respective family members; and (xv) any document that contains or references confidential or propriety Highland Capital information (any and all such information being hereinafter referred to as "Confidential Information"). "Confidential Information" includes any and all confidential or proprietary information or trade secrets of Highland Capital or any of the other Released Parties that was obtained or developed by you since the commencement of your employment with Highland Capital. Notwithstanding the specific categories of confidential information listed above, this confidentiality provision does not apply to any of the following categories of information: (i) information that was or becomes generally available to the public other than as a result of your disclosure in breach of this Agreement; (ii) information that becomes available to you on a confidential basis from a source other than Highland Capital or any of the other Released Parties, provided that such source is not bound by a confidentiality agreement with Highland Capital; or (iii) information you can establish was within your possession prior to its being furnished to you by or on behalf of Highland Capital or any of the other Released Parties, provided that the source of such information was not known by you to be bound by a confidentiality agreement with Highland Capital in respect thereof. Notwithstanding the preceding sentence, compilations of information collected, generated or prepared by or on behalf of Highland Capital, or any of the other Released Parties will not be considered to fall within any of the exceptions set forth in the preceding sentence (i) if the format in which such information has been collected, collated, maintained and/or disseminated by Highland Capital or any of the other Released Parties is confidential or proprietary to such entities and individuals; or (ii) merely because individual components or combinations thereof are now or become known to the public.

You further acknowledge and agree that Highland Capital and the other Released Parties did not voluntarily disclose the Confidential Information, but rather took precautions to prevent the disclosure of Confidential Information beyond those employees to whom Highland Capital communicated the information. You further acknowledge and agree that such Confidential Information was communicated to you when you knew of its confidential nature, and that such information constitutes valuable, special and unique assets, trade secrets, properties, rights and interests of Highland Capital and the other Released Parties, the disclosure of which could cause substantial injury and loss of profits and good will to Highland Capital, and the other Released Parties.

You acknowledge and agree that you will maintain the confidentiality of, and will not use or disclose, either directly or indirectly, any or all Confidential Information of Highland Capital or any of the other Released Parties, irrespective of whether such information is written, oral, or computerized. In the event it appears that you will be compelled by law or judicial process to disclose such Confidential Information, to avoid potential liability you must notify Human Resources Director, Highland Capital Management, L.P., 13455 Noel Rd, Suite 800, Dallas, TX 75240, by telephone and in writing promptly upon your receipt of a subpoena or other legal process. You further agree that you will use your reasonable efforts to afford Highland Capital

and any of the other Released Parties the ability to challenge the disclosure of information pursuant to such subpoena prior to any disclosure by you of the information specified in the subpoena. Furthermore, in the event you are contacted by any person or entity seeking Confidential Information about Highland Capital or any of the other Released Parties, you will not provide any such information in response to the request, and you agree to notify Human Resources Director, Highland Capital Management, L.P., 13455 Noel Road, Suite 800, Dallas, Texas 75240, by telephone and in writing promptly upon your receipt of any such request for information.

You further agree that for a period of one (1) year following the date hereof you will abide by all securities laws regarding the use of confidential information related to investment decisions relating to any securities of any issuer listed on a Restricted Securities List to be provided to you on, or within five (5) days after, the Separation Date.

If you breach any obligation under this Section, you acknowledge and agree that Highland Capital and the other Released Parties have no complete and adequate remedy at law and would suffer irreparable harm and substantial loss, and that monetary damages cannot fully compensate Highland Capital or the other Released Parties in such event; and as a result of which you admit that a temporary injunction, without bond, should be entered for Highland Capital or any of the other Released Parties in any such event, restraining you from using or disclosing, in whole or in part, any Confidential Information of Highland Capital or any of the other Released Parties. You further acknowledge and agree that nothing herein will be construed to prohibit Highland Capital or any of the other Released Parties from pursuing other remedies available to them, by law and equity, for breach of any obligation of this Section, and should you breach any obligation under this Section, Highland Capital and any of the other Released Parties will also be entitled to enforce the provisions of this Section by seeking to recover any monetary damages Highland Capital and any of the other Released Parties may sustain as a result of such breach, including but not limited to their attorney's fees and costs of court incurred to enforce the provisions of this Section, and will have no obligation to pay you the unpaid portion of the Special Separation Compensation described above. You further acknowledge and agree that, in enforcing their rights under this Section, Highland Capital or any of the other Released Parties will not be required to prove that any of such information is confidential, proprietary, or a trade secret, or material, or important, and you stipulate that as between you and Highland Capital or any of the other Released Parties, the same are important, material, and confidential or proprietary or a trade secret, and gravely affect the effective and successful conduct of the business of Highland Capital or any of the other Released Parties.

8. Confidentiality, Nonprosecution, and Nondisparagement by Employee. In consideration of the Special Separation Compensation described in Section 3 of this Agreement and all promised contained herein, you further agree that:

(a) The terms of this Agreement will be and remain confidential and will not be disclosed by you to any persons other than your family members and your attorneys (if you choose to retain counsel), accountants and/or tax return preparers if such persons have agreed to

keep such information confidential. Notwithstanding the foregoing, you may make any disclosures concerning the terms of this Agreement that are required by law.

(b) Except as requested by Highland Capital or as compelled by law or judicial process, you will not assist, cooperate with, or supply information of any kind to any individual or private-party litigant or their agents or attorneys (i) in any proceeding, investigation, or inquiry raising issues under any federal, state, or local law involving the formation, continuation, performance, or termination of your employment relationship, or the employment of other persons, by Highland Capital or any of the other Released Parties; or (ii) in any other litigation, examination, audit or investigation involving or related to Highland Capital or any of the other Released Parties.

(c) You agree to waive any right to monetary recovery should any administrative agency or other individual or group of individuals pursue any claim on your behalf. You further agree that you will not request or accept anything of value from Highland Capital not provided for in this Agreement as compensation or damages related to your employment or your resignation from your employment with Highland Capital. You further acknowledge and agree that this Agreement will bar you from receiving any compensation or personal relief in any such event.

(d) You will not make to any other persons or entities any statement, oral or written, which directly or indirectly impugns the quality or integrity of Highland Capital's or any of the other Released Parties' business or employment practices, or any other disparaging or derogatory remarks about Highland Capital or any of the other Released Parties.

It will not be a breach of the obligations set forth in this Section for you to state to any person that any differences, if you believe any to exist, between you and Highland Capital that have been settled or satisfactorily resolved.

9. Confidentiality, Non-prosecution, and Non-disparagement by Highland Capital or the Released Parties. In consideration of the promises made by you herein, Highland Capital and the Released Parties further agree that:

(a) The terms of this Agreement will be and remain confidential and will not be disclosed by Highland Capital or the Released Parties to other persons or entities, except as may be authorized by you. Notwithstanding the foregoing, disclosures concerning the terms of this Agreement may be made that are required by law. In addition, Highland Capital may disclose all information necessary to provide the Limited Partners of Highland Capital with notice of your resignation.

(b) Highland Capital and/or the Released Parties will not initiate any proceeding, investigation, or inquiry, or any other action of any kind with any governmental agency, with respect to any activity relating to your employment or your resignation from your employment.

(c) Highland Capital and the Released Parties will not make to any other persons or entities any statement, oral or written, which directly or indirectly impugns the quality or integrity of your character, any service or activity you provided relating to your employment or resignation of your employment, or any other disparaging or derogatory remarks about you. Furthermore, neither Highland Capital nor the Released Parties will make any statement, remark, or publication of any fact or opinion that could affect a third party from engaging in or refraining from a business relationship of any kind with you. Additionally, neither Highland Capital nor the Released Parties may not cause intentionally or unintentionally through a statement or omission of fact or speculation that would likely result in third party to terminate an existing business relationship of any kind with you.

It will not be a breach of the obligations set forth in this Section for Highland Capital or the Released Parties to state to any person that any differences, if Highland Capital believes any to exist, between you and Highland Capital that have been settled or satisfactorily resolved.

10. Consultation and Cooperation. You agree to cooperate fully and completely with Highland Capital or any of the other Released Parties, at their reasonable request, to consult, and provide such information as may from time to time be requested by Highland Capital in its sole discretion in connection with various legal or business matters in which you were involved during your employment with Highland Capital, or about which you have knowledge or information, and to take any other action reasonably required by Highland Capital relating to matters occurring during your employment with Highland Capital, including cooperation with Highland Capital or any of the other Released Parties, in all pending and future litigation, claims, investigations, examinations, or audits by any federal, state, or local governmental agencies involving Highland Capital and any of the other Released Parties, in which Highland Capital believes you may have relevant knowledge or information. This obligation includes your meeting with Highland Capital or the other Released Parties and their counsel, or with any government investigators or other representatives, at reasonable times upon Highland Capital's request; providing testimony in court or upon deposition and other information (whether by testimony or otherwise) that is truthful, accurate, and complete, according to information known to you, in connection with the prosecution or defense of Highland Capital or any of the other Released Parties in such litigation, claims, investigations, examinations, or audits. If you appear as a witness or provide information in any pending or future litigation, claims, investigations, examinations, or audits at the request of Highland Capital or any of the other Released Parties, Highland Capital agrees to reimburse you at the agreed hourly rate of $400 for your time devoted to such activities, upon presentation of substantiating documentation and for any reasonable out of pocket expenses incurred by you in cooperating pursuant to this Section 10. While performing services pursuant to this Agreement, and thereafter, you acknowledge and agree that your relationship to Highland Capital will be that of an independent contractor, that Highland Capital will not exercise any control or direction over the methods by which you perform services pursuant to this Agreement, and that you will not be nor will you represent to anyone that you are an agent or active employee of Highland Capital. Consequently, you will have no authority to enter into contracts, commitments, or obligations of any kind, or to make any

representations, on behalf of Highland Capital, unless expressly authorized to do so in writing by an authorized representative of Highland Capital. Nor will you have or exercise the authority to supervise or direct the activities of any Highland Capital employee. You further agree to hold harmless and indemnify Highland Capital for any claim, expense, loss, or damage, including without limitation its costs and attorney's fees, occasioned by your breach of this obligation. You further acknowledge and agree that, during such period when you are providing consulting services to Highland Capital and thereafter, you will not be eligible to participate in any of the rights and benefits afforded to employees of Highland Capital. Highland Capital and the Released Parties agree to hold harmless and indemnify you for any claim, expense, loss or damage, including without limitation your costs and attorney's fees, arising out of or in connection with any such cooperation you undertake pursuant to this Section 10. Notwithstanding the foregoing, this Section 10 will be inapplicable to your consultation to or cooperation with Cornerstone or its subsidiaries, which will be governed exclusively by the Cornerstone Agreement.

11. Restrictive Covenants: Non-Solicitation, Non-Recruitment, and Non-Competition. In consideration of the Special Separation Compensation provided to you by Highland Capital and all promised contained herein, you hereby reaffirm the obligations set forth in Section 5.3 of your Employment Agreement.

You agree that you will forfeit the Special Separation Compensation paid to you by Highland Capital if the obligations in set forth in Section 5.3 of your Employment Agreement are not fulfilled.

12. Personnel Records. You acknowledge and agree that your personnel records will reflect that you are not eligible for rehire with Highland Capital or any of the other Released Parties.

13. Agreement Not to Seek Reemployment. Further in consideration of the Special Separation Compensation and all promised contained herein, you understand and agree that Highland Capital and the other Released Parties have no obligation to employ or to hire or rehire you, to consider you for hire, or to deal with you in any respect at any location, office, or place of business with regard to future employment or potential employment. Accordingly, in consideration of the Special Separation Compensation and all promised contained herein, you hereby agree: (i) that you will not apply for or otherwise seek employment by Highland Capital or any of the other Released Parties at any time in the future, at any location, office, or place of business, and (ii) that your forbearance to seek future employment as just stated is purely contractual and is in no way involuntary, discriminatory, or retaliatory.

14. Non-admission of Liability or Wrongdoing; Non-admissibility. You acknowledge and agree that this Agreement does not in any manner constitute an admission of liability or wrongdoing on the part of Highland Capital or any of the other Released Parties, or on your part. In fact, Highland Capital and the other Released Parties and you expressly deny any such liability or wrongdoing. Further, neither this Agreement nor any part of it may be

construed, used, or admitted into evidence in any judicial, administrative, or arbitral proceedings, except to the extent necessary to enforce this Agreement.

15. Authority to Execute. You represent and warrant that you have the authority to execute this Agreement on behalf of all the Releasing Parties, and that you have not assigned, sold, transferred or otherwise granted to any person any right related to your employment by, or your resignation from your employment with, Highland Capital, including any claims or demands in respect thereof. You further agree to indemnify fully and hold harmless Highland Capital and any of the other Released Parties from any and all claims brought by the Releasing Parties or derivative of your own, including the amount of any such claims Highland Capital or any of the other Released Parties are compelled to pay, and the costs and attorneys' fees incurred in defending against all such claims.

16. Governing Law and Interpretation. This Agreement and the rights and duties of the parties under it will be governed by and construed in accordance with the laws of the State of Texas. If any provision of this Agreement is held to be unenforceable, such provision will be considered separate, distinct, and severable from the other remaining provisions of this Agreement, and will not affect the validity or enforceability of such other remaining provisions, and that, in all other respects, this Agreement will remain in full force and effect. If any provision of this Agreement is held to be unenforceable as written but may be made to be enforceable by limitation thereof, then such provision will be enforceable to the maximum extent permitted by applicable law. The language of all parts of this Agreement will in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. Any dispute regarding the subject matter, terms, or performance of this Agreement will be brought only in a court of competent jurisdiction in Dallas County, Texas. Highland Capital and you expressly agree that proper jurisdiction and venue for any such disputes must be in Dallas County, Texas only.

17. Breach of Agreement. If you violate or fail to comply with any of your obligations as set forth in this Agreement, including but not limited to Section 11. Restrictive Covenants: Non-Solicitation, Non-Recruitment, and Non-Competition, Highland Capital will have no obligation to make payment of any unpaid Special Separation Compensation, however all other provisions of this Agreement will remain in full force and effect.

If, notwithstanding your release of claims as described in Section 4 above, you (or any other party asserting any claim derivative of your own) should nonetheless proceed to make any such claims against Highland Capital or any of the other Released Parties by bringing an action in a federal, state, or municipal court, or before any administrative or arbitral body that has the power to make a monetary or equitable award, then in addition to any other legal or equitable remedies available to Highland Capital for your breach of this Agreement, Highland Capital may seek, and the court or other body hearing the claims may hold you liable for, Highland Capital's damages and costs, including attorneys' fees, incurred in defending against your claims.

Both Highland Capital and you agree that any controversy or claim arising out of or relating to this Agreement will first be submitted to non-binding mediation prior to the

commencement of litigation proceedings, with mediation expenses to be borne equally by the parties. Only in the event the parties are unable to resolve their differences through mediation may either party initiate litigation proceedings to enforce this Agreement.

You agree and acknowledge that Highland Capital and/or the other Released Parties would suffer irreparable harm, incur substantial damage and would not have an adequate remedy at law for money damages if you were to breach this Agreement. Accordingly, you acknowledge that, without the necessity of proving actual damages or posting bond or other security, Highland Capital and/or the other Released Parties are entitled to temporary or permanent injunction or injunctions to prevent breaches of performance and to specific enforcement of applicable covenants in addition to any other remedy to which Highland Capital and/or the other Released Parties may be entitled, at law or in equity. In such a situation, Highland Capital and/or the other Released Parties may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement, and the pursuit of any particular remedy is not to be deemed an election of remedies or waiver of the right to pursue any other remedy.

18. Expiration of Offer. Highland Capital's offer of the Special Separation Compensation will expire at 5:00 p.m. on November 8, 2011 (the "Expiration Date"), which is more than 21 days after the date of this Agreement. You may accept the terms and condition contained in this Agreement at any time before the Expiration Date by signing in the space provided below, and delivering this Agreement to Human Resources Director, Highland Capital Management, L.P., 13455 Noel Road, Suite 800, Dallas, Texas 75240. Whether or not you execute this Agreement, you are required to fulfill the obligations set forth in Sections 6 and 7 of this Agreement.

19. Effective Date. This Agreement will become effective and enforceable upon the expiration of seven (7) days after your and the Company's execution of it and delivery of a signed copy to the Human Resources Department, Highland Capital Management, L.P., 13455 Noel Road, Suite 800, Dallas, Texas 75240 ("Effective Date").

20. Assignment of Work Product/Works for Hire. You further acknowledge and agree that any work product prepared, conceived or developed by you during the term of your employment with Highland Capital, including but not limited to all written documents and electronic data pertaining thereto, are and shall remain the exclusive property of Highland Capital, and will be considered Confidential Information subject to the terms of this Agreement. You agree that when appropriate, and upon written request of Highland Capital, you will acknowledge that your work product constitute "works for hire" and will cooperate in the filing for patents or copyrights with regard to any or all such work product and will sign documentation necessary to evidence ownership of such work product in Highland Capital.

21. Consultation with an Attorney. You acknowledge that you have the right and are encouraged to consult with an attorney of your choosing before executing this Agreement.

22. Assignment of Claims. Further in consideration of the promises and undertakings of Highland Capital memorialized in this Agreement, you represent and warrant to Highland Capital that you have not assigned any part of your claims or causes of action, whether vicarious, derivative, or direct, to anyone, and that no persons are or may be entitled to any portion of the proceeds paid in settlement of your claims or causes of action, if any, either by subrogation or otherwise, except as may be set forth in this Agreement. You further agree to indemnify fully and hold Highland Capital and any of the other Released Parties harmless from any and all claims derivative of your own, including the amount of any such claim Highland Capital or any of the other Released Parties are compelled to pay, and the costs, including attorney's fees, incurred by them in defending against all such claims.

23. Knowing and Voluntary Agreement. You acknowledge that this Agreement has been read and explained to you by your attorney if you choose to retain counsel, or that you have had the opportunity to engage an attorney for such purpose; and that you have had a reasonable period of time in which to deliberate regarding its terms and to consider whether you wish to enter into this Agreement, that you fully understand the meaning and effect of your action in executing it; and that your execution of this Agreement is knowing and voluntary. You further acknowledge that neither Highland Capital nor any of the other Released Parties has made any promise or representation to you that is not expressed in this Agreement, and that in entering this Agreement, you are not relying on any statement or representation by Highland Capital or any of the other Released Parties, but are instead relying solely on your own judgment in consultation with your attorneys, if you choose to retain counsel.

24. Status of Released Parties as Third-Party Beneficiaries. Highland Capital and you further acknowledge and agree that all the other Released Parties and third-party beneficiaries of this Agreement, and, in that capacity, are entitled to assert their own claims against you or Highland Capital (as the case may be) in the event of your or Highland Capital's breach of this Agreement that adversely affects their interests. Further, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

25. 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 or the employment relationship between Employee and Highland Capital or the Released Parties, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that Highland Capital or the Released Parties thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with any non-competition, non-solicitation and/or confidentiality covenants or agreements binding on Employee, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. This paragraph does not prohibit Employee from filing or cooperating in a charge before a federal administrative agency without pursuing private litigation. Insured workers compensation claims (other than wrongful discharge claims), and claims for unemployment insurance are excluded from arbitration under this provision. The

Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) 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 is 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 admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Documents produced pursuant to Texas Rule of Civil Procedure 194.2(f) shall not be included in, or counted toward, the 5,000 page limit described supra. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative 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 arbitrator(s) has 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 employment dispute resolution rules or other mutually agreeable, arbitration service rules. As necessary Highland Capital will pay any up-front arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. 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. Employee expressly acknowledges and agrees that the agreements set forth in this paragraph shall also apply to any disputes under all other agreements between Employee and either of Highland Capital or any Released Parties.

26. Waiver. You and Highland Capital further acknowledge and agree that the failure of Highland Capital or any of the other Released Parties or you at any time to enforce any provisions of this Agreement shall not be construed to be a waiver of such provisions or any other provisions of this Agreement, or of Highland Capital's or any of the other Released Parties' right thereafter to enforce any such provision.

27. Entire Agreement. This Agreement (i) contains and constitutes the entire understanding and agreement between you and Highland Capital with respect to its subject matter; (ii) supersedes and cancels any previous negotiations, agreements, commitments, and writings with respect to that subject matter; and (iii) may not be released, discharged, abandoned, supplemented, changed, or modified in any manner except by a writing of concurrent or subsequent date executed by both you and an authorized officer of Highland Capital. This Section 27 is not applicable to Article V of your Employment Agreement, the Sierra Verde

Agreement, the Cornerstone Agreement or any other confidentiality, non-compete, non-recruit, or non-solicitation provisions in any other documents you are subject to.

DRAFT

If you are in agreement with the provisions of this Agreement, please execute both copies in the space provided below. You should return one executed original as provided above, and maintain the other executed original in your files.

Sincerely,

Highland Capital Management, L.P.

By:_____

ACCEPTED AND AGREED TO:

___DRAFT DO NOT SIGN_____
Patrick Daugherty

Date Signed:_____

DRAFT

Appendix A

Subject to the terms provided for in this Appendix A, the following payments shall be made to you in satisfaction of all monies owed to you under the terms of Highland Capital's compensation or employee benefit plans:

Long Term Incentive Plan
Payment in accordance with terms of 2005 HCMLP Long-Term Incentive Plan (the "LTIP") dated on or about January 1, 2005 for the 372,830 vested LTIP units. For the avoidance of doubt, compliance with LTIP Section 8.8(b) "The Restrictive Covenants" is required to receive payment for the Long Term Incentive Plan Units. LTIP Section 8.8(b) "The Restrictive Covenants" includes Non-Solicitation, Non-Recruitment, and Non-Competition.

Option IT
Payment in accordance with terms of 2005 HCMLP Option Plan Option Agreement (the "Option Plan Agreement') based on underlying net asset values as of October 31, 2011. The resulting payment under the Option Plan Agreement shall be provided within ten business days of applicable final net asset values being produced for the month ended October 31, 2011. The amounts paid are subject to lawful deductions, including any deductions you have previously authorized, and will be paid to you in accordance with applicable law.

Defined Benefit Plan
These monies will be paid out, at your request, by the plan administrator per the terms of the plan.

401K Plan
These monies will be paid out, at your request, by the plan administrator per the terms of the plan.

DRAFT

Appendix B

ASSIGNMENT OF INTEREST

IN

Highland Capital Management, L.P., a Delaware Limited Partnership

Patrick Daugherty (the "Assignor") hereby assigns, transfers, surrenders and conveys of all of his right, title, and interest in and to a 1.24276 % Percentage Interest in the Partnership, as represented by 372,830 Long Term Incentive Plan units, and all the capital, profits, and losses of the Partnership associated therewith (the "Interest"), free and clear of all liens, encumbrances, security interests, claims, or options, to the Partnership as of this 31 day of October 2011 (the "Effective Date"), subject to the General Release and Separation Agreement, including Appendix A, dated on or about October 17, 2011.

IN WITNESS WHEREOF, the Assignor and Partnership have executed this Assignment effective as of the ___day of _____, _____.

ASSIGNOR:

_____
Patrick Daugherty

ACCCEPTED BY THE PARTNERSHIP

Highland Capital Management, L.P.

By: Strand Advisors, Inc.,
Its general partner

By: _____
Name: _____
Title: _____

DRAFT

The undersigned spouse of Patrick Daugherty, in consideration of the Salary and Benefits, Special Consideration, and Benefits, covenants and agreements set forth in the Separation Agreement of even date herewith of which this Agreement of Interest is a part, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, hereby agrees to this Assignment of Interest and the terms of the Separation Agreement.

SPOUSE OF ASSIGNOR:_____

DRAFT

SIERRA VERDE, LLC

ACTION BY WRITTEN CONSENT OF THE MEMBERS

In accordance with Section 18-302(d) of the Delaware Limited Liability Company Act, the undersigned, being members of Sierra Verde, LLC (the "***Member***"), a Delaware limited liability company (the "***Company***"), do hereby consent that the recitals and resolutions set forth on **Annex I** hereto shall be deemed to be adopted to the same extent and to have the same force and effect as if such recitals and resolutions were adopted by the vote of the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a special meeting of the members of the Company duly called and held for the purposes of acting upon proposals to adopt such recitals and resolutions, including, at least a majority of the Company's outstanding units.

Terms that are capitalized but not defined in this Action by Written Consent shall have the meanings ascribed to them in that certain Limited Liability Company Agreement of Sierra Verde, LLC entered into effective as of the 16th day of December, 2010 (the "***LLC Agreement***").

This Action by Written Consent shall be effective as to a Member when executed by such Member and as to all of the Members under the LLC Agreement upon the execution of this Action by Written Consent by a sufficient number of Members to constitute the Stockholder Majority. Additional Members nonetheless may be added hereto after the effectiveness hereof.

[Signature page follows]

DEFENDANT'S EXHIBIT
45
25-03055

This Action by Written Consent may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered in person, by facsimile, or by electronic delivery format.

MEMBERS:

Date: _____ _____
James Dondero

Date: _____ _____
Patrick H. Daugherty

Date: _____ _____
Clay Callan

Date: _____ _____
David Smith

Date: _____ _____
Shawn Lederman

Date: _____ _____
Steve Stewart

Date: _____ _____
Chuck Shifferd

Date: _____ _____
Timothy Lawler

Date: _____ _____
W. Carl Moore, Jr.

[Signature Page to Action by
Written Consent of Members of Sierra Verde, LLC]

AUS:646905.2

ANNEX I

SIERRA VERDE, LLC

ACTION BY WRITTEN CONSENT OF THE MEMBERS

TERMINATION/RESCISSION OF SERVICES CONTRACTS AND COMPENSATION AGREEMENTS; APPROVAL OF DISSOLUTION

WHEREAS, the Company has entered into Service Contracts to provide Services to various companies and in connection therewith has been issued various Compensation Agreements (the Compensation Agreements together with the Services Contracts being, collectively, the "***Company Agreements***");

WHEREAS, the Manager has determined that it is in the best interests of the Company and its members to terminate or rescind all of the Company Agreements and, in connection therewith, to return any and all interests in any companies received by the Company under the Compensation Agreements (collectively, the "***Agreement Rescission***");

WHEREAS, pursuant to Section 5.2(b) of the LLC Agreement, the consent of the Members constituting the Stockholder Majority is required for the Manager to effect the Agreement Rescission; and

WHEREAS, pursuant to Section 5.2(b) of the LLC Agreement, the consent of the Members constituting the Stockholder Majority also is required in order to dissolve the Company; and the Members desire to grant the Manager the authority to dissolve the Company at such time as he determines.

NOW, THEREFORE, BE IT

Agreement Rescission

RESOLVED, that the Agreement Rescission is hereby in all respects approved, adopted, ratified and confirmed; and further

RESOLVED, that the Manager of the Company be, and he hereby is, authorized and directed to execute and deliver all documents and take whatever actions are deemed necessary or advisable to effect the Agreement Rescission, the execution and delivery of such documents by the Manager to be conclusive evidence of the approval of the members thereof and all matters relating thereto; and further

Dissolution

RESOLVED, that the Manager of the Company be, and he hereby is, authorized and directed to execute and deliver all documents and take whatever actions are deemed necessary or advisable to effect the dissolution of the Company at such time and in such manner as he reasonably determines (provided that the form and manner of such dissolution shall not impose any personal liability on the Members beyond that which may be imposed by applicable law or statute); and further

Omnibus Resolutions

RESOLVED, that the Manager and any of the appropriate officers of the Company be, and each of them hereby is, authorized (i) to prepare, execute, deliver and perform, as the case may be, such agreements, amendments, applications, approvals, certificates,

communications, consents, demands, directions, documents, further assurances, instruments, notices, orders, requests, resolutions, supplements or undertakings, (ii) to pay or cause to be paid on behalf of the Company any related costs and expenses and (iii) to take such other actions, in the name and on behalf of the Company, as the Manager and each such officer, in his discretion, shall deem necessary or advisable to complete and effect the foregoing transactions or to carry out the intent and purposes of the foregoing resolutions and the transactions contemplated thereby, the preparation, execution, delivery and performance of any such agreements, amendments, applications, approvals, certificates, communications, consents, demands, directions, documents, further assurances, instruments, notices, orders, requests, resolutions, supplements or undertakings, the payment of any such costs or expenses and the performance of any such other acts to be conclusive evidence of the approval of the members thereof and all matters relating thereto; and further

RESOLVED, that all actions heretofore taken in good faith by the Manager and officers of the Company with respect to the foregoing transactions and all other matters contemplated by the foregoing resolutions are hereby approved, adopted, ratified and confirmed, and shall be conclusively deemed to be such corporate act and deed for all purposes.

* * * * * *

From: **Brian Collins** BCollins@hcmlp.com
Subject: RE: Separation Documents - Daugherty
Date: October 20, 2011 at 8:20 AM
To: Pat Daugherty phdaugherty@gmail.com
Cc: Pat Daugherty PDaugherty@hcmlp.com

BC

Pat,

Yes, this is an all or nothing deal. We need all three documents signed.

Please let me know if you have any other questions.

Brian Collins
Director of Human Resources
Highland Capital Management, L.P.
13455 Noel Rd, Suite 800
Dallas, TX 75240
(o) 972-419-4438
(f) 972-628-4137
(e) bcollins@hcmlp.com

From: Pat Daugherty [mailto:phdaugherty@gmail.com]
Sent: Thursday, October 20, 2011 7:52 AM
To: Brian Collins
Cc: Pat Daugherty
Subject: Re: Separation Documents - Daugherty

Thanks Brian,

To clarify, is the offer an all or none deal? Meaning, do I have to sign all three documents attached in order for any one to be effective?

Sent from my iPhone

On Oct 17, 2011, at 4:55 PM, Brian Collins <BCollins@hcmlp.com> wrote:

> Hi Pat,
>
> Attached are soft copies of the three documents I gave you earlier.
>
> · Highland Separation Agreement
> · Cornerstone Separation Agreement
> · Sierra Verde Consent

DEFENDANT'S EXHIBIT
46
25-03055

The document are in draft format and are not available for execution at this time. After we have agreed on the terms we can finalize and execute the documents.

Please let me know if you have any questions.

Brian Collins
Director of Human Resources
Highland Capital Management, L.P.
13455 Noel Rd, Suite 800
Dallas, TX 75240
(o) 972-419-4438
(f) 972-628-4137
(e) bcollins@hcmlp.com

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<Cornerstone_Daugherty Separation and Release Agreement 10-17.doc>

<Separation Agreement Pat Daugherty 10172011.doc>

<Sierra Verde LLC_ Highland Capital_Member Consent re_ Termination of Services Agreements.doc>

Document Produced in Native Format

DEFENDANT'S EXHIBIT
47
25-03055

Document Produced in Native Format

DEFENDANT'S EXHIBIT
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25-03055

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

IN RE:	: Chapter 11
HIGHLAND CAPITAL	: Case No.
MANAGEMENT, L.P.,	: 19-34054-SGJ11
Reorganized Debtor.	:

CASE REFERENCE: 6689.8

SPEAKERS:
PAT DAUGHERTY
JIM SEERY

JOB No.: 7444999

DEFENDANT'S EXHIBIT
49
25-03055

R E C O R D I N G

MR. SEERY: How you doing?

MR. DAUGHERTY: I'm good. How are you?

MR. SEERY: I'm alright. I'm okay. Yeah.

MR. DAUGHERTY: Couple of things I just wanted to exchange with you.

MR. SEERY: Uh-huh. List them up.

MR. DAUGHERTY: First is, I spoke with Todd Travers (ph) and it looks like my lawyer in the bankruptcy case has -- is no longer representing all the former Highland employees on the tax payment/compensation, depending on how you look at it --

MR. SEERY: Yeah.

MR. DAUGHERTY: -- I guess, because all those guys signed releases except me and Todd.

MR. SEERY: Yeah. You guys have a weird thing. You know, we still -- yours is different.

MR. DAUGHERTY: Yeah.

MR. SEERY: I don't think -- did we file an objection on that basis or not?

MR. DAUGHERTY: You -- I never signed a release at all, neither did Todd. But we -- you all objected to mine saying that it was -- and you said it again.

MR. SEERY: No, I meant for the other guys though.

MR. DAUGHERTY: Oh, for the other guys, I don't think -- I don't know that you filed an objection yet. I guess what you did was you informed -- my counsel was also representing some of them, but not all of them. It's kind of weird. Jack Yang (ph), Okata, and Brad Baroud (ph), and Paul, and -- yeah, Jack Brink (ph), Okata, Baroud, and maybe Kurt Plumer (ph) had one counsel. And then Todd Travers, me, and Davis Steadman (ph), and Paul Kaufman (ph) had another counsel. And I guess Morris or somebody -- I don't think it was Morris, somebody on the team. Oh, it was Demo (ph).

MR. SEERY: Yeah.

MR. DAUGHERTY: He basically called up my lawyer and said, "Hey, by the way, you guys are done right out of the gate because you signed releases. Pretty comprehensive releases." And I don't know if y'all had sent them over or not, but Paul Kaufman had a copy of the release and it was pretty comprehensive. So I think they're -- I don't -- I think they're just going away, frankly, with their tail between their legs for lack of a better description. I don't know what happens from there. But I know my lawyer's not

representing them anymore. He's just representing me and Todd, the people that didn't sign, such a thing.

MR. SEERY: Got it.

MR. DAUGHERTY: But the question was, you know, at some point, you know, how do you want to move forward? We obviously don't want to cost the estate unnecessary, you know, legal costs, et cetera. If you guys are continuing to just make it go away and, you know, I -- we're open. We're not trying to be difficult there.

MR. SEERY: Yeah.

MR. DAUGHERTY: We just --

MR. SEERY: Yeah.

MR. DAUGHERTY: Yeah.

MR. SEERY: What I think I want to do, let me talk to Demo, if we -- you know, we'll -- I'm going to try to see if we get a little more information on where the tax thing is. I mean, frankly, Highland's just been -- had been completely wrong, right? They were supposed to be done this last July. And the sense I get is that the IRS guy has a hard on for Dondero.

MR. DAUGHERTY: As do many people, but yeah.

MR. SEERY: Oh, why?

MR. DAUGHERTY: You know, as do many people.

MR. SEERY: Now, our thought would be, if we have two -- we literally only had two other little claims. One is from a HarborVest entity that's in RCP, and the other is CalPERS. CalPERS --

CERTIFICATE OF TRANSCRIBER

I, RODIE DEAN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

June 23, 2025

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DEFENDANT'S EXHIBIT
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25-03055

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

IN RE:	: Chapter 11
HIGHLAND CAPITAL	: Case No.
MANAGEMENT, L.P.,	: 19-34054-SGJ11
Reorganized Debtor.	:

CASE REFERENCE: 6689.8

SPEAKERS:
PAT DAUGHERTY
JIM SEERY

JOB No.: 7444999

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R E C O R D I N G

MR. SEERY: Correct. And so, they're going to be fine to withdraw their claims. CalPERS can't find it. I've got to call those guys again. Like, they literally don't know who's responsible for filing it. It was somebody in legal in San Francisco. So I got to try to hound that. If we can get it (crosstalk) --

MR. DAUGHERTY: I thought they were -- I thought -- as I recall, I thought CalPERS filed a claim really just so that Dondero would have to go through on buying their shares at whatever it was, 68 or $72 a share. I thought they said, "Look, we don't care what's going on with this bankruptcy. That was the deal that was struck. We need to get paid." I thought that was their claim. And I thought that had been paid during the estate.

MR. SEERY: (Inaudible).

MR. DAUGHERTY: Yeah.

MR. SEERY: But what they didn't know was they were selling them at 68.50 and he was selling them at 72.50, or 67.50 and 72.50. He was skimming them five bucks.

MR. DAUGHERTY: Okay. Well, he was skimming them a lot more than that because it sold for 1.46,

but yeah.

MR. SEERY: You think?

MR. DAUGHERTY: While he was on the board, I mean, that's why he was trying to give you that -- forced you to use his insider information because he knew that, you know, Amazon was there for 1.46. I mean, that's what I've read in the press.

MR. SEERY: Yep. It was all in the press anyway, but whatever.

MR. DAUGHERTY: Yeah.

MR. SEERY: I think the -- my point is, if I can get those withdrawn, and then we can figure out the other tax guys if that -- and I'll talk to Demo about that, other than you and Todd, then as we -- I don't think we want to let -- we'll try to figure out where this tax -- you know, the status of the tax litigation.

MR. DAUGHERTY: Yeah.

MR. SEERY: But then it's easier to make a distribution and reserve.

MR. DAUGHERTY: Yeah. That's all. And that was what I was calling about.

MR. SEERY: Got it. Right.

MR. DAUGHERTY: Obviously going to stick to the terms of our deal, but just want to make sure the

estate doesn't get liquidated and we get, you know --

MR. SEERY: No, no, no.

MR. DAUGHERTY: -- you know.

MR. SEERY: Of course not.

MR. DAUGHERTY: Okay.

MR. SEERY: And also, I don't -- there's no point in spending money while, you know, we're all going to -- if --

MR. DAUGHERTY: Yeah.

MR. SEERY: -- (crosstalk) --

MR. DAUGHERTY: If you do that, we'll sit tight. We're not dying to go and fight you.

MR. SEERY: Yeah. We'll just -- because hopefully it'll go away, I mean, at some point. It's 10 years old, it's -- there's got to be a resolution.

MR. DAUGHERTY: You would think. But I mean, I -- like you said, I think you hit the nail on the head. I think they're after Dondero and Okada for the big money. And, you know, until they get some resolution on that, you know, who knows? I mean, you guys brought up a host of other tax fraud issues when it came to all these transactions between all these entities, right? The moving of the shared services and the employment reimbursement contracts back and forth and all that. I can't --

MR. SEERY: (Crosstalk) --

MR. DAUGHERTY: -- imagine that the --

MR. SEERY: -- (crosstalk) said once that they were tax fraud. Devore Rupovida (ph) brought that up.

MR. DAUGHERTY: That's what I mean. You brought up the transactions and Devore brought up the tax fraud. No. Morris made a point to let the judge know that y'all -- you guys say, you're assuming they're completely legitimate. If they're not, that's between, you know, Dondero and the IRS, but, yeah. Anyway. Well, the reason why it's on my mind is because, you know, rumor mill.

Dondero's running around town telling everybody he's going to get back Highland, he's going to get back the name, the brand, you know, the legacy, whatever else goes along with it, he's claiming he's going to get it back. So, you know, my thought is if he's got any grounds for saying that, which I always doubt first that anything he says is true, but to the extent it is true, I just want to make sure my unresolved things are getting resolved, unless he's going to do what he says he is going to do, which is buy out this estate.

MR. SEERY: Yeah. Like, he's fucking insane.

MR. DAUGHERTY: Okay. Okay. Well, I figured, like I said.

MR. SEERY: You know, he can definitely buy out the estate. And, you know, if it's -- if there's $600 million, like he said, you know, sold to him at a 20 percent discount.

MR. DAUGHERTY: Yeah.

MR. SEERY: (Inaudible).

MR. DAUGHERTY: He said you're sitting on 200 million in cash and the value of everything is 600. I don't know. You -- like, you and I already talked about that. You just said he's making it up, so.

MR. SEERY: He's making it up.

MR. DAUGHERTY: Yeah. Not the first time. Okay. Those were -- that was -- those were those two items. Oh, oh, on Ellington. You had mentioned to me many conversations ago that he told you that he had a special relationship with Hoffman (ph). He was bragging about it. I can't remember what it was, but that -- and then the same conversation, I think you mentioned to me that he also said that I was stalking Hoffman at Disneyland, and I follow him all around Disneyland.

MR. SEERY: Yeah.

MR. DAUGHERTY: Do you mind -- I mean, we may

have to call you as a witness on that. I'm not sure that we will, but on the one hand, it's defamation because I never stalked Hoffman at all at Disneyland or anywhere else. But on the other hand, just want to -- we may need to show at some point down the line, hey, this Ellington guy, he's used the stocking card before. And I don't know if you know this or not, but they're desperately trying to get back in front of Hoffman. We have Judge Williams or Williamson, and they're trying to claim that all this stalking stuff relates back to the case way back in 2012.

In fact, the papers that Michael Hurst (ph) filed with the Court didn't even acknowledge the settlement where everything in the taxes action against me was vacated. They're still operating and trying to tell the Court that Hoffman should have jurisdiction over this because of all the things that the jury found against me back in 2014. If you can believe it, that's actually what they're doing. That's what Michael Hurst is doing.

MR. SEERY: I mean, but all you got to do is put it in front this other person, like, yeah, the jury journal is (inaudible) you --maybe whatever they found was based on a whole thing of lies.

MR. DAUGHERTY: Yeah. Well, fortunately --

MR. SEERY: (Crosstalk) --

MR. DAUGHERTY: -- you did a really good job. I didn't even expect it. And were it not for Ellington objecting to my claim, it never would've gone on record. But in the transcript you said there's fraud here, which was one of the most disturbing things that you discovered, and that there never was an escrow account. So, you know, it couldn't have been better.

MR. SEERY: (Crosstalk). I mean, I got it. I keep -- you can't say this about Highland anymore because, like, how could I still be shocked, but I'm still shocked about stuff that I learned.

MR. DAUGHERTY: Yeah.

MR. SEERY: I'm just blown away. Like, I'm -- I mean, these guys literally fucking put on in front of -- but now I've seen them do it again. You know, they put it on in front of judges a fucking fraudulent case about there being an escrow and about there being plenty of money to pay you if you prevail. And then they don't pay you fucking -- like, 2.6 million. Who the fuck does that?

MR. DAUGHERTY: I know. I know. And I mean, it's just --

MR. SEERY: And you're paying them --

MR. DAUGHERTY: -- unbelievable.
MR. SEERY: You're paid him. Like, it's fucking insane.
MR. DAUGHERTY: You know, I don't even know if you know the whole of it. They sent the constable over to my house to seize --
MR. SEERY: (Cosstalk).
MR. DAUGHERTY: -- my assets, claiming that I hadn't paid anything. So I had to wire them 3.1 million because of interest. All the while, they had taken all the assets out of the escrow, and Ellington's filed an affidavit saying that on personal knowledge, I didn't have the assets to make do on their claim against me. It was just unbelievable. But anyway, I don't want to go through all that.
MR. SEERY: No, no.
MR. DAUGHERTY: It's --
MR. SEERY: (Crosstalk) --
MR. DAUGHERTY: -- it's not your problem anymore.
MR. SEERY: -- a horrible thing. I think you told me that you were away and your wife called (crosstalk).
MR. DAUGHERTY: I was in New York and my wife was in a complete panic with the kids, and I had my

in-laws trying to get them out here, and we thought they might come in and take the dogs, so it was just ridiculous. But it is what it is. And I -- again, I'm not trying to drag you into that.

MR. SEERY: Yeah. I wouldn't say. Look, I don't know if I could say he said he had a special relationship. I don't (crosstalk).

MR. DAUGHERTY: Well, that's what I'm getting at. What did he tell you as far as, you said he boasted something about Hoffman, and I don't want to paraphrase you. I want to know, what did he say?

MR. SEERY: It it's hard to -- I'm trying to be as both accurate in memory. It was more in passing that he had a good relationship with Judge Hoffman. I think he said he had lunch with him. Now, I may conflate some stuff because I think you or someone else has told me that, you know, he and Levinton (ph) and Savila (ph) and Dondero, not that anything's illegal about it, but they all just happened to contribute to (crosstalk).

MR. DAUGHERTY: Not Dondero, but yes, it was -- that, I did tell you. I don't know if you heard from others, but it was Ellington, Levinton, Savila, and Diorio (ph) contributed $20,000 to Judge Hoffman's runoff campaign as Judge Hoffman was hearing a

contempt of court case from them against me. But anyway, I could prove that because I've got the records from the Attorney General's office. I just --

MR. SEERY: Right.

MR. DAUGHERTY: -- couldn't remember exactly what it was that he boasted to you.

MR. SEERY: It was some -- it was hard to -- I can't say it was Hoffman. There was definitely some implication that he knew the Dallas judges and he could have lunch with them. And I --

MR. DAUGHERTY: Oh, so it wasn't even --

MR. SEERY: -- (crosstalk) --

MR. DAUGHERTY: -- it wasn't even specific to Hoffman?

MR. SEERY: It -- I don't recall. And he's the only judge that I've heard a name because that went to the Disneyland thing.

MR. DAUGHERTY: Ah, well he -- yeah, that was pretty clear. He did -- he -- you know, there's only one. That was Hoffman that he was referring to there, so.

MR. SEERY: Yeah. And --

MR. DAUGHERTY: And didn't he tell you I -- because you asked me. No. Don't you remember? Early on you asked me, you were like, "Hey man, you don't

have to tell him if you don't want to, but did you --"

MR. SEERY: No. He said that you stalked the guy.

MR. DAUGHERTY: Yeah.

MR. SEERY: Right? And so -- and told me all about it. How Hoffman came back, you know, really disturbed and that's why he, like, put a -- some kind of order against you or something.

MR. DAUGHERTY: Well, okay. As usual, he was lying. I mean, I did talk to Hoffman and he did say it was an improper ex parte communication, even though I was talking to him about a case I wasn't even involved in. But anyway, be that as may --

MR. SEERY: And --

MR. DAUGHERTY: -- that's kind of my point is --

MR. SEERY: -- apparently, you didn't just fly and follow the dude to Disneyland. You go there with your family.

MR. DAUGHERTY: Yeah. Every year. And when I saw him, I was with my wife and daughter because I didn't even see him initially. My wife did. And she's like, you ought to introduce Judge Hoffman to your family and blah, blah, blah, blah, so. You know, I'm not -- I got my wife and daughter, if necessary,

for witnesses on that front. But I think we may have to show the Court, you know, that, a, this guy lies all the time. You know, not just about all the business stuff, but he's used the stalking thing before. Because I'm still having to deal with that.

MR. SEERY: (Crosstalk), I'll tell you one thing this guy's done is he has run from this case.

MR. DAUGHERTY: In what sense?

MR. SEERY: Their defense on the, you know, whatever this Rupovida thing he made up that they -- we would had to renegotiate this contract with Frank Waterhouse (ph) at the beginning of the case. Told the (crosstalk) --

MR. DAUGHERTY: Oh, yeah.

MR. SEERY: -- (crosstalk) --

MR. DAUGHERTY: Where he said he told Ellington.

MR. SEERY: -- Frank Caruso (ph) --

MR. DAUGHERTY: Yeah.

MR. SEERY: -- just happens to be retired so they pick on Fred. And then -- and Ellington and Levinton -- well, Ellington and Levinton are your guys. They -- you -- 100 percent of their income comes from Dondero, why weren't they testifying?

MR. DAUGHERTY: Oh, I see what you're saying.

It's not like they dodged a subpoena from you, they just --

MR. SEERY: No.

MR. DAUGHERTY: -- you know.

MR. SEERY: No, no, no. Oh, they did when we said, oh, we're going to -- actually, we subpoenaed them for the CPMC claims. They just agreed to take zero.

MR. DAUGHERTY: Gotcha.

MR. SEERY: Oh, this -- they don't --

MR. DAUGHERTY: Well, because you'd already taken both of their depositions --

MR. SEERY: No.

MR. DAUGHERTY: -- I want to say --

MR. SEERY: I never.

MR. DAUGHERTY: -- January and 56 -- 15th and 16th of 2021. Because that's when I found out about --

MR. SEERY: I thought that was Kluback (ph).

MR. DAUGHERTY: Oh, was January 15th -- oh, was that Kluback in January 15th and 16th?

MR. SEERY: I think Kluback took that.

MR. DAUGHERTY: Because that was the whole where Ellington said he didn't know anything about Nimitz (ph) and Patton (ph).

MR. SEERY: Yeah. Well, we know those true -- we know those unequivocally to be false.

MR. DAUGHERTY: Right. Remember I went and found Caman Islands registrar and I gave this to Paige Montgomery at the time, and I found that Diorio was the board member of Sentinel.

MR. SEERY: Yeah. And, you know, during the case, Sentinel provided an indemnity, unbeknownst to me or anybody else, when I started getting a little bit close, maybe in the beginning of the summer when they were fraudulently hiding the whole settlement, the whole payments to UBS and they were working with me on the strategy despite UBS. They got -- must have gotten worried. And Savila, Levinton, Ellington, Katie Irving (ph), Stephanie Patella (ph), all got indemnities, a written indemnity that they each signed from Sentinel in June of 2020. Nobody ever mentioned Sentinel. This was during the case while they were full-time employees in Highland.

MR. DAUGHERTY: Wow.

MR. SEERY: And then, you know, this guy says he doesn't remember anything about the Sentinel structure.

MR. DAUGHERTY: Oh, I know. Yep. He did say he didn't know about it. He didn't -- wasn't involved

and knew he had heard the word, but that was it. You know, blah, blah, blah.

MR. SEERY: Yeah. He knew how to build all of his expenses through it --

MR. DAUGHERTY: Yeah.

MR. SEERY: -- at the very time.

MR. DAUGHERTY: Yep.

MR. SEERY: (Inaudible) that.

MR. DAUGHERTY: Well, okay. I'm glad you clarified on the whole judge thing. Just because if it becomes necessary, we're going to have to, you know.

MR. SEERY: Why are they --

MR. DAUGHERTY: Continuing to fight it? Because it's --

MR. SEERY: Well, I -- like the whole thing, the whole thing with you, right, it is clearly fabricated. They can clearly say, "Hey, you went took pictures of people." Okay. This is --

MR. DAUGHERTY: Actually, I didn't take pictures of the people. I took pictures of the driver's license -- plates --

MR. SEERY: Yeah.

MR. DAUGHERTY: -- and the cars. The only people I took a picture of was one of Ellington, one

of his secretary, and one of his, what. At the time, I didn't know who she was, but now we've learned that she's a fiancé, workout partner/girlfriend, depending on who he's talking to. But other than that, all this about kids and all the others is made up.

MR. SEERY: Well, I don't doubt that for a second. But be that as it may, what's the -- what are they defending -- what are you -- I guess I'm trying to figure out what he's -- why is he in your -- why is he getting away from you too? Why -- what's -- why is he in your (crosstalk)?

MR. DAUGHERTY: I think that's why he's doing this. I think he's saying, "Hey, if you come after me for your Delaware actions, and if you bring Hera (ph) after me." Because that's what they said. You know, they said, "Hey, Your Honor, you can't approve this settlement. This is to judge Jernigan. Because Daugherty's just going to take Hera and come after us through Hera. He's going to harass, you know, Ellington.

And we all knew it was really all of them." And so, they've concocted up this whole stalking thing, is in their mind, I guess, some kind of, "Hey, you let us off of ours and we'll let you off yours." And I'm like, "Screw you." You know, I negotiated

hard for the Hera thing for a reason. And as you can imagine, we are now -- we got a meeting with Judge Zern (ph) tomorrow to move forward on that. But there's a lot of people with a lot of problems on the Hera front.

MR. SEERY: I mean, look, your thing, your pleading, which was, as I said, pretty good, the one with the crime fraud stuff. If only a quarter of it is all really bad, if only a quarter of it is like -- somebody's got -- I mean, I can't imagine people don't want to get the fuck out of that.

MR. DAUGHERTY: You know, look, and I'm always open -- you know, you call it commercial.

MR. SEERY: Yeah.

MR. DAUGHERTY: I'm always open to a settlement, but the lying has to stop, and the defamatory stuff against me has to stop. And then I'll talk to anybody who wants to be a grownup about coming up with a solution, but I'm not going to go away just for the hell of it.

MR. SEERY: Yeah.

MR. DAUGHERTY: You know, so.

MR. SEERY: Well, I don't trust Ellington for anything. I think he's a complete lying, cheating piece of shit.

MR. DAUGHERTY: Yeah.
MR. SEERY: So I --
MR. DAUGHERTY: You could put Levinton in that group too.
MR. SEERY: But it seems to me like he's -- is he separating himself from that Hera? I mean, the fact that he wasn't in any of these things, he's got to be telling him something. I can't (crosstalk).
MR. DAUGHERTY: I'm telling you the reason why he doesn't -- he hasn't gotten any of those things, is they don't want to put him on the witness stand where he could get caught perjuring and then be under the -- and then get repercussions from Jernigan. That's why.
MR. SEERY: I mean, I'm going to be sorely disappointed if on that litigation over the fees she doesn't recommend or refer Dondero for prosecution -- investigation of prosecutor. I'm -- I just -- I don't (crosstalk) --
MR. DAUGHERTY: You're talking about the promissory notes, making them all up with Nancy? Or are you talking about --
MR. SEERY: No. That one's separate because that one she didn't actually hear any testimony.
MR. DAUGHERTY: Correct.

MR. SEERY: So she's already (crosstalk) --

MR. DAUGHERTY: You talking about the one where he got on there and was just making up, and he said he was going to go after her to have her recused again.

MR. SEERY: Yep. Yep.

MR. DAUGHERTY: And he said it was financial mugging and everything else?

MR. SEERY: Yeah. Yeah. But he flat out lied about all kinds of stuff.

MR. DAUGHERTY: Agreed.

MR. SEERY: And she looked at him with her mouth open, like.

MR. DAUGHERTY: Well, she looked at him over her glasses. She wasn't going to him a single word that he can use on his appeal.

MR. SEERY: And Waterhouse, I --

MR. DAUGHERTY: Waterhouse just looked like a --

MR. SEERY: I'll be --

MR. DAUGHERTY: -- Stockholm syndrome.

MR. SEERY: -- disappointed if she doesn't, like, literally, set me up referring to the Justice Department for, perhaps possible perjury. It -- there has to be some -- man, I guess maybe there isn't.

MR. DAUGHERTY: You know, it's funny you --
MR. SEERY: It's (crosstalk) --
MR. DAUGHERTY: -- mentioned Ellington. We haven't seen Ellington on the stand in her court since ASIS when he got nailed for lying about the HarborVest stuff, and he stopped going to the court. Isaac Levinton stopped going to the court and they started sitting JP Savila in their place. And I haven't seen either one of them, not only on the stand, but in the courtroom, ever since. And that was 2019 -- 2018 --
MR. SEERY: Yeah.
MR. DAUGHERTY: -- so. All right.
MR. SEERY: (Inaudible).
MR. DAUGHERTY: Status on the sales and everything. Did you ever get the remaining pieces of Cornerstone done?
MR. SEERY: We are still working on it.
MR. DAUGHERTY: Okay.
MR. SEERY: We've got a couple -- there's a couple of very difficult things that we have to deal with.
MR. DAUGHERTY: Okay.
MR. SEERY: We have a really good second piece, so we need to be very, very quiet about it. We're very optimistic for the --

MR. DAUGHERTY: Uh-huh.

MR. SEERY: -- remaining pieces. We have an LOI, and we're moving towards a PSA. It's -- so we don't want to mention that anywhere. We just want to keep it really low.

MR. DAUGHERTY: The PSA on the second part, or the first part, or all of it?

MR. SEERY: Second part.

MR. DAUGHERTY: Okay. I won't say anything.

MR. SEERY: Thank you. And so, we really -- I mean, that one is -- the (inaudible) too small.

MR. DAUGHERTY: Okay.

MR. SEERY: And then we've got a couple of one particularly difficult thing that we're dealing with that we're trying to expedite related to an investigation matter in the company which is a gating item.

MR. DAUGHERTY: Oh, you're talking about internal operational problem?

MR. SEERY: Office of the Inspector General.

MR. DAUGHERTY: Yeah. We've -- that's -- that could be dealt with, OIG. I mean, it sounds awful, but it's not uncommon.

MR. SEERY: Yeah. The issue is, it's -- you know, you need to -- it's not uncommon. It's not that

bad. It's a key -- we think it's a key term, but whatever.

MR. DAUGHERTY: Yeah.

MR. SEERY: And the issue is, it's a little bit pushing our strength. So we've got a strategy to get there, you know, that will go over the next couple weeks how our strategy looks because we've been providing information.

MR. DAUGHERTY: Okay.

MR. SEERY: You know, there really isn't anything there, but we're not going to be able to close with that hanging out there.

MR. DAUGHERTY: Understood.

MR. SEERY: And -- so that's --

MR. DAUGHERTY: What about Trustway?

MR. SEERY: We are -- you know, again, keep it to yourself please. We are in the market.

MR. DAUGHERTY: Well, that's not a secret to anybody.

MR. SEERY: Well, we've actually -- we got a real launch. We were -- we --

MR. DAUGHERTY: Okay.

MR. SEERY: -- we --

MR. DAUGHERTY: Okay.

MR. SEERY: -- (inaudible).

MR. DAUGHERTY: I was hoping you're going to say I'm not -- I can't tell you, but, you know, don't tell anybody, but it -- we think we can get 500 million for it.

MR. SEERY: I wish. I wish.

MR. DAUGHERTY: One time's a backlog, man. One time's a backlog.

MR. SEERY: Yeah. The hard part for that business is people getting their arms around that level of volatility unless they're in it. So the strategics, you know, obviously have a better insight. You know, the financiability part of it's tougher.

MR. DAUGHERTY: Okay.

MR. SEERY: For a PE guy. So that's the challenge. But the business is way different than it was in 2018. It's just a different -- they put in a whole bunch of different stuff that's made it a much, much better business. And, you know, we're hopeful for --

MR. DAUGHERTY: Well, remember I got to see the entire business plan because of my appraisal rights hearing Carl Moore had to go through all the things that they were going to do to bring all this value in.

MR. SEERY: Yeah. Well, a lot of that

they've changed -- like, they changed and Jeff --

MR. DAUGHERTY: Oh really?

MR. SEERY: -- (crosstalk).

MR. DAUGHERTY: Because that was October, 2018.

MR. SEERY: Yeah. They adapted to the market. They did some of those, but they really have gotten way better at their -- both their payment protection date provisions in their contracts as well as their hedging strategy. And then in addition, they concentrated their buys, so they just have a better relationship with their suppliers. And then they strategically focus themselves on the more value add customers who are willing to pay a premium, both for the, you know, design, flexibility, quality, but also the execution and delivery, and notwithstanding, you know, some of them were difficult decisions during the real spike and during the COVID. Trustway didn't miss a single contract. Didn't back out with -- didn't back out of one, and all --

MR. DAUGHERTY: Okay.

MR. SEERY: -- of the competitors did.

MR. DAUGHERTY: Okay. That's impressive.

MR. SEERY: And it was -- it wasn't an accident. It was like, all right, this is -- if we're

going to have a business that we're selling to people as, hey, we're the high-quality guy and we deliver, we're a reliable partner, we got to actually do that. It had a short-term cost. But the numbers look really good and this year's performance is great. So hopefully we'll be able to continue.

MR. DAUGHERTY: Gotcha.

MR. SEERY: (Crosstalk).

MR. DAUGHERTY: Hey, one other thing I -- it just occurred to me. Todd Travers wanted me to ask this. You know, he and I -- I don't know if any of the other former partners hold it, but we have some significant ownership interest in HFP, you know, the equity pilot financial --

MR. SEERY: Yeah.

MR. DAUGHERTY: -- partners, also known as HFT --

MR. SEERY: Yep, yep.

MR. DAUGHERTY: -- High Financial Trust. And that entity, I think, took a billion-dollar judgment from UBS.

MR. SEERY: Correct.

MR. DAUGHERTY: So I think it's pretty worthless under any scenario as it relates to us as pure equity holders.

MR. SEERY: Yeah.

MR. DAUGHERTY: The question was, we all have capital accounts that we've getting on our K-1s. Are you just going to --

MR. SEERY: Are you still getting --

MR. DAUGHERTY: -- write those?

MR. SEERY: Are you still getting K-1s on those?

MR. DAUGHERTY: We did last year. I don't know if we're going to get -- you know, we --

MR. SEERY: I thought the capital account had gotten zeroed out. I'll have to look at that.

MR. DAUGHERTY: Well, that's what I'm calling about. If you zero out --

MR. SEERY: (Crosstalk) worthless --

MR. DAUGHERTY: Yeah. If you --

MR. SEERY: -- on that already.

MR. DAUGHERTY: Yeah. I mean, for whatever reason Todd, this account, it's thought that the company should do it. And I'm like, you don't have to wait for the company to do it. And I'm like, "Todd, they took a billion-dollar judgment and --"

MR. SEERY: They even sent out something in '08 to tell everybody that there was no value. Now, the truth was at that point, there actually was all

the value that ended up getting siphoned up.

MR. DAUGHERTY: Well, and that's just it. Todd's like --

MR. SEERY: Yes.

MR. DAUGHERTY: -- well, we had value based on all the money being siphoned out. But I'm like, okay. Well, at this point that was an unsecured claim from the equity. And now that UBS comes in with a billion dollars of non-equity based unsecured, I don't think we'd -- I think we'd get washed out, so.

MR. SEERY: Yeah, no doubt about it. Somebody else recently asked us a Japanese account about this as well who hadn't taken it. And we said, look --

MR. DAUGHERTY: Well, that's why we're asking. Are you just going to write it down and send out the --

MR. SEERY: We --

MR. DAUGHERTY: -- K-1s that demonstrate that?

MR. SEERY: (Crosstalk) it's got a very up management structure. And so, while we owned the GP, there's a different board. Dondero sat on that board by himself and controlled it.

MR. DAUGHERTY: Yep.

MR. SEERY: Through last year.
MR. DAUGHERTY: I remember that. Oh, through last year.
MR. SEERY: Through last year. And so, I got to look at it. It's -- I think our recommendation, I don't know that we'll be able to tell you what -- tell anybody what to do. I don't think there's any dispute that the equity's worthless.
MR. DAUGHERTY: I agree. I agree. I just -- you know, everybody's looking for something that's --
MR. SEERY: Yes.
MR. DAUGHERTY: -- coming from a third party --
MR. SEERY: Sure.
MR. DAUGHERTY: -- so that they could just --
MR. SEERY: Yep.
MR. DAUGHERTY: -- do it that way. All right.
MR. SEERY: Yeah. I think -- let me say, I'll look at that for you guys because I think we had -- we gave something that was --
MR. DAUGHERTY: Some type of notice --
MR. SEERY: -- (crosstalk) --
MR. DAUGHERTY: -- that just says we've looked at it and it's a write off to zero. You know,

that's just --

MR. SEERY: Yeah.

MR. DAUGHERTY: -- what people are looking for.

MR. SEERY: Okay. Let see what we can -- let me see what we had sent out. And I think we had something helpful. Some Japanese guys.

MR. DAUGHERTY: Okay. Thank you.

MR. SEERY: Okay. Cool.

MR. DAUGHERTY: Bye.

MR. SEERY: I'll talk to you. Thanks. Bye.

(End of recording.)

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June 23, 2025

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Document Produced in Native Format

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Re: Tolling

JS

James Seery<jpseeryjr@gmail.com>

To: Patrick Daugherty

Cc: Jim Seery <jseery@highlandcapital.com>

Reply | Reply all | Forward

Mon 7/18/2022 9:54 AM

You replied on Mon 7/18/2022 9:14 PM View conversation

Start reply with: Ok, thanks for checking. | Ok, thank you. | Okay, thanks.

I don't think there are any waivers other that claiming that the tolling does not apply

---

From: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Date: Monday, July 18, 2022 at 10:53 AM
To: James Seery <jpseeryjr@gmail.com>
Cc: Jim Seery <jseery@highlandcapital.com>
Subject: Re: Tolling

I reviewed the doc over the weekend. I am fine with the Tolling but had concerns regarding the waiver of rights. My counsel is going to review to assess if changes are necessary. We can also schedule a time to discuss my questions.-Pat

Patrick H Daugherty, Esq.
President and Chief Investment Officer

Glacier Lake Capital Advisors
(t) +1 214.932.9140 **(m)** +1 972.679.7487
(e) pdaugherty@glacierlakecap.com

From: James Seery <jpseeryjr@gmail.com>
Sent: Monday, July 11, 2022 8:03 AM
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Cc: Jim Seery <jseery@highlandcapital.com>
Subject: Tolling

Pat: As discussed, attached is a tolling agreement with respect to the reserved tax claim. It's a bit bulky, but most of the Whereas clauses are lifted from our settlement. Basic principal is to continue the objection deadline so we can negotiate a settlement or see the results of the IRS action.

If acceptable, please let me know, I will convert to a pdf and send you a signed version. I do not believe we need to file this with the court.

If you have comments, please let me know.

Thanks.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com
jseery@highlandcapital.com

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Counsel for Plaintiff/Counter-Defendant Highland Capital Management, L.P.

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-sgj11
Reorganized Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff/Counter-Defendant,	§	Adv. Proc. No. 25-03055-sgj
v.	§	
PATRICK HAGAMAN DAUGHERTY,	§	
Defendant/Counter-Plaintiff.	§	

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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HIGHLAND CAPITAL MANAGEMENT, L.P.'S RESPONSES AND OBJECTIONS TO PATRICK DAUGHERTY'S INTERROGATORIES

Plaintiff/Counter-Defendant Highland Capital Management, L.P., the reorganized debtor ("Highland" or the "Debtor," as applicable), by and through its undersigned counsel, hereby submits its responses and objections (each a "Response," and collectively, the "Responses") to Defendant/Counter-Plaintiff Patrick Daugherty's Interrogatories to Highland Capital Management, L.P. (the "Interrogatories"),[2] served by Defendant/Counter-Plaintiff Patrick Daugherty ("Daugherty"), in the above-captioned adversary proceeding (the "Adversary Proceeding"). Highland's Responses are made pursuant to Federal Rules of Civil Procedure ("FRCP") 26 and 33, as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7033.

GENERAL OBJECTIONS

Unless otherwise specified, the following general objections and caveats (the "General Objections") apply to each and every Response and are incorporated into each Response as though set forth in full:

1. The Responses contained herein are based upon information presently known and ascertained by Highland.

2. Highland objects to the Interrogatories to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity.

[2] Capitalized terms not defined herein have the meanings set forth in the Interrogatories.

3. Highland objects to the Interrogatories to the extent they request information that is not reasonably or readily available to it, in its possession, custody or control, or is more readily available to Daugherty from another source or for which the burden of obtaining such information is not substantially greater for Daugherty than it is for Highland.

4. Highland objects to the Interrogatories to the extent they call for legal conclusions and/or legal analyses.

5. Highland objects to the Interrogatories to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

6. All specific Responses to the Interrogatories are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such Responses, or the subject matter thereof, on any ground in any further proceeding in this action; (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings; and (e) the right to supplement, amend, or modify the Responses, including the right to supplement any documents produced in connection therewith.

7. These General Objections shall be deemed to be incorporated by reference into the specific responses and objections set forth below.

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify the persons answering the interrogatories, supplying information, or in any way assisting with the preparation of the answers.

RESPONSE TO INTERROGATORY NO. 1:

In response to Interrogatory No. 1, Highland identifies the following persons:

1. Pachulski Stang Ziehl & Jones LLP
2. James P. Seery, Jr.
3. David Klos
4. Timothy J. Cournoyer

INTERROGATORY NO. 2:

Describe the Communications Highland had with its bank group regarding alleged covenant defaults in 2008-2009.

RESPONSE TO INTERROGATORY NO. 2:

Highland objects to Interrogatory No. 2 on the grounds that it seeks information that is not relevant to the parties' claims or defenses; is not proportional to the needs of the case; and does not seek information relevant to resolving any disputed issue. *See* Fed. R. Civ. P. 26(b)(1). Highland further objects to this Interrogatory on the ground that it is being tendered for the improper purpose of obtaining discovery in connection with unrelated litigation.

INTERROGATORY NO. 3:

Describe Highland's liquidity position in 2008 and 2009.

RESPONSE TO INTERROGATORY NO. 3:

Highland objects to Interrogatory No. 3 on the grounds that it seeks information that is not relevant to the parties' claims or defenses; is not proportional to the needs of the case; and does not seek information relevant to resolving any disputed issue. *See* Fed. R. Civ. P. 26(b)(1). Highland further objects to this Interrogatory on the ground that it is being tendered for the improper purpose of obtaining discovery in connection with unrelated litigation.

INTERROGATORY NO. 4:

Describe the process for which the bank group received collateral in exchange for amending Highland's credit facility from 2008-2009.

RESPONSE TO INTERROGATORY NO. 4:

Highland objects to Interrogatory No. 4 on the grounds that it seeks information that is not relevant to the parties' claims or defenses; is not proportional to the needs of the case; and does not seek information relevant to resolving any disputed issue. *See* Fed. R. Civ. P. 26(b)(1). Highland further objects to this Interrogatory on the ground that it is being tendered for the improper purpose of obtaining discovery in connection with unrelated litigation.

INTERROGATORY NO. 5:

Describe the impact that the collateral negotiations had on existing Highland employee compensation packages.

RESPONSE TO INTERROGATORY NO. 5:

Highland objects to Interrogatory No. 5 on the grounds that it seeks information that is not relevant to the parties' claims or defenses; is not proportional to the needs of the case; and does not seek information relevant to resolving any disputed issue. *See* Fed. R. Civ. P. 26(b)(1).

Highland further objects to this Interrogatory on the ground that it is being tendered for the improper purpose of obtaining discovery in connection with unrelated litigation.

INTERROGATORY NO. 6:

Describe how many employees left Highland in 2008-2009, and why.

RESPONSE TO INTERROGATORY NO. 6:

Highland objects to Interrogatory No. 6 on the grounds that it seeks information that is not relevant to the parties' claims or defenses; is not proportional to the needs of the case; and does not seek information relevant to resolving any disputed issue. *See* Fed. R. Civ. P. 26(b)(1). Highland further objects to this Interrogatory on the ground that it is being tendered for the improper purpose of obtaining discovery in connection with unrelated litigation. Subject to the General Objections and these specific objections, Highland currently estimates that approximately 111 people ceased being employed by Highland, including its London-based wholly-owned subsidiary, in 2008, and approximately 77 people ceased being employed by Highland in 2009.

INTERROGATORY NO. 7:

Describe Highland's process for calculating the 2008 Refund, as identified in paragraph 3 of Your Complaint.

RESPONSE TO INTERROGATORY NO. 7:

In response to Interrogatory No. 7, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00000001.

INTERROGATORY NO. 8:

Describe Highland's process for determining that Daugherty should be allocated 0.740262% of Highland's taxable losses, as identified in paragraph 16 of Your Complaint.

RESPONSE TO INTERROGATORY NO. 8:

Highland objects to Interrogatory No. 8 on the grounds that it seeks information that is not relevant to the parties' claims or defenses; is not proportional to the needs of the case; and does not seek information relevant to resolving any disputed issue. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00000001-217.

INTERROGATORY NO. 9:

Identify all Documents and Communications where Highland conveyed to Daugherty that Daugherty "[was] told that the tax refund amounts were 'not guaranteed,' and that if refund amounts were different, Highland would merely 'consider what action to take on a case-by-case basis, considering several factors,'" as identified in paragraph 21 of Your Complaint. This interrogatory seeks the author or speaker of the statement, the approximate date on which the statement was made, and the names of those that were part of the Communication.

RESPONSE TO INTERROGATORY NO. 9:

In response to Interrogatory No. 9, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00000218-309.

INTERROGATORY NO. 10:

Describe how Highland's "obligations to Daugherty under the 2009 Statement had been satisfied," as identified in paragraph 23 of Your Complaint.

RESPONSE TO INTERROGATORY NO. 10:

In response to Interrogatory No. 10, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00000040 and Daugherty ROGs 00000310-627.

INTERROGATORY NO. 11:

Describe the basis for Your contention that "upon information and belief, the 2008 Audit has not been resolved and is heading to court with a resolution not expected until approximately 2029," as identified in footnote 6, page 7 of Your Complaint.

RESPONSE TO INTERROGATORY NO. 11:

In response to Interrogatory No. 11, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00000628-631.

INTERROGATORY NO. 12:

Identify who You have, or anyone on Your behalf has, communicated with at the IRS regarding the 2008 Audit. Please list the name and contact information for each individual.

RESPONSE TO INTERROGATORY NO. 12:

Highland objects to Interrogatory No. 12 on the ground that, for most of the Relevant Time Period, including before the Petition Date, the persons who were involved with matters concerning the 2008 Audit are no longer employed at Highland, and therefore, Highland is without knowledge or information sufficient to provide information as to any such communications. Subject to the General Objections and this specific objection, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00000632-3727 and avers that it will produce additional documents in response to this Interrogatory on or before December 12, 2025.

INTERROGATORY NO. 13:

Identify who You have, or anyone on Your behalf has, communicated with at Strand regarding the 2008 Audit. Please list the name and contact information for each individual.

RESPONSE TO INTERROGATORY NO. 13:

Highland objects to Interrogatory No. 13 on the ground that, for most of the Relevant Time Period, including before the Petition Date, the persons who were involved with matters concerning the 2008 Audit are no longer employed at Highland, and therefore, Highland is without knowledge or information sufficient to provide information as to any such communications. Subject to the General Objections and this specific objection, Highland further states that no such communications referenced in this Interrogatory occurred during the Known Period. Highland also states that, during the Relevant Time Period, Strand and Highland were controlled by the same persons (Strand had no employees and no separate email domains), such that Highland does not have any reason to believe any such communications responsive to this Interrogatory occurred.

INTERROGATORY NO. 14:

Identify any third-parties with whom You have, or anyone on Your behalf has, communicated with regarding the 2008 Audit. Please list the name and contact information for each individual.

RESPONSE TO INTERROGATORY NO. 14:

Highland objects to Interrogatory No. 14 on the ground that, for most of the Relevant Time Period, including before the Petition Date, the persons who were involved with matters concerning the 2008 Audit are no longer employed at Highland, and therefore, Highland is without knowledge or information sufficient to provide information as to any such communications. Subject to the General Objections and this specific objection, and in compliance with Fed. R. Civ. P. 33(d), Highland will produce documents in response to this Interrogatory on or before December 12, 2025.

INTERROGATORY NO. 15:

Describe the basis for Your contention that "Highland believes that the 'IRS [made] a final determination with respect to the IRS Audit Dispute,'" as identified in paragraph 2 of Your Objection/Cross Motion.

RESPONSE TO INTERROGATORY NO. 15:

In response to Interrogatory No. 15, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00000577 and Daugherty ROGs 00003728-3754.

INTERROGATORY NO. 16:

Identify the Documents and Communications where the IRS conveyed to You that it had made a "final determination" related to the IRS Audit Dispute, to the extent You make that contention in this adversary proceeding.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the General Objections, Highland refers to the documents bates stamped Daugherty ROGs 00000577 and Daugherty ROGs 00003728-3754.

INTERROGATORY NO. 17:

Describe the basis for Your contention that the existence of the Claimant Trust and Litigation Sub-Trust Agreements are evidence that the parties believed the IRS would not need more than five years for a final determination, as identified in footnote 9, page 3 of Your Objection/Cross-Motion.

RESPONSE TO INTERROGATORY NO. 17:

In response to Interrogatory No. 17, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00003755-4044.

INTERROGATORY NO. 18:

Describe how You contend that "Daugherty was (a) advised that the IRS field examiners had 'concluded their audit,' (b) informed that his allocable Portfolio income/short term gain was determined to be $1,257,792 (Form 886-Z), representing an adjustment (increase) of $1,231,361…and (c) given the opportunity to accept the IRS' determination and avoid penalties and further interest…" as identified in paragraph 16 of Your Objection/Cross-Motion.

RESPONSE TO INTERROGATORY NO. 18:

In response to Interrogatory No. 18, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00003744 and Daugherty ROGs 00004045-4061.

INTERROGATORY NO. 19:

Describe the basis and method of calculation that You have, or anyone else on Your behalf has, performed regarding Daugherty's actual or potential liability under the 2008 Audit.

RESPONSE TO INTERROGATORY NO. 19:

In response to Interrogatory No. 19, Highland states that on February 3, 2018, Daugherty was (a) advised that the IRS field examiners had "concluded their audit," (b) informed that his allocable Portfolio income/short term gain was determined to be $1,257,792 (Form 886), representing an adjustment (increase) of $1,231,361 (the "Adjustment"), and (c) given the opportunity to accept the IRS' determination and avoid penalties and further interest. (Form 870). The Adjustment does not represent incremental tax owed, but rather incremental income that would be subject to tax at the applicable tax rate.

Daugherty rejected the IRS' Adjustment and thereby accepted the risk that the IRS might impose penalties and interest on his allocable income/gain.

To the best of Highland's current knowledge, the Adjustment has not changed since 2018 such that Daugherty's maximum tax underpayment exposure is equal to the highest individual income tax rate at the time (37%) times the income Adjustment, or approximately $455,000, which represents Daugherty's maximum potential liability. As a result of voluntarily rejecting the IRS' Adjustment, Mr. Daugherty could also face statutory interest and a one-time penalty on the underpayment exposure.

INTERROGATORY NO. 20:

Describe Highland's document retention protocols and procedures.

RESPONSE TO INTERROGATORY NO. 20:

In response to Interrogatory No. 20, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00004062-16697.

INTERROGATORY NO. 21:

Identify where Highland's books and records, as well as other Documents, related to HERA, ERA and Restoration Capital Partners, LP are stored. This interrogatory seeks the manner of storage, the location of the storage device (if physical), the location of any servers containing Highland's documents related to HERA, Restoration Capital Partners, LP and ERA, and the identifying information for the Cloud-based storage Highland uses for HERA, Restoration Capital Partners, LP, and ERA Documents (if applicable).

RESPONSE TO INTERROGATORY NO. 21:

Highland objects to Interrogatory No. 21 on the grounds that (a) the phrase "books and records" is subject to dispute; (b) the location of the "books and records" of HERA, ERA and Restoration Capital Partners, LP is irrelevant to any issue in dispute, (c) the "books and records (spreadsheet) maintained on HCMLP's system" of HERA and ERA that are relevant are all

maintained on Highland's cloud based storage system, and (d) notwithstanding the foregoing, the "books and records" of HERA and ERA maintained on Highland's system have been produced to Daugherty.

INTERROGATORY NO. 22:

If you contend that Highland no longer possesses any books and records, as well as other Documents, related to HERA, Restoration Capital Partners, LP, and/or ERA, describe why that is and when those books and records were deleted, destroyed, or removed, or how it was that Highland lost its access.

RESPONSE TO INTERROGATORY NO. 22:

Highland objects to Interrogatory No. 22 on the grounds that (a) the location of the "books and records" of Restoration Capital Partners, LP is irrelevant to any issue in dispute, and (b) Highland does not contend that it "no longer possesses any books and records, as well as other Documents, related to HERA, Restoration Capital Partners, LP, and/or ERA."

INTERROGATORY NO. 23:

If you contend that Highland has made previous efforts to transfer to Daugherty the HERA, Restoration Capital Partners, LP, and ERA books and records that Highland has in its possession, describe those efforts.

RESPONSE TO INTERROGATORY NO. 23:

Highland objects to Interrogatory No. 23 on the ground that Highland was never obligated to transfer any "books and records" of Restoration Capital Partners, LP to Daugherty. As concerns HERA and ERA, in response to Interrogatory No. 23, and in compliance with Fed. R. Civ. P. 33(d), Highland refers to the documents bates stamped Daugherty ROGs 00016698-16707.

INTERROGATORY NO. 24:

Describe all negotiations and Communications with Daugherty regarding the HERA, Restoration Capital Partners, LP, and ERA books and records provision in paragraph 8 of the settlement agreement with Daugherty. This interrogatory seeks the author or speaker of the statement, the approximate date on which the Communication was made, the names of those that were part of the Communication, and a description of the Communication.

RESPONSE TO INTERROGATORY NO. 24:

Highland objects to Interrogatory No. 24 on the ground that Highland was never obligated to transfer any books and records of Restoration Capital Partners, LP that were in its possession pursuant to Highland's settlement agreement with Daugherty. Subject to the General Objections and the specific objection, in compliance with Fed. R. Civ. P. 33(d), Highland refers to documents bates stamped Daugherty ROGs 00016708-25613.

Dated: November 21, 2025

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Plaintiff/Counter-Defendant Highland Capital Management, L.P.

Delete | Archive | Report | Move to | Reply | Reply all | Forward | Share to Teams | Zoom | Quick steps | Read / Unread | Categorize | Flag / Unflag | Pin / Unpin | Print

Re: Redline - Daugherty Settlement Agreement (PSZJ)-42669-v7 and Daugherty S....pdf

JS

James Seery<jpseery@yahoo.com>

To: Patrick Daugherty

Reply | Reply all | Forward

Fri 8/20/2021 12:09 PM

Start reply with: Great, thanks for letting me know! | Ok, thanks for letting me know. | Thanks!

We also got some stuff Re mcgain

Sent from my iPhone

> On Aug 20, 2021, at 1:03 PM, Patrick Daugherty <pdaugherty@glacierlakecap.com> wrote:
>
> I will take a look and revert. I am in contact with Kirschner and in the process of sharing all relevant information. Additionally, he wants me to meet with Quinn Emanuel to discuss the details next week.
>
> Do you still want me to release Surgent given the fact that he concealed the Prive network (recall that we discussed one of the leasing entities and its worldwide headquarters in Kalispel, MT)? If so, I will honor our deal but it was always conditional on whether he stayed in your good graces.
>
> I am fine to proceed with the 9019 as initially contemplated.
>
> In other news, I hear that Ellington remains AWOL and has been replaced by DC Saughter. The spin is that he "retired" to spend more time with family. Also, Katy Irving has apparently gone missing.
>
> Finally, the BH Equities people that own a controlling interest in NXRT are apparently out of patience and are seeking to remove Dondero, McGraner, Ellington and Mitz.
>
> **Patrick H Daugherty, Esq.**
> President and Chief Investment Officer
>
> **Glacier Lake Capital Advisors**
> **(t)** +1 214.932.9140 **(m)** +1 972.679.7487
> **(e)** pdaugherty@glacierlakecap.com
>
> ---
>
> **From:** Jpseery@yahoo.com <jpseery@yahoo.com>
> **Sent:** Friday, August 20, 2021 7:02 AM
> **To:** Patrick Daugherty <pdaugherty@glacierlakecap.com>
> **Subject:** Redline - Daugherty Settlement Agreement (PSZJ)-42669-v7 and Daugherty S....pdf
>
> Pat: I'm out for a few days. Here is the cummulative blackline with the changes we discussed.
>
> I believe this should do it. One question we should address is whether we want to do this as a 9019. I will review with Morris. My instinct is yes because of the years of lit with Dondero, but please let me know your thoughts.
>
> Please review and let me know if we are all done.
>
> Best. Jim

DEFENDANT'S EXHIBIT 55 25-03055

From: "Gregory V. Demo" <GDemo@pszjlaw.com>
To: 'Thomas Uebler' <tuebler@mdsulaw.com>
CC: "dyork@grayreed.com" <dyork@grayreed.com>, "Jason S. Brookner" <jbrookner@grayreed.com>, "rdaniels@grayreed.com" <rdaniels@grayreed.com>, "John A. Morris" <jmorris@pszjlaw.com>
Subject: [EXTERNAL] RE: revised
Date: Wed, 21 Dec 2022 21:05:39 +0000
Attachments: Highland_-_Amendment_to_Daugherty_Tolling_Agreement_(EXECUTED).pdf
Inline-Images: image001.jpg

Tom,

Attached is a fully executed copy of the amendment to the tolling agreement for your and Pat's records. Thank you for the help in getting this done.

Best,
Greg

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7730 | Fax: 212.561.7777
GDemo@pszjlaw.com
vCard | Bio | LinkedIn

PACHULSKI STANG ZIEHL & JONES
Los Angeles | San Francisco | Wilmington, DE | New York | Houston

---

From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
Sent: Wednesday, December 21, 2022 2:55 PM
To: Gregory V. Demo <GDemo@pszjlaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: Re: revised

Great, thanks.

Thomas A. Uebler
McCollom D'Emilio Smith Uebler LLC
(302) 468-5963
tuebler@mdsulaw.com

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From: Gregory V. Demo <GDemo@pszjlaw.com>
Sent: Wednesday, December 21, 2022 2:18:06 PM
To: Thomas Uebler <tuebler@mdsulaw.com>

DEFENDANT'S EXHIBIT
56
25-03055

Cc: dyork@grayreed.com <dyork@grayreed.com>; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com <rdaniels@grayreed.com>; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

EXTERNAL EMAIL

Tom,

This works. I'll ask my client to sign and will send you back a fully executed.

Greg

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7730 | Fax: 212.561.7777
GDemo@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

-----Original Message-----
From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
Sent: Wednesday, December 21, 2022 12:59 PM
To: Gregory V. Demo <GDemo@pszjlaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

Greg, Pat removed the draft stamp, entered the date, and sent me the attached pdf signature page. See attached. Can you work with this as the execution version?

Thomas A. Uebler
McCollom D'Emilio Smith Uebler LLC
(302) 468-5963
tuebler@mdsulaw.com

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-----Original Message-----
From: Gregory V. Demo <GDemo@pszjlaw.com>
Sent: Tuesday, December 20, 2022 3:31 PM
To: Thomas Uebler <tuebler@mdsulaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

EXTERNAL EMAIL

Tom,

A draft is attached. Happy to discuss if needed.

Best,
Greg

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7730 | Fax: 212.561.7777
GDemo@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

-----Original Message-----
From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
Sent: Tuesday, December 20, 2022 11:03 AM
To: Gregory V. Demo <GDemo@pszjlaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

Greg, we're OK with the proposed extension and will look for your draft agreement.

Tom

Thomas A. Uebler
McCollom D'Emilio Smith Uebler LLC
(302) 468-5963
tuebler@mdsulaw.com

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-----Original Message-----
From: Gregory V. Demo <GDemo@pszjlaw.com>
Sent: Monday, December 19, 2022 12:24 PM
To: Thomas Uebler <tuebler@mdsulaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

EXTERNAL EMAIL

Tom - Checking back in on this. We'd like to have something signed this week if possible.

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7730 | Fax: 212.561.7777
GDemo@pszjlaw.com
vCard | Bio | LinkedIn

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-----Original Message-----
From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
Sent: Tuesday, December 13, 2022 3:05 PM
To: Gregory V. Demo <GDemo@pszjlaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

No but I'll check in with Pat again now.

Thomas A. Uebler
McCollom D'Emilio Smith Uebler LLC
(302) 468-5963
tuebler@mdsulaw.com

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-----Original Message-----
From: Gregory V. Demo <GDemo@pszjlaw.com>
Sent: Tuesday, December 13, 2022 3:04 PM
To: Thomas Uebler <tuebler@mdsulaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

EXTERNAL EMAIL

Hi Tom - Any update?

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7730 | Fax: 212.561.7777
GDemo@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

-----Original Message-----
From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
Sent: Thursday, December 8, 2022 11:24 AM
To: Gregory V. Demo <GDemo@pszjlaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

When I hear back from Pat, I'll let you know.

Thomas A. Uebler
McCollom D'Emilio Smith Uebler LLC
(302) 468-5963
tuebler@mdsulaw.com

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-----Original Message-----
From: Gregory V. Demo <GDemo@pszjlaw.com>
Sent: Thursday, December 8, 2022 11:23 AM
To: Thomas Uebler <tuebler@mdsulaw.com>
Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: RE: revised

EXTERNAL EMAIL

Tom,

Following up again. Can you let me know where we stand on the tolling agreement?

Best,
Greg

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7730 | Fax: 212.561.7777
GDemo@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

-----Original Message-----
From: Gregory V. Demo
Sent: Wednesday, December 7, 2022 11:47 AM
To: Thomas Uebler <tuebler@mdsulaw.com>

Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>; rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
Subject: Re: revised

Tom,

Can you confirm you received access to the website and that Pat is in agreement with the terms below?

Greg

Gregory V. Demo
(212) 561-7730

Sent from my iPad

> On Dec 5, 2022, at 11:27 AM, Gregory V. Demo <GDemo@pszjlaw.com> wrote:
>
> Tom,
>
> Highland took down the website. They're going to put it back up and you'll get an automated invite.
>
> My client mentioned that he'd spoken to Pat and that they discussed extending the deadline to the earlier of (i) December 31, 2023); (ii) the date Jim Seery is no longer the Claimant Trustee; or (iii) the date the Claimant Trust no longer owns Reorganized Highland. Can you confirm your client's agreement and I'll send around an amendment to the tolling agreement for your review.
>
> Best,
> Greg
>
> Gregory V. Demo
> Pachulski Stang Ziehl & Jones LLP
> Tel: 212.561.7730 | Fax: 212.561.7777 GDemo@pszjlaw.com vCard | Bio |
> LinkedIn
>
>
> Los Angeles | San Francisco | Wilmington, DE | New York | Houston
>
>
> -----Original Message-----
> From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
> Sent: Monday, December 5, 2022 11:03 AM
> To: Gregory V. Demo <GDemo@pszjlaw.com>
> Cc: 'dyork@grayreed.com' <dyork@grayreed.com>; Jason S. Brookner
> <jbrookner@grayreed.com>; 'rdaniels@grayreed.com'
> <rdaniels@grayreed.com>; John A. Morris <jmorris@pszjlaw.com>
> Subject: RE: revised
>
> Greg, we're OK with 6 additional months. Can you send whatever documentation you have in mind?
>
> Also, can you send me the invite to the portal in which you shared docs with Pat so I can access?
>
> Thomas A. Uebler
> McCollom D'Emilio Smith Uebler LLC
> (302) 468-5963
> tuebler@mdsulaw.com
>
> This email (including any attachments) is intended solely for the recipient(s) named above and may contain information

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>
> -----Original Message-----
> From: Gregory V. Demo <GDemo@pszjlaw.com>
> Sent: Friday, December 2, 2022 12:50 PM
> To: Thomas Uebler <tuebler@mdsulaw.com>
> Cc: 'dyork@grayreed.com' <dyork@grayreed.com>; Jason S. Brookner
> <jbrookner@grayreed.com>; 'rdaniels@grayreed.com'
> <rdaniels@grayreed.com>; John A. Morris <jmorris@pszjlaw.com>
> Subject: RE: revised
>
>
>
> **EXTERNAL EMAIL**
>
>
>
>
> Tom,
>
> The tolling agreement with Pat expires on January 11, 2023. We would like to extend for an additional six months. Can you please let me know if Pat is amenable to that?
>
> Best,
> Greg
>
> Gregory V. Demo
> Pachulski Stang Ziehl & Jones LLP
> Tel: 212.561.7730 | Fax: 212.561.7777
> GDemo@pszjlaw.com
> vCard | Bio | LinkedIn
>
>
> Los Angeles | San Francisco | Wilmington, DE | New York | Houston
>
>
> -----Original Message-----
> From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
> Sent: Tuesday, July 26, 2022 10:17 AM
> To: Gregory V. Demo <GDemo@pszjlaw.com>
> Cc: 'dyork@grayreed.com' <dyork@grayreed.com>; Jason S. Brookner
> <jbrookner@grayreed.com>; 'rdaniels@grayreed.com'
> <rdaniels@grayreed.com>; John A. Morris <jmorris@pszjlaw.com>
> Subject: RE: revised
>
> Greg,
>
> Pat is going to reach out to Seery. He's finding our back and forth to be unproductive.
>
> Tom
>
> Thomas A. Uebler
> McCollom D'Emilio Smith Uebler LLC
> (302) 468-5963
> tuebler@mdsulaw.com

>
> This email (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged, or legally protected. Any unauthorized use or dissemination of this email is strictly prohibited. If you have received this email in error, please immediately notify the sender and delete all copies of this email. Thank you for your cooperation.
>
> -----Original Message-----
> From: Gregory V. Demo <GDemo@pszjlaw.com>
> Sent: Tuesday, July 26, 2022 9:30 AM
> To: Thomas Uebler <tuebler@mdsulaw.com>
> Cc: 'dyork@grayreed.com' <dyork@grayreed.com>; Jason S. Brookner
> <jbrookner@grayreed.com>; 'rdaniels@grayreed.com'
> <rdaniels@grayreed.com>; John A. Morris <jmorris@pszjlaw.com>
> Subject: RE: revised
>
>
>
> **EXTERNAL EMAIL**
>
>
>
>
> Tom,
>
> I just tried you. Can we schedule a time to discuss today?
>
> Best,
> Greg
>
> Gregory V. Demo
> Pachulski Stang Ziehl & Jones LLP
> Tel: 212.561.7730 | Fax: 212.561.7777
> GDemo@pszjlaw.com
> vCard | Bio | LinkedIn
>
>
> Los Angeles | San Francisco | Wilmington, DE | New York | Houston
>
> -----Original Message-----
> From: Gregory V. Demo
> Sent: Monday, July 25, 2022 6:13 PM
> To: 'Thomas Uebler' <tuebler@mdsulaw.com>
> Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>;
> rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
> Subject: RE: revised
>
> Tom,
>
> Our comments are attached. I think they should be self-explanatory but we need a deadline on this. It can't just be open ended.
>
> Happy to discuss. Are you free at 5:30 CT?
>
> Best,
> Greg
>
> Gregory V. Demo

> Pachulski Stang Ziehl & Jones LLP
> Tel: 212.561.7730 | Fax: 212.561.7777
> GDemo@pszjlaw.com
> vCard | Bio | LinkedIn
>
>
> Los Angeles | San Francisco | Wilmington, DE | New York | Houston
>
>
> -----Original Message-----
> From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
> Sent: Monday, July 25, 2022 12:32 PM
> To: Gregory V. Demo <GDemo@pszjlaw.com>
> Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>;
> rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
> Subject: RE: revised
>
> Greg, our edits are attached in clean and redline. If you want to have a call today, I'm free after 3:30 ET.
>
> Tom
>
> Thomas A. Uebler
> McCollom D'Emilio Smith Uebler LLC
> (302) 468-5963
> tuebler@mdsulaw.com
>
> This email (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged, or legally protected. Any unauthorized use or dissemination of this email is strictly prohibited. If you have received this email in error, please immediately notify the sender and delete all copies of this email. Thank you for your cooperation.
>
> -----Original Message-----
> From: Gregory V. Demo <GDemo@pszjlaw.com>
> Sent: Friday, July 22, 2022 2:35 PM
> To: Thomas Uebler <tuebler@mdsulaw.com>
> Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>;
> rdaniels@grayreed.com; John A. Morris <jmorris@pszjlaw.com>
> Subject: Re: revised
>
>
>
> **EXTERNAL EMAIL**
>
>
>
>
> Tom,
>
> Let me know if you'd like to discuss.
>
> Best,
> Greg
>
> Sent from my iPhone
>
> On Jul 21, 2022, at 6:07 PM, Gregory V. Demo <GDemo@pszjlaw.com> wrote:
>

> Tom,
>
> Please see our attached revisions. Happy to jump on a call if easier.
>
> Best,
> Greg
>
> Gregory V. Demo
> Pachulski Stang Ziehl & Jones LLP
> Tel: 212.561.7730 | Fax: 212.561.7777
> GDemo@pszjlaw.com
> vCard | Bio | LinkedIn
>
>
> Los Angeles | San Francisco | Wilmington, DE | New York | Houston
>
>
> -----Original Message-----
> From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
> Sent: Thursday, July 21, 2022 2:28 PM
> To: Gregory V. Demo <GDemo@pszjlaw.com>
> Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>;
> rdaniels@grayreed.com
> Subject: RE: revised
>
> Greg, our edits and comments are attached. Let me know if you want to discuss anything.
>
> Tom
>
> Thomas A. Uebler
> McCollom D'Emilio Smith Uebler LLC
> (302) 468-5963
> tuebler@mdsulaw.com
>
> This email (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged, or legally protected. Any unauthorized use or dissemination of this email is strictly prohibited. If you have received this email in error, please immediately notify the sender and delete all copies of this email. Thank you for your cooperation.
>
> -----Original Message-----
> From: Gregory V. Demo <GDemo@pszjlaw.com>
> Sent: Thursday, July 21, 2022 8:50 AM
> To: Thomas Uebler <tuebler@mdsulaw.com>
> Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>;
> rdaniels@grayreed.com
> Subject: RE: revised
>
>
>
> **EXTERNAL EMAIL**
>
>
>
>
> Could you call my cell? (312) 662-3573
>
> I'm working from home today.

> Gregory V. Demo
> Pachulski Stang Ziehl & Jones LLP
> Tel: 212.561.7730 | Fax: 212.561.7777
> GDemo@pszjlaw.com
> https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.p%2F&data=05%7C01%7Ctuebler%40mdsulaw.com%7C52526575737d4037841908dae3881b53%7C61e08988dfc042a8a6e0426ba0394b38%7C0%7C0%7C638072470982345746%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=F%2FpIW6qs6%2Bmg7BTIc6oMw1v1NdCvKDGzmq9XEtNR0UU%3D&reserved=0
> %2F&data=05%7C01%7Ctuebler%40mdsulaw.com%7Cc5b0701500d04e84a54308dae2c
> 919dc%7C61e08988dfc042a8a6e0426ba0394b38%7C0%7C0%7C638071650763029753%
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> 1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=E9WdJ5Gv6fUWstCOMp%2BGao24n
> DY4ov4rsAnl%2Bt5hsVs%3D&reserved=0
> %2F&data=05%7C01%7Ctuebler%40mdsulaw.com%7C32129f2452a7497345b908dae1e
> 5e1c3%7C61e08988dfc042a8a6e0426ba0394b38%7C0%7C0%7C638070674742527644%
> 7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik
> 1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=r7mA%2FmMtTGiZojdCvBtkeQtyT
> kJs1HtrXKfR%2FgA%2B1JQ%3D&reserved=0
> %2F&data=05%7C01%7Ctuebler%40mdsulaw.com%7C288a5cec6d1f405f728c08d
> add45385e%7C61e08988dfc042a8a6e0426ba0394b38%7C0%7C0%7C638065586635477
> 853%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTi
> I6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=1kxdvVWFfax9A8gvLki
> nW9TW8OFhUu6fqnXn3%2Fws1DI%3D&reserved=0
> http://szjlaw.com%2F
> &data=05%7C01%7Ctuebler%40mdsulaw.com%7C09e1ab4d11f44
> 4f38db908dad9388166%7C61e08988dfc042a8a6e0426ba0394b38%7C0%7C0%7C63806
> 1133981586465%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2lu
> MzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=uBRSoMw8H
> 1UJnCnt%2ByjQ%2Fhtt%2Bkou8R3pit0TZmD6d0E%3D&reserved=0
>
> Los Angeles | San Francisco | Wilmington, DE | New York | Houston
>
> -----Original Message-----
> From: Thomas Uebler [mailto:tuebler@mdsulaw.com]
> Sent: Thursday, July 21, 2022 8:12 AM
> To: Gregory V. Demo
> Cc: dyork@grayreed.com; Jason S. Brookner; rdaniels@grayreed.com
> Subject: RE: revised
>
> Yes that works. I will call your office number.
>
> Thomas A. Uebler
> McCollom D'Emilio Smith Uebler LLC
> (302) 468-5963
> tuebler@mdsulaw.com
>
> This email (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged, or legally protected. Any unauthorized use or dissemination of this email is strictly prohibited. If you have received this email in error, please immediately notify the sender and delete all copies of this email. Thank you for your cooperation.
>
> -----Original Message-----
> From: Gregory V. Demo <GDemo@pszjlaw.com>
> Sent: Wednesday, July 20, 2022 10:03 PM
> To: Thomas Uebler <tuebler@mdsulaw.com>

> Cc: dyork@grayreed.com; Jason S. Brookner <jbrookner@grayreed.com>;
> rdaniels@grayreed.com
> Subject: Re: revised
>
>
>
> **EXTERNAL EMAIL**
>
>
>
>
> Happy to chat. Are you free tomorrow at 1030 est?
>
> Sent from my iPhone
>
> On Jul 20, 2022, at 9:58 PM, Thomas Uebler <tuebler@mdsulaw.com> wrote:
>
>
> Greg, I'll discuss with Pat and get back to you with comments.
>
> One basic question I have (which may show my ignorance of the bankruptcy process) is why a tolling agreement is needed when Section 9 of our settlement agreement already states, "Any litigation by and between the Debtor and Daugherty concerning the validity and amount of the Reserved Claim shall be stayed until the IRS makes a final determination with respect to the IRS Audit Dispute." I would have thought a claim objection would fall within "litigation … concerning … the Reserved Claim," which is already stayed until the IRS acts. No need to respond by email, but a quick call would be helpful so I can better understand the context of the proposed agreement.
>
> Tom
>
> Thomas A. Uebler
> McCollom D'Emilio Smith Uebler LLC
> (302) 468-5963
> tuebler@mdsulaw.com<mailto:tuebler@mdsulaw.com>
>
> This email (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged, or legally protected. Any unauthorized use or dissemination of this email is strictly prohibited. If you have received this email in error, please immediately notify the sender and delete all copies of this email. Thank you for your cooperation.
>
> From: Gregory V. Demo <GDemo@pszjlaw.com>
> Sent: Wednesday, July 20, 2022 1:28 PM
> To: 'dyork@grayreed.com' <dyork@grayreed.com>; Thomas Uebler
> <tuebler@mdsulaw.com>; Jason S. Brookner <jbrookner@grayreed.com>;
> 'rdaniels@grayreed.com' <rdaniels@grayreed.com>
> Subject: FW: revised
>
>
> **EXTERNAL EMAIL**
>
>
> Good afternoon – I got involuntarily brought into the email communication last night. I'd be glad to work with you all directly to finalize this document, so please go ahead and send me any changes. No need to copy Seery on any further communications.
>
> Best,
> Greg
> Gregory V. Demo

> Pachulski Stang Ziehl & Jones LLP
> Tel: 212.561.7730 | Fax: 212.561.7777
> GDemo@pszjlaw.com<mailto:GDemo@pszjlaw.com>
> vCard<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2
> http://Fwww.pszjlaw.com%2Fvcard-130.vcf &data=05%7C01%7Ctuebler%40mdsulaw.
> com%7C09e1ab4d11f444f38db908dad9388166%7C61e08988dfc042a8a6e0426ba0394
> b38%7C0%7C0%7C638061133981586465%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wL
> jAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&
> amp;sdata=FIrIM%2BT9jJyRGcVHrMNpurZoehMP%2Fel8EozA1CO3k8M%3D&reser
> ved=0> |
> Bio<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fw
> http://ww.pszjlaw.com%2Fattorneys-130.html
> &data=05%7C01%7Ctuebler%40mdsul
> aw.com%7C09e1ab4d11f444f38db908dad9388166%7C61e08988dfc042a8a6e0426ba0
> 394b38%7C0%7C0%7C638061133981586465%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC
> 4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%
> 7C&sdata=ksjtsTfz3%2F7QCEpvecj2H0fSLSO2oM%2FvelzzdTEYp%2F8%3D&
> reserved=0> |
> LinkedIn<https://nam12.safelinks.protection.outlook.com/?url=https%3A%
> 2F%2Fwww.linkedin.com%2Fin%2Fgregory-demo-482aa112&data=05%7C01%7C
> tuebler%40mdsulaw.com%7C09e1ab4d11f444f38db908dad9388166%7C61e08988dfc
> 042a8a6e0426ba0394b38%7C0%7C0%7C638061133981586465%7CUnknown%7CTWFpbGZ
> sb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3
> D%7C3000%7C%7C%7C&sdata=rDutclZi3imuAEEP6PiiGQJRLI4INlMn2EbYXytfxe
> 4%3D&reserved=0>
>
> [image001.jpg]
> Los Angeles | San Francisco | Wilmington, DE | New York | Houston
>
> From: Patrick Daugherty [mailto:pdaugherty@glacierlakecap.com]
> Sent: Wednesday, July 20, 2022 11:47 AM
> To: James Seery <jpseeryjr@gmail.com<mailto:jpseeryjr@gmail.com>>
> Cc: Gregory V. Demo <GDemo@pszjlaw.com<mailto:GDemo@pszjlaw.com>>;
> Drew York <dyork@grayreed.com<mailto:dyork@grayreed.com>>; Thomas
> Uebler <tuebler@mdsulaw.com<mailto:tuebler@mdsulaw.com>>; Jason S.
> Brookner <jbrookner@grayreed.com<mailto:jbrookner@grayreed.com>>; Ruth
> Ann Daniels <rdaniels@grayreed.com<mailto:rdaniels@grayreed.com>>
> Subject: Re: revised
>
> Sorry for the delay, I tested positive for Covid yesterday and was not feeling well. I will revert today.
>
> I included my counsel in the email distribution.
>
> Congrats on the Summary Judgment win for $60 million on the notes! I see that the Dondero clan have turned on their counsel - Wow!
>
> Patrick H Daugherty, Esq.
> President and Chief Investment Officer
>
> Glacier Lake Capital Advisors
> (t) +1 214.932.9140 (m) +1 972.679.7487
> (e)
> pdaugherty@glacierlakecap.com<mailto:pdaugherty@glacierlakecap.com>
> _____
> From: James Seery <jpseeryjr@gmail.com<mailto:jpseeryjr@gmail.com>>
> Sent: Tuesday, July 19, 2022 2:35 PM
> To: Patrick Daugherty

> <pdaugherty@glacierlakecap.com<mailto:pdaugherty@glacierlakecap.com>>
> Cc: Greg V. Demo <gdemo@pszjlaw.com<mailto:gdemo@pszjlaw.com>>
> Subject: revised
>
>
> Pat: Hopefully this cleaned up version works for you. Can you give us the contact details? Not sure why Demo did not have them.
>
>
>
> Thanks
>
> Best. Jim
>
>
>
> Jim Seery
>
> 631-804-2049
>
> jpseeryjr@gmail.com<mailto:jpseeryjr@gmail.com>
>
>
>
>
>
>
>

Thomas Uebler

From: Thomas Surgent <TSurgent@hcmlp.com>
Sent: Tuesday, January 15, 2013 11:52 AM
To: Paul Lackey (pbl@lhlaw.net); Michael Aigen (mpa@lhlaw.net); Patrick Boyce; Lane Britain; Ted Dameris; Scott Ellington; Katz, Marc (MarcKatz@andrewskurth.com)
Cc: Hough, Steven C.
Subject: HERA docs for review
Attachments: HERA (1st) Amendment (Walia-related) to Second Amended Restated LLC Agreement (00236187-5).doc; HERA (2d) Amendment (indemnification) to Second Amended Restated LLC Agreement (00236453-2).doc; HERA Member Consent (2d) (indemnification) (00236456-2).doc; HERA (3d) Amendment (amendment) to Second Amended Restated LLC Agreement (00236454-2).doc; HERA - Written Consent (3d) Approving Transfer and Amendment Amendment (00236464-2).doc; HERA Member Consent (3d) (transfer and amendment) (00236465-2).doc; PRIVILEGED Offer to Purchase (1-15-2013).docx; HERA Transfer Agreement (00236189-3).doc; HERA - Written Consent Removing Dougherty and Appointing Ellington (00236185-3).doc; HERA - Written Consent Removing Walia and Approving Amendment (00236186-3).doc; HERA - Written Consent Approving Indemnification Amendment (00236462).doc

Importance: High

Attached are revised versions of all the HERA docs for review, which incorporate Delaware counsel comments. Paul/Michael: I will call you to discuss the form of release contained in the transfer agreement to determine what final tweaks are necessary to cover the issue previously discussed. Marc: I will call you to explain.

Otherwise the docs should be done other than filling in blanks.

Plan is to get this closed this week, so we need to finalize quickly.

THOMAS SURGENT | CHIEF COMPLIANCE OFFICER & DEPUTY GENERAL COUNSEL

HIGHLAND CAPITAL MANAGEMENT, LP

300 Crescent Court | Suite 700 | Dallas, Texas 75201
Office: 972.419-6205 | Fax: 972.628.4147
tsurgent@hcmlp.com | www.hcmlp.com

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DEFENDANT'S EXHIBIT
57
25-03055

PDADV_010052

WRITTEN CONSENT
OF BOARD OF DIRECTORS
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

Effective as of January __, 2013

THE UNDERSIGNED members of the board of directors (the "***Board***") of Highland Employee Retention Assets LLC, a Delaware limited liability company (the "***Company***"), acting pursuant to the Delaware Limited Liability Company Act and the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the "***Company Agreement***"), as amended, do hereby adopt the following resolutions by written consent:

WHEREAS, the Company desires to amend Sections 5.1 and 5.2 of the Company Agreement in the form previously reviewed by the undersigned (the "***Amendment***");

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the affirmative vote or written consent of at least 75% of the members of the Board is required in order to amend, alter, change or repeal any of the provisions of the Company Agreement;

WHEREAS, pursuant to Article IX of the Company Agreement, the prior written consent of the Board is required to assign Series A Preferred Units of the Company;

WHEREAS, a majority-in-interest of the Company's Series A Preferred Units have consented to and ratified the Company adopting the Amendment;

WHEREAS, the holders of a majority-in-interest of the Company's Series A Preferred Units have accepted [BUYER'S] Offer to Purchase dated [January ___, 2013] (the "***Offer***");

WHEREAS, a majority-in-interest of the Company's Series A Preferred Units have consented to and ratified the assignment of Series A Preferred Units of the Company to [BUYER] pursuant to the Offer to Purchase dated [January ___, 2013] (the "***Assignment***").

NOW, THEREFORE, BE IT

RESOLVED, that, subject to and conditioned upon a majority-in-interest of the Company's Series A Preferred Units having consented to and ratified the Amendment and having accepted the Offer, the Board approves the proposed Amendment;

RESOLVED FURTHER, that, subject to and conditioned upon a majority-in-interest of the Company's Series A Preferred Units having consented to and ratified the Assignment and having accepted the Offer, the Board approves the Assignment;

RESOLVED FURTHER, that the Company's directors be, and they hereby are, authorized, empowered and directed for, in the Company's name and behalf, to do and perform all acts and deeds, to execute and deliver all documents, instruments and other

agreements, to waive any and all conditions and do all things necessary or helpful to carry out and comply with the terms and provisions of the foregoing resolutions; and that all acts and deeds of the directors and agents on behalf of the Company prior to the date hereof shall be, and they hereby are, in all respects, ratified, approved, confirmed and adopted as the Company's acts and deeds;

RESOLVED FURTHER, that this authorization shall remain in effect until further written notice from the Company.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned have executed this Consent to be effective as of the date first set forth above.

DIRECTORS:

_____
Patrick Boyce

_____
John Honis

_____
William L. Britain

_____
Ted Dameris

_____
Scott Ellington

WRITTEN CONSENT
OF BOARD OF DIRECTORS
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

Effective as of January __, 2013

THE UNDERSIGNED members of the board of directors (the "***Board***") of Highland Employee Retention Assets LLC, a Delaware limited liability company (the "***Company***"), acting pursuant to the Delaware Limited Liability Company Act and the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the "***Company Agreement***"), as amended, do hereby adopt the following resolutions by written consent:

WHEREAS, the Company desires to amend Article VIII of the Company Agreement in the form previously reviewed by the undersigned (the "***Amendment***");

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the affirmative vote or written consent of at least 75% of the members of the Board is required in order to amend, alter, change or repeal any of the provisions of the Company Agreement;

WHEREAS, a majority-in-interest of the Company's Series A Preferred Units have consented to and ratified the Company adopting the Amendment.

NOW, THEREFORE, BE IT

RESOLVED, that, subject to and conditioned upon a majority-in-interest of the Company's Series A Preferred Units having consented to and ratified the Amendment, the Board approves the proposed Amendment;

RESOLVED FURTHER, that the Company's directors be, and they hereby are, authorized, empowered and directed for, in the Company's name and behalf, to do and perform all acts and deeds, to execute and deliver all documents, instruments and other agreements, to waive any and all conditions and do all things necessary or helpful to carry out and comply with the terms and provisions of the foregoing resolutions; and that all acts and deeds of the directors and agents on behalf of the Company prior to the date hereof shall be, and they hereby are, in all respects, ratified, approved, confirmed and adopted as the Company's acts and deeds;

RESOLVED FURTHER, that this authorization shall remain in effect until further written notice from the Company.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned have executed this Consent to be effective as of the date first set forth above.

DIRECTORS:

_____
Patrick Boyce

_____
John Honis

_____
William L. Britain

_____
Ted Dameris

_____
Scott Ellington

A&B Comments on DRAFT: 1/9/13

WRITTEN CONSENT
OF BOARD OF DIRECTORS
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

Effective as of January __, 2013

THE UNDERSIGNED members of the board of directors (the "***Board***") of Highland Employee Retention Assets LLC, a Delaware limited liability company (the "***Company***"), acting pursuant to the Delaware Limited Liability Company Act and the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the "***Company Agreement***"), do hereby adopt the following resolutions by written consent:

WHEREAS, Mr. R. Joseph Dougherty has resigned as a member of the Board of the Company and the Company now desires to accept his resignation;

WHEREAS, the Company desires to appoint Mr. Scott Ellington to serve on the Board to fill such vacancy;

WHEREAS, Mr. Ellington is a holder of Series A Preferred Units of the Company and is willing to serve on the Board;

NOW, THEREFORE, BE IT

RESOLVED, that the Company hereby accepts Mr. Dougherty's resignation from the Board to be effective immediately;

RESOLVED FURTHER, that the Company hereby approves the appointment of Mr. Ellington to the Board to serve as a director of the Company;

RESOLVED FURTHER, that the Company's directors be, and they hereby are, authorized, empowered and directed for, in the Company's name and behalf, to do and perform all acts and deeds, to execute and deliver all documents, instruments and other agreements, to waive any and all conditions and do all things necessary or helpful to carry out and comply with the terms and provisions of the foregoing resolutions; and that all acts and deeds of the directors and agents on behalf of the Company prior to the date hereof shall be, and they hereby are, in all respects, ratified, approved, confirmed and adopted as the Company's acts and deeds;

RESOLVED FURTHER, that this authorization shall remain in effect until further written notice from the Company.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned have executed this Consent to be effective as of the date first set forth above.

DIRECTORS:

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

Amit Walia

A&B Comments on DRAFT 1/09/13

WRITTEN CONSENT
OF BOARD OF DIRECTORS
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

Effective as of January __, 2013

THE UNDERSIGNED members of the board of directors (the "***Board***") of Highland Employee Retention Assets LLC, a Delaware limited liability company (the "***Company***"), acting pursuant to the Delaware Limited Liability Company Act and the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the "***Company Agreement***"), do hereby adopt the following resolutions by written consent:

WHEREAS, the Company desires to remove Mr. Amit Walia from the Board of the Company;

WHEREAS, the Company desires to amend Section 5.1 of the Company Agreement in the form previously reviewed by the undersigned (the "***Amendment***"); and

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the affirmative vote or written consent of at least 75% of the members of the Board is required in order to amend, alter, change or repeal any of the provisions of the Company Agreement.

NOW, THEREFORE, BE IT

RESOLVED, that the remaining members of the Board unanimously approve the removal of, and hereby remove, Mr. Walia from the Board to be effective immediately;

RESOLVED FURTHER, that the remaining members of the Board unanimously approve the proposed Amendment;

RESOLVED FURTHER, that the Company's directors be, and they hereby are, authorized, empowered and directed for, in the Company's name and behalf, to do and perform all acts and deeds, to execute and deliver all documents, instruments and other agreements, to waive any and all conditions and do all things necessary or helpful to carry out and comply with the terms and provisions of the foregoing resolutions; and that all acts and deeds of the directors and agents on behalf of the Company prior to the date hereof shall be, and they hereby are, in all respects, ratified, approved, confirmed and adopted as the Company's acts and deeds;

RESOLVED FURTHER, that this authorization shall remain in effect until further written notice from the Company.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned have executed this Consent to be effective as of the date first set forth above.

DIRECTORS:

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

Scott Ellington

A&B Comments 1/14/13 on DRAFT 1/09/13

AMENDMENT
TO
SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

THIS AMENDMENT (this "***Amendment***") to the Second Amended and Restated Limited Liability Company Agreement of HIGHLAND EMPLOYEE RETENTION ASSETS LLC (the "***Company***") dated as of February 16, 2012 (the "***Company Agreement***") is entered into as of January __, 2013 (the "***Effective Date***") by and among the members of the board of directors of the Company (the "***Board***"). All capitalized terms used but not defined in this Amendment and defined in the Company Agreement shall have the meanings ascribed to them in the Company Agreement.

WHEREAS, the Company desires to amend Section 5.1 of the Company Agreement;

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the Company requires the affirmative vote or written consent of at least 75% of the members of the Board in order to amend, alter, change or repeal any of the provisions of the Company Agreement.

NOW, THEREFORE, the Company amends the Company Agreement as follows as of the Effective Date:

1. Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

> Section 5.1 General. The Company shall be managed by a Board of Directors (the "***Board***"), which shall at all times consist of five members, consisting of the following individuals:
>
> Patrick Boyce
> John Honis
> William L. Britain
> Ted Dameris
> Scott Ellington
>
> The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member shall cease to hold Series A Preferred Units or until such member's death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by holder(s) of Series A Preferred Units elected by a majority of the

remaining members of the Board, or if no such majority decision can be reached, by the holder(s) of the greatest number of Series A Preferred Units who are not then currently a member of the Board and who are willing to serve on the Board, or if no Series A Preferred Units remain outstanding, as determined by a majority of the remaining members of the Board.

2. This Amendment may be executed in multiple counterparts, each of which, when assembled to include an original, facsimile or scanned signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed document. All such fully executed original, facsimile or scanned counterparts will collectively constitute a single document.

3. Except as modified hereby, the Company Agreement shall remain in full effect and the Amendment shall be binding upon the Company and its successors and assigns. If any inconsistency exists or arises between the terms of the Amendment and the terms of the Company Agreement, the Amendment shall prevail.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

DIRECTORS:

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

Scott Ellington

A&B Comments 1/14/13 on DRAFT 1/09/13

SECOND AMENDMENT
TO
SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

THIS SECOND AMENDMENT (this "***Amendment***") to the Second Amended and Restated Limited Liability Company Agreement of HIGHLAND EMPLOYEE RETENTION ASSETS LLC (the "***Company***") dated as of February 16, 2012 (the "***Company Agreement***"), as amended, is entered into as of January __, 2013 (the "***Effective Date***") by and among the members of the board of directors of the Company (the "***Board***"). All capitalized terms used but not defined in this Amendment and defined in the Company Agreement shall have the meanings ascribed to them in the Company Agreement.

WHEREAS, the Company desires to amend Article VIII of the Company Agreement;

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the Company requires the affirmative vote or written consent of at least 75% of the members of the Board in order to amend, alter, change or repeal any of the provisions of the Company Agreement;

WHEREAS, a majority-in-interest of the Company's Series A Preferred Units have consented to and ratified the Company adopting the within Amendment.

NOW, THEREFORE, the Company amends the Company Agreement as follows as of the Effective Date:

1. Article VIII of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Indemnification and Liability. (a) To the maximum extent permitted by applicable law, no current or future member of the Board, no current or future officer of the Company nor the Initial Member (each an "Indemnitee") shall be liable to the Company or any other third party (i) for mistakes of judgment, (ii) for any act or omission suffered or taken by it, (iii) for breach of fiduciary duty owed to the Company and/or its members or (iv) for losses due to any such mistake, action or inaction, or breach of fiduciary duty.

(b) To the fullest extent permitted by applicable law as the same exists or may hereafter be amended, the Company shall indemnify and hold harmless, and advance expenses including attorneys' fees, to an Indemnitee against all liabilities and claims against each such person arising from such person's performance of his duties in conformance with the terms of this Agreement. Notwithstanding the preceding sentence, the Company shall be required to indemnify, or advance expenses to, an Indemnitee in

connection with a proceeding (or part thereof) commenced by such Indemnitee only if the commencement of such proceeding (or part thereof) by the Indemnitee was authorized by the Board.

(c) An Indemnitee may consult with legal counsel or accountants selected by the Board and/or the Initial Member and, to the maximum extent permitted by applicable law, any action or omission suffered or taken in good faith in reliance and in accordance with the written opinion or advice of any such counsel or accountants (provided such counsel or accountants have been selected with reasonable care) shall be fully protected and justified with respect to the action or omission so suffered or taken.

(d) The rights conferred upon Indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a member of the Board, an officer of the Company or the Initial Member and shall inure to the benefit of the Indemnitee's heirs, executors, administrators and successors. Any amendment, alteration or repeal of this Article VIII that adversely affects any right of an Indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any liability or claim involving any occurrence or any alleged occurrence of any action or omission that took place prior to such amendment or repeal.

2. This Amendment may be executed in multiple counterparts, each of which, when assembled to include an original, facsimile or scanned signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed document. All such fully executed original, facsimile or scanned counterparts will collectively constitute a single document.

3. Except as modified hereby, the Company Agreement shall remain in full effect and the Amendment shall be binding upon the Company and its successors and assigns. If any inconsistency exists or arises between the terms of the Amendment and the terms of the Company Agreement, the Amendment shall prevail.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

DIRECTORS:

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

Scott Ellington

A&B Comments 1/14/13 on DRAFT 1/09/13

THIRD AMENDMENT
TO
SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

THIS THIRD AMENDMENT (this "***Amendment***") to the Second Amended and Restated Limited Liability Company Agreement of HIGHLAND EMPLOYEE RETENTION ASSETS LLC (the "***Company***") dated as of February 16, 2012 (the "***Company Agreement***"), as amended, is entered into as of January __, 2013 (the "***Effective Date***") by and among the members of the board of directors of the Company (the "***Board***"). All capitalized terms used but not defined in this Amendment and defined in the Company Agreement shall have the meanings ascribed to them in the Company Agreement.

WHEREAS, the Company desires to amend Sections 5.1 and 5.2 of the Company Agreement;

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the Company requires the affirmative vote or written consent of at least 75% of the members of the Board in order to amend, alter, change or repeal any of the provisions of the Company Agreement;

WHEREAS, a majority-in-interest of the Company's Series A Preferred Units have consented to and ratified the Company adopting the within Amendment;

WHEREAS, the holders of a majority-in-interest of the Company's Series A Preferred Units have accepted [BUYER'S] Offer to Purchase dated [January ___, 2013].

NOW, THEREFORE, the Company amends the Company Agreement as follows as of the Effective Date:

1. Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

> Section 5.1 General. The Company shall be managed by a Board of Directors (the "***Board***"), which shall at all times consist of five members, consisting of the following individuals:
>
> Patrick Boyce
> John Honis
> William L. Britain
> Ted Dameris
> Scott Ellington
>
> The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to

bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member's death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

2. Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board. (a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

3. This Amendment may be executed in multiple counterparts, each of which, when assembled to include an original, facsimile or scanned signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed document. All such fully executed original, facsimile or scanned counterparts will collectively constitute a single document.

4. Except as modified hereby, the Company Agreement shall remain in full effect and the Amendment shall be binding upon the Company and its successors and assigns. If any inconsistency exists or arises between the terms of the Amendment and the terms of the Company Agreement, the Amendment shall prevail.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

DIRECTORS:

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

Scott Ellington

WRITTEN CONSENT
OF HOLDER OF SERIES A PREFERRED UNITS
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the "***Company Agreement***"), as amended:

Article VIII of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Indemnification and Liability. (a) To the maximum extent permitted by applicable law, no current or future member of the Board, no current or future officer of the Company nor the Initial Member (each an "Indemnitee") shall be liable to the Company or any other third party (i) for mistakes of judgment, (ii) for any act or omission suffered or taken by it, (iii) for breach of fiduciary duty owed to the Company and/or its members or (iv) for losses due to any such mistake, action or inaction, or breach of fiduciary duty.

(b) To the fullest extent permitted by applicable law as the same exists or may hereafter be amended, the Company shall indemnify and hold harmless, and advance expenses including attorneys' fees, to an Indemnitee against all liabilities and claims against each such person arising from such person's performance of his duties in conformance with the terms of this Agreement. Notwithstanding the preceding sentence, the Company shall be required to indemnify, or advance expenses to, an Indemnitee in connection with a proceeding (or part thereof) commenced by such Indemnitee only if the commencement of such proceeding (or part thereof) by the Indemnitee was authorized by the Board.

(c) An Indemnitee may consult with legal counsel or accountants selected by the Board and/or the Initial Member and, to the maximum extent permitted by applicable law, any action or omission suffered or taken in good faith in reliance and in accordance with the written opinion or advice of any such counsel or accountants (provided such counsel or accountants have been selected with reasonable care) shall be fully protected and justified with respect to the action or omission so suffered or taken.

(d) The rights conferred upon Indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a member of the Board, an officer of the Company or the Initial Member and shall inure to the benefit of the Indemnitee's heirs, executors, administrators and successors. Any amendment, alteration or repeal of this Article VIII that adversely affects any right of an Indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any liability or claim involving any occurrence or any alleged occurrence of any action or omission that took place prior to such amendment or repeal.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name:_____
By:_____
Number of Series A Preferred Units Held:_____
Dated:_____

WRITTEN CONSENT
OF HOLDER OF SERIES A PREFERRED UNITS
OF
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the "***Company Agreement***"), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the "***Board***"), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce
John Honis
William L. Britain
Ted Dameris
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member's death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board. (a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to [BUYER] pursuant to the Offer to Purchase dated [January ___, 2013].

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name:_____
By:_____
Number of Series A Preferred Units Held:_____
Dated:_____

A&B Comments on DRAFT 1/09/13

TRANSFER AGREEMENT

This Transfer Agreement (this "***Agreement***") is entered into by and among _____ ("***Seller***") and _____ ("***Purchaser***"). Each of Seller and Purchaser are individually referred to as a "***Party***" and together, collectively referred to as the "***Parties***."

WHEREAS, Seller holds _____ units of the Series A Preferred Units of Highland Employee Retention Assets LLC, a Delaware limited liability company ("***HERA***") (the "***Interests***"); and

WHEREAS, Seller desires to transfer the Interests and all of its rights, claims and interests related to or arising from the Interests and settle and release any and all claims that Seller may have with respect to HERA, the Interests, the Board Members of HERA, the Purchaser, Highland Capital Management, L.P. and its affiliates.

NOW, THEREFORE AND IN CONSIDERATION of the mutual covenants contained herein, and other good and valuable consideration, the parties intending to be legally bound hereby agree as follows:

1. Transfer of Interests. Subject to the terms and conditions set forth in this Agreement, Seller hereby sells, transfers, assigns, sets over and otherwise conveys to Purchaser, and Purchaser hereby purchases and takes from Seller, all right, title and interest (whether now owned or hereafter acquired or arising and wherever located) of Seller in, to and under the Interests.

2. Payment. The purchase price for the Interests purchased hereby (the "***Payment Amount***") is $_____.

3. Representations and Warranties of Seller. Seller hereby represents and warrants as follows:

(a) It has all requisite power, authority and capacity, corporate, limited partnership or otherwise, to execute, deliver and perform under this Agreement. Its execution, delivery and performance of this Agreement have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding agreement of such party, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer or conveyance or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.

(b) Seller's Interests are owned of record and beneficially by Seller, free and clear of any obligation, lien, claim, pledge, security interest, liability, charge, contingency or other encumbrance or claim of any nature. Seller has not assigned, pledged or otherwise in any manner whatsoever sold or transferred either by instrument in writing or otherwise, any right, title, interest or claim which it has or may have in HERA or the Interests or any matters arising out of, related thereto, or in connection therewith.

(c) Seller has had access to all information as it deems necessary and appropriate in connection with its decision to enter into this Agreement, including, without limitation, that Seller is aware of the terms of the Second Amended and Restated Operating Agreement of the Company dated February 16, 2012 (as amended, the "***Operating Agreement***"), including Article XII thereof, and the amendment to the Operating Agreement being effected in connection with the tender of at least a majority-in-interest of the Series A Preferred Units of HERA in the Offer, which permits the HERA Member(s) holding a majority-in-interest of the Series A Preferred Units to amend, alter, change or repeal any of the provisions (except Article VIII) of the HERA Operating Agreement. Seller hereby consents to and ratifies this amendment and the Operating Agreement as so amended by the Board and the Board's approval of the assignment of Series A Preferred Units of the Company to Buyer pursuant to the Offer. Seller believes that the Payment Amount, as set forth above and calculated under the terms of the Offer, including application of the Adjustment Amount as determined in Purchaser's sole discretion, is a fair value for the Interests and the sale of the Interests and the Payment Amount is not based on anything other than the fair value of the Interests.

(d) None of HERA or any of its Board members or any of their respective affiliates has recommended or induced Seller to enter into this Agreement.

4. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants as follows:

Purchaser has all requisite power, authority and capacity, corporate, individual or otherwise, to execute, deliver and perform under this Agreement. The execution, delivery and performance by Purchaser of this Agreement have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Purchaser. This Agreement is a legal, valid and binding agreement of Purchaser, enforceable against each in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer or conveyance or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity. Purchaser has had access to all information as it deems necessary and appropriate in connection with its decision to enter into this Agreement. None of HERA or any of its Board members or any of their respective affiliates has recommended or induced Purchaser to enter into this Agreement.

5. Waiver and Release. Seller does hereby and for its predecessors, successors, assigns and affiliates and for all other persons or entities claiming by, through or under any of them, hereby fully, irrevocably and forever RELEASE, ACQUIT AND FOREVER DISCHARGE Purchaser, HERA, Highland Capital Management, L.P., James Dondero and their respective predecessors, successors, assigns, affiliates, subsidiaries, and all their respective past, present and future officers, directors, board members, managers, partners, attorneys, agents, representatives and employees (collectively, the "***Released Parties***"), of and from any and all claims, liabilities, actions, causes of action, demands, rights,

damages, costs, loss of service, expense and compensation whatsoever, both individually and in their official capacities, from the beginning of time through the date of this Agreement, related to, or arising from, any matter whatsoever, whether or not related to HERA, whether or not in contract, in equity, in tort or otherwise, whether pursuant to any rule, regulation, law or otherwise, whether direct or indirect, whether known or unknown, and whether fixed, accrued, contingent or otherwise, which Seller ever had, now have or may hereafter have. Seller acknowledges that his waiver and release herein includes any claims, disputes, obligations, rights, damages, injury, or causes of action which may arise out of facts existing or actions taken by the Released Parties as of the date of this Agreement but which are as yet unknown and which may not be known until some period in the future.

6. Covenant Not to Sue. Seller covenants and agrees that it will not again raise, participate in, assist, or in any way pursue any claims which are being released and discharged in this Agreement in any forum of any kind, including, without limitation, the federal, state or local courts, or federal, state or local agencies or offices of any kind, be they administrative, regulatory, judicial, quasi-judicial, or otherwise.

7. Cooperation. Seller acknowledges and agrees to cooperate with Purchaser and HERA in the event of any future litigation, including any litigation related to HERA. This cooperation includes, but is not limited to, providing background information related to any litigation and Seller's role in the facts underlying the litigation, providing deposition and trial testimony, assisting counsel in preparing for trial, attending depositions and trial, and any other work that Purchaser and HERA reasonably request related to litigation. Additionally, Purchaser agrees not to cooperate with any parties adverse to Purchaser or HERA in any litigation, including any litigation related to HERA.

8. Non-Disparagement. Seller agrees to take no action which is intended, or would reasonably be expected, to harm any of the Released Parties or their reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity to any of them. Seller agrees that he will not disparage or comment negatively with respect to any of the Released Parties.

9. Confidentiality. Except for the disclosure required under Section 11 below, Seller covenants and agrees that the terms and conditions of this Agreement are to be held strictly confidential by him and not revealed to any other person or entity, unless in response to the lawful process of any judicial or governmental authority or as otherwise required by law, with the exception of his attorneys, auditors, other professional advisors, insurers and parent company affiliates who need to know the information and who have been advised of the confidential nature of such information and have agreed to hold such information confidential.

10. Freedom of Choice. Each signatory to this Agreement agrees it has been entered into freely and without duress after having consulted with the attorneys and/or professionals of his/her choice. This Agreement, or any portion thereof, shall not be construed against the Party who initially prepared it, but shall be construed as if all Parties jointly prepared each and every part thereof, and any uncertainty or ambiguity shall not be interpreted to the detriment of any Party on such basis.

11. Miscellaneous. The Parties acknowledge that they had the opportunity to be represented by counsel, and fully understand their rights and obligations under the Agreement. The Parties

acknowledge and agree that each of HERA and the other parties and persons released herein are intended third party beneficiaries of this Agreement, and agree to deliver to HERA a copy of this Agreement promptly following the execution thereof. Further, the Parties declare they have completely read this Agreement, and they enter into the Agreement freely, voluntarily and without coercion or duress. Seller understands that Purchaser is relying upon the representations made by Seller in this Agreement, and Seller knowingly waives (i) any claim that this settlement was induced by any misrepresentation or nondisclosure, and (ii) any right to rescind or avoid this settlement based upon presently existing facts, known or unknown.

12. Applicable Law. Subject to Section 18, it is also understood and agreed that this Agreement shall be governed by and construed in accordance with Delaware law, without regard to its conflict of laws rules. Subject to Section 18, the Parties irrevocably consent to and agree to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (and if the Court of Chancery of the State of Delaware is unavailable, any state court or federal court sitting in Delaware) over any and all disputes among the Parties hereto, whether at law or in equity, based upon, arising out of or relating to this Agreement or the facts and circumstances leading to its execution and delivery, whether in contract, tort or otherwise. Subject to Section 18, the Parties agree that process may be served upon them in any manner authorized by the laws of the State of Delaware and hereby waive, and agree not to assert in any such dispute, any claim that (a) such Party is not subject to the personal jurisdiction of such courts, (b) such Party and its property is immune from any legal process issued by such courts or (c) any litigation commenced in such courts is brought in an inconvenient forum.

13. Severability. In case any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

14. No Admission of Liability. By entering into this Agreement, the Parties do not admit any liability on the part of any Party. In fact, the Parties explicitly and expressly deny any and all liability whatsoever from any and all claims, demands, damages, actions, causes of action, or suits of any kind or nature arising out of HERA and the Interests.

15. Modification of Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, waived, modified, or otherwise changed in any respect or particular whatsoever, except in writing, which writing must be signed by authorized representatives of each Party. The Parties further acknowledge and agree that they will make no claims at any time or place that this Agreement has been orally supplemented, modified, or altered in any respect whatsoever.

16. Further Assurances. Seller agrees that from time to time, it will promptly execute and deliver all further instruments and documents, and take any and all further action, that may be necessary or appropriate, or that Purchaser may reasonably request, in order to collect upon, perfect, protect or more fully evidence the Interests purchased hereunder, or otherwise to enable Purchaser to exercise and enforce any of its rights and remedies related to the Interests.

17. Execution of Agreement. It is understood and agreed that this Agreement may be executed in any number of identical counterparts, each of which shall be deemed original for all purposes.

18. Arbitration. In the event there is an unresolved legal dispute between the parties and/or any of their respective Released Parties 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 a party 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 Delaware. 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 is to be taken pursuant to the Rules of the Court of Chancery of the State of Delaware; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Rules of the Court of Chancery of the State of Delaware. 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 determinative 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 service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Wilmington, Delaware, or another mutually agreeable site. Each party shall bear its own attorney's 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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date appearing next to each Party's signature and this Agreement shall be effective on the date the last signature has been signed upon this Agreement.

SELLER:

_____
Name:

Dated:_____

PURCHASER:

[_____]

By:_____
Name:
Title:

Date:_____

PRIVILEGED AND CONFIDENTIAL
DRAFT: 1/15/2013

Offer to Purchase Statement

January ___, 2013

To the holders (each a "Seller") of Series A Preferred Units of Highland Employee Retention Assets, LLC ("***HERA***"):

_____ ("***Purchaser***") invites you, on the terms and subject to the conditions set forth in this Offer to Purchase, which we refer to herein as this "Statement," to sell all of your Series A Preferred Units of HERA ("***Interests***"), which we refer to herein as the "***Offer***".

Interests tendered for purchase will be purchased, on the terms and subject to the conditions set forth in this Statement for a cash purchase price determined as follows:

- ____% of the [December 31, 2012] estimated value of your Interests as reflected on the statement previously provided to Seller by HERA (the "***Unadjusted Purchase Price***"), LESS
- the Adjustment Amount, if any.

As used herein the "***Adjustment Amount***" shall be equal to the total of the full costs and expenses (including costs and expenses of legal counsel) of HERA or any of its members, officers, directors, agents, representatives, or equity holders (each, a "HERA Party"), plus any diminution in value of HERA's assets, incurred in connection with any litigation, dispute, or claim commenced by any Seller (or any action taken by Seller that results in any third party making a claim) against a HERA Party or that does or could impact adversely any of HERA's assets, or Seller's disclosure of matters and information regarding HERA and its assets (except as required by law or directed and authorized in writing by HERA), all of the foregoing to be determined in Purchaser's sole discretion.

Commented [A1]: Consider clarifying what statement is being referred to (date? title?).

Commented [A2]: We should restate Article XII's key provisions in the Offer instead of cross-referencing the Operating Agreement because Article XII requires the consent of 75% of the Board and contemplates funds being placed into a Dispute Escrow and reallocated pro rata to other Series A Preferred Unit holders.

The Offer is subject to a minimum tender condition, which we may elect to waive as discussed in Section 5 of "Description of the Offer". Additionally, we reserve the right, in our sole discretion, to amend the terms of the Offer.

To tender your Interests pursuant to the Offer you must follow the procedures described in this Statement.

We have not authorized any person to make any recommendation on our behalf as to whether you should tender or refrain from tendering your Interests in the Offer. We have not authorized any person to give any information or to make any representation on our behalf in connection with the Offer other than those contained in this Offer or in the related Transfer Agreement. If given or made, any recommendation, information or representation must not be relied upon as having been authorized by us.

PRIVILEGED AND CONFIDENTIAL
DRAFT: 1/15/2013

THE OFFER WILL EXPIRE AT 5:00 P.M., DALLAS TIME, ON JANUARY ___, 2013, UNLESS THE OFFER IS EXTENDED. WE MAY EXTEND THE OFFER PERIOD AT ANY TIME.

PRIVILEGED AND CONFIDENTIAL
DRAFT: 1/15/2013

Summary Term Sheet

We are providing this summary term sheet for your convenience. It highlights material information in this Offer, but you should realize that it does not describe all of the details of the Offer to the same extent that they are described in the body of this Offer. We urge you to read the entire Statement because it contains the full details of the Offer.

Who will be the purchaser of Interests in the Offer?

- The Purchaser is _____ (the "***Purchaser***").

What will be the purchase price for Interests tendered in the Offer?

- Subject to the terms and conditions set forth in this Statement, Interests that are tendered will be purchased at a cash purchase price determined as follows:
  - ____% of the [December 31, 2012] estimated value of Seller's Interests as reflected on the statement previously provided to Seller by HERA (the "***Unadjusted Purchase Price***"), LESS
  - the Adjustment Amount, if any.

As used herein the "***Adjustment Amount***" shall be equal to the total of the full costs and expenses (including costs and expenses of legal counsel) of HERA or any of its members, officers, directors, agents, representatives, or equity holders (each, a "HERA Party"), plus any diminution in value of HERA's assets, incurred in connection with any litigation, dispute, or claim commenced by any Seller (or any action taken by Seller that results in any third party making a claim) against a HERA Party or that does or could impact adversely any of HERA's assets, or Seller's disclosure of matters and information regarding HERA and its assets (except as required by law or directed and authorized in writing by HERA), all of the foregoing to be determined in Purchaser's sole discretion.

How can I determine what my purchase price would be in the Offer?

- At your request, a statement can be provided to you that calculates the anticipated purchase price for your Interests.

What will be the form of the purchase price in the Offer?

- If your Interests are purchased in the Offer, you will be paid the purchase price in cash, less any applicable withholding taxes and without interest.

What amount of Interests will be purchased in the Offer?

- Subject to the terms and conditions set forth in this Statement, the Purchaser is offering to purchase all Interests in the Offer.

Is the Offer subject to a financing condition?

- No.

What are the primary conditions to the Offer?

- The Offer is subject to receipt of tenders for the Offer from the holders of at least a majority-in-interest of the Series A Preferred Units of HERA.

Will the terms of the HERA Operating Agreement be amended following the Offer?

- If the Purchase is completed, Purchaser will become the holder of at least a majority-in-interest of the Series A Preferred Units of HERA and will be able to amend HERA's Operating Agreement without obtaining approval from HERA's Board or other holders of Series A Preferred Units of HERA. Purchaser reserves the right to amend the terms of the Operating Agreement in the event the Purchase is completed.

How long do I have to decide whether to tender my Interests in the Offer? Can the Offer be extended past the initial expiration date?

- You may tender your Interests pursuant to the Offer until the Offer expires. Currently, the Offer is scheduled to expire at 5:00 p.m., Dallas time, on January ___, 2013.
- We can extend the Offer past this scheduled expiration date in our sole discretion. If we choose to do so, you will be able to tender your Interests until 5:00 p.m., Dallas time, on the day selected as the new expiration date.

Can the terms of the Offer be amended?

- We reserve the right in our sole discretion to amend the Offer in any respect.

How do I tender my Interests?

- To tender your Interests, you must complete the actions described under Section 2 of "Description of the Offer."

How and when will I be paid if I tender my Interests for Purchase?

- If your Interests are purchased pursuant to the Offer, you will be paid the applicable purchase price, in cash, without interest, promptly upon receipt of tenders from the holders of at least a majority-in-interest of the Series A Preferred Units of HERA and the acceptance of the Interests for payment. [There may be tax consequences to receiving this payment. See "Certain Tax Consequences," below.]

Once I have tendered my Interests in the Offer, can I withdraw my tender?

- No, unless the Offer expires or is terminated.

What are the tax consequences if I tender my Interest?

- The transaction will be treated as a sale of a partnership interest for those members who tender their units. You should consult your personal tax advisor for the specific tax consequences resulting from the sale. In general, gain or loss will be recognized to the extent the sales price of the partnership interest exceeds a member's tax basis in his partnership interest. Given the nature of the underlying assets held by HERA, it is anticipated that the vast majority of that gain or loss would be long term capital gain or loss.

How do I calculate the basis in my partnership interest?

- You should consult your tax advisor for your actual tax basis. However, in general a member's tax basis in his partnership interest should equal the discounted value of the HERA property included on his 2011 W-2 (this amount was reflected as a contribution on your 2011 K-1), plus or minus any taxable income/(loss) reported to him on his 2011, 2012 and 2013

K-1s from HERA, less any cash distributions received from the partnership after 5/15/11. Please note that the capital balances reflected on the 2011 K-1 reflect those tax basis capital balances as of 12/31/11 according to the partnerships records.

Will I still be allocated income /(loss) from HERA for 2012 & 2013 and owe tax on that income as well?

- Yes, a tendering member will still receive a 2012 and 2013 K-1 and be subject to tax on the income reflected on those K-1s in addition to any gain / loss on sale of the partnership interest. However, as mentioned above the K-1 income / loss does adjust the basis in their partnership interest. A unitized estimate of the 2012 taxable income expected to be reported on the 2012 HERA K-1s is available upon request. That template also includes the unitized cash distribution paid by the partnership in 2012. Those amounts are very rough and subject to change. The 2013 K-1 for a tendering member will only reflect their share of income from HERA through the date they sell their partnership interest. No estimate for 2013 is currently available.

How will the transaction affect non-tendering members from a tax perspective?

- Non-tendering members will continue to receive K-1s reflecting their share of taxable income related to a full year of HERA activity in 2013. However, depending on the percentage of units tendered, HERA may be required to file two partnership tax returns for 2013. One for the 1-1-13 to 1-xx-13 period and a second return for the period beginning 1-xx-13 and ending on 12/31/13. If this is the case a non-tendering member will receive two K-1s related to the 2013 calendar year. Both would need to be included in their 2013 tax return. From a tax perspective, there should not be any other significant impact of the transaction to a non-tendering member.

[Whom can I talk to if I have questions about the Offer?]

Background of the Offer.

Purchaser believes that there are many Interest holders that would prefer to receive immediate liquidity with respect to their Interests rather than wait for distributions to occur over time.

As a result, the primary purpose of the Offer is to provide Interest holders that desire the opportunity to receive immediate liquidity with respect to their Interests to sell their Interests.

Certain Effects of the Offer.

The Offer is conditional on a minimum tender of a majority-in-interest of the Interests. In the event this condition is satisfied and the Purchase is completed, the Purchaser will be able to amend the terms of HERA's Operating Agreement in its sole and absolute discretion. See Section 7 of "Description of the Offer" for a more detailed description of certain effects of the Offer and related transactions on Non-Electing Holders (as hereinafter defined).

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DRAFT: 1/15/2013

Description of the Offer

1. The Election; Amount of Interests to be Purchased or Exchanged.

On the terms and subject to the conditions of this Offer, holders of Interests can elect whether or not they wish to sell their Interests.

Interests tendered for purchase will be purchased, on the terms and subject to the conditions set forth in this Statement for a cash price determined as follows:

- ____% of the [December 31, 2012] estimated value of Seller's Interests as reflected on the statement previously provided to Seller by HERA (the "***Unadjusted Purchase Price***"), LESS
- the Adjustment Amount, if any.

As used herein the "***Adjustment Amount***" shall be equal to the total of the full costs and expenses (including costs and expenses of legal counsel) of HERA or any of its members, officers, directors, agents, representatives, or equity holders (each, a "HERA Party"), plus any diminution in value of HERA's assets, incurred in connection with any litigation, dispute, or claim commenced by any Seller (or any action taken by Seller that results in any third party making a claim) against a HERA Party or that does or could impact adversely any of HERA's assets, or Seller's disclosure of matters and information regarding HERA and its assets (except as required by law or directed and authorized in writing by HERA), all of the foregoing to be determined in Purchaser's sole discretion.

A holder that does not tender its Interests for purchase is referred to herein as a "***Non-Electing Holder***." See Section 7 for a description of certain effects of the Offer and related transactions on Non-Electing Holders.

Interests properly tendered for purchase will be purchased at the applicable purchase price upon the terms and conditions of the Offer. See Section 4 for a more detailed description of the terms of our Offer.

The Offer is subject to the tender for purchase of at least a majority-in-interest of the aggregate Interests. See Section 5.

2. Procedures for Tendering.

For Interests to be properly tendered for purchase, we must receive before or on the expiration date a properly completed and executed Transfer Agreement, the form of which is attached as Appendix A, together with all documents contemplated thereby.

For purposes of the Offer, the term "expiration date" means 5:00 p.m., Dallas time, on January ___, 2013, unless and until we in our sole discretion extend the period of time during which the offer will remain open. If extended by us, the term "expiration date" will refer to the latest time and date at which the offer, as extended, will expire. See Section 9 for a description of our right to extend, delay, terminate or amend the Offer.

To be validly tendered all required documents must be received by us at the following address prior to the expiration date:

Highland Capital Management, L.P.

PRIVILEGED AND CONFIDENTIAL
DRAFT: 1/15/2013

300 Crescent Court, Suite 700
Dallas, TX 75201
Attention: Thomas Surgent

The method of delivery of all documents is at your election and risk. If you decide to make delivery by mail, we recommend you use registered mail with return receipt requested, properly insured. In all cases, sufficient time should be allowed to ensure timely delivery.

We will determine, in our sole discretion, all questions as to the validity, form, eligibility, including time of receipt, and acceptance of any tender of Interests. Our determination will be final and binding on all parties. We reserve the absolute right to reject any or all tenders we determine not to be in proper form or the acceptance of which we determine may be unlawful. We also reserve the absolute right to waive any of the conditions of the Offer and any defect or irregularity in the tender of any particular Interests or any particular Interest holder. No tender will be deemed to be properly made until all defects or irregularities have been cured by the tendering holder or waived by us. We assume no duty or obligation to provide you with any notice of any defects or irregularities in any tender. Our interpretation of the terms of and conditions to the Offer will be final and binding. By tendering Interests to us, you agree to accept all decisions we make concerning these matters and waive any right you might otherwise have to challenge those decisions.

To tender your Interests you will be required to complete, execute and deliver a Transfer Agreement. Among other things, the Transfer Agreement requires you to make certain representations and warranties, including with respect to your ownership of the tendered Interest; to release any and all claims that you may have against HERA, Highland, and certain parties associated with them; and to agree to take such further actions as may be necessary to effect the transfer of your Interests pursuant to the Offer.

A tender of shares for purchase under the procedures described herein will constitute your acceptance of the terms and conditions of the applicable Offer.

Our acceptance for purchase of an Interest tendered pursuant to the Offer will constitute a binding agreement between you and us upon the terms and conditions of such Offer described in this Statement and related documents.

3. Withdrawal Rights; Change in Election.

Interests tendered in the Offer may not be withdrawn at any time before the expiration date. After the expiration date, unless we have already accepted your tendered Interests for payment, you may withdraw your Interests at any time after 5:00 p.m., Dallas time, on January ___, 2013. Except as otherwise provided in the preceding sentence, tenders of Interests for purchase pursuant to this Offer are irrevocable and may not be withdrawn.

For a withdrawal to be effective, we must receive a notice of withdrawal in written form on a timely basis. The notice of withdrawal must specify the name of the person who tendered the Interests to be withdrawn, identify the Interests to be withdrawn and the name of the registered holder.

We will determine, in our sole discretion, all questions as to the form and validity, including time of receipt, of notices of withdrawal. Our determination shall be final and binding on all parties.

We assume no duty or obligation to provide you with any notice of any defects or irregularities in any notice of withdrawal.

4. Purchase of Interests and Payment of Purchase Price.

Upon the terms and subject to the conditions of the Offer, we will accept for payment and pay for, and thereby purchase, Interests validly tendered for purchase and not properly withdrawn.

For purposes of the Offer, we will be deemed to have accepted for payment, and therefore purchased, Interests that are properly tendered for purchase and not properly withdrawn only when, as and if we accept such Interests for payment.

Upon the terms and subject to the conditions of the Offer, after the expiration date, we will purchase and pay for Interests accepted for payment under the Offer, provided that we reserve the right to accept and/or pay for any tendered Interest prior to the expiration date. Our intention is to commence payment for the tendered Interests upon receipt of tendered Interests for a majority-in-interest of Series A Preferred Units. In all cases, payment for Interests tendered and accepted for payment pursuant to the Offer will be made only after our timely receipt of a properly completed and duly executed Transfer Agreement and the documents described in the Transfer Agreement.

Under no circumstances will we pay interest on the purchase price, regardless of any delay in making payment. In addition, the Offer is subject to the conditions set forth below.

5. Conditions of the Offer.

We will not be required to accept for payment, purchase or pay for any Interests tendered for purchase, and we may terminate or amend the Offer or postpone the acceptance of Interests tendered, if at any time on or after the date hereof and prior to acceptance of tendered Interests we have not received tenders accepting the Offer from holders of at least a majority-in-interest of the Series A Preferred Units of HERA.

No assurance can be given that this condition will be satisfied.

The condition listed above is for our sole benefit and we may assert this condition regardless of the circumstances (including our action or inaction) that give rise to the condition and we may, in our sole discretion, waive the condition listed above, before the expiration date. Our failure at any time to exercise any of the foregoing rights shall not be deemed a waiver of any of these rights, and each of these rights shall be deemed an ongoing right that may be asserted by us at any time prior to the expiration of the Offer.

6. Certain Effects of the Offer on Non-Electing Holders.

Non-Electing Holders will have no assurance as to the ultimate value that will be received by HERA in respect of its assets (many of which are highly illiquid), nor the timing of any distributions by HERA to any Non-Electing Holders following completion of the Purchase contemplated herein. In addition, in the event the Purchase is completed, Purchaser will be able to amend the terms of the Operating Agreement in its discretion without the consent of any Non-Electing Holder.

7. Certain Tax Consequences.

The transaction will be treated as a sale of a partnership interest for those members who tender their units. You should consult your personal tax advisor for the specific tax consequences resulting from the sale. In general, gain or loss will be recognized to the extent the sales price of the partnership interest exceeds a member's tax basis in his partnership interest. Given the nature of the underlying assets held by HERA, it is anticipated that the vast majority of that gain or loss would be long term capital gain or loss.

- **How do I calculate the basis in my partnership interest?**

  You should consult your tax advisor for your actual tax basis. However, in general a member's tax basis in his partnership interest should equal the discounted value of the HERA property included on his 2011 W-2 (this amount was reflected as a contribution on your 2011 K-1), plus or minus any taxable income/(loss) reported to him on his 2011, 2012 and 2013 K-1s from HERA, less any cash distributions received from the partnership after 5/15/11. Please note that the capital balances reflected on the 2011 K-1 reflect those tax basis capital balances as of 12/31/11 according to the partnerships records.

- **Will I still be allocated income /(loss) from HERA for 2012 & 2013 and owe tax on that income as well?**

  Yes, a tendering member will still receive a 2012 and 2013 K-1 and be subject to tax on the income reflected on those K-1s in addition to any gain / loss on sale of the partnership interest. However, as mentioned above the K-1 income / loss does adjust the basis in their partnership interest. A unitized estimate of the 2012 taxable income expected to be reported on the 2012 HERA K-1s is available upon request. That template also includes the unitized cash distribution paid by the partnership in 2012. Those amounts are very rough and subject to change. The 2013 K-1 for a tendering member will only reflect their share of income from HERA through the date they sell their partnership interest. No estimate for 2013 is currently available.

- **How will the transaction affect non-tendering members from a tax perspective?**

  Non-tendering members will continue to receive K-1s reflecting their share of taxable income related to a full year of HERA activity in 2013. However, depending on the percentage of units tendered, HERA may be required to file two partnership tax returns for 2013. One for the 1-1-13 to 1-xx-13 period and a second return for the period beginning 1-xx-13 and ending on 12/31/13. If this is the case a non-tendering member will receive two K-1s related to the 2013 calendar year. Both would need to be included in their 2013 tax return. From a tax perspective, there should not be any other significant impact of the transaction to a non-tendering member.

8. Extension of the Offer; Termination; Amendment.

We reserve the right, in our sole discretion, at any time and from time to time, and regardless of whether or not any of the events set forth in Section 5 occur, to extend the period of time during which the Offer is open and thereby delay acceptance of Interests for purchase or exchange by giving notice of such extension. We also reserve the right, in our sole discretion, to terminate the Offer and not accept for payment or pay for any Interests not already accepted for payment upon

the occurrence of any of the conditions specified in Section 5 by giving notice of such termination.

We also reserve the right, in our sole discretion, and regardless of whether any of the events set forth in Section 5 occur or are deemed by us to have occurred, to amend the Offer in any respect.

9. Miscellaneous.

We have not authorized any person to make any recommendation on our behalf regarding whether you should tender or refrain from tendering your Interests in the Offer. We have not authorized any person to provide any information or make any representation in connection with the Offer, other than those contained in this Statement.

Any questions or requests for assistance may be directed to us as follows:

[Contact Person[s] and Number(s)]

Commented [A3]: We should ask Purchaser to obtain and disclose to the HERA Series A Preferred Unit holders a fairness opinion supporting the financial fairness of this Offer.

From: Shawn Raver <SRaver@HighlandCapital.com>
To: "'lan.yao@irs.gov'" <lan.yao@irs.gov>
Subject: RE: Highland Capital Management - 2008 Federal Audit
Date: Thu, 12 Oct 2017 14:08:11 -0500

Hi Linda –

I got your message and we have added the call on the 26th to our calendars.

Thanks,
Shawn

From: Shawn Raver
Sent: Wednesday, October 11, 2017 3:27 PM
To: lan.yao@irs.gov
Subject: Highland Capital Management - 2008 Federal Audit

Hi Linda –

My fax # is 214-540-4702. Thank you.

Shawn

Shawn E. Raver
Attorney
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
sraver@highlandcapital.com
(972) 419-4479

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DEFENDANT'S EXHIBIT
58
25-03055

Daugherty ROGs00003060

From: Shawn Raver <SRaver@HighlandCapital.com>
To: "'Lam Kwan Y (Carmen)'" <Kwan.Y.Lam@irs.gov>
Subject: RE: Have you sent out the signed Form 872(s) yet?
Date: Thu, 13 Dec 2018 08:57:31 -0600
Inline-Images: image001.jpg; image002.jpg; image004.jpg; image005.jpg

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Yes, I mailed them on Monday in the envelope provided.

From: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Sent: Thursday, December 13, 2018 8:41 AM
To: Shawn Raver <SRaver@HighlandCapital.com>
Subject: Have you sent out the signed Form 872(s) yet?

Good morning Shawn,

I would like to check the status of the Form 872(s), have you sent them out to me yet? thanks

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Lam Kwan Y (Carmen)
Sent: Friday, December 07, 2018 9:35 AM
To: 'SRaver@HighlandCapital.com' <SRaver@HighlandCapital.com>
Subject: RE: Form 872(s)

Hi Shawn,

Thanks for letting me know, I am looking forward to get the signed F872s early next week. I am in the office today, and the first thing I did was checking my mail box and hoping to get the mail from you 😊

Well, you have a wonderful weekend, thanks

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Shawn Raver <SRaver@HighlandCapital.com>
Sent: Friday, December 07, 2018 9:31 AM
To: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Subject: RE: Form 872(s)

Carmen –

I hope to get the signed statute extensions back from Mr. Dondero today and in the mail no later than Monday.

Thanks,
Shawn

From: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Sent: Wednesday, November 28, 2018 1:56 PM
To: Shawn Raver <SRaver@HighlandCapital.com>
Subject: RE: Form 872(s)

DEFENDANT'S EXHIBIT
59
25-03055

Great, thank you!!

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Shawn Raver <SRaver@HighlandCapital.com>
Sent: Wednesday, November 28, 2018 1:55 PM
To: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Subject: RE: Form 872(s)

Ok, thank you. I will get them signed asap after I receive them next week.

Shawn

From: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Sent: Wednesday, November 28, 2018 1:47 PM
To: Shawn Raver <SRaver@HighlandCapital.com>
Subject: RE: Form 872(s)

Yes, I can re-send the package this Friday to revise the statute extension to 3/31/2020 for both 2008 and 2009.

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Shawn Raver <SRaver@HighlandCapital.com>
Sent: Wednesday, November 28, 2018 1:40 PM
To: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Subject: RE: Form 872(s)

Ok. But you are sending a revised statute extension to only 3/31/2020, correct?

From: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Sent: Wednesday, November 28, 2018 1:36 PM
To: Shawn Raver <SRaver@HighlandCapital.com>
Subject: RE: Form 872(s)

Hi Shawn,

I just talk to Joint Committee, and they stated that if Mr. Dondero does not sign the Form 872(s), then we will have to disallow the NOL carryback and reverse all the refunds from 2004-2007, so please have Mr. Dondero sign the Form 872(s) accordingly. Please note that the reason we have to extension the statute is a requirement from JC, allow them to review the case, but I don't see any reasons they will disallow the refunds. So, please sign the Form 872(s) asap and return them to me, so that I could issue the audit report to you once I receive the signed Form 872(s). Please let me know if you have any questions, thanks

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Lam Kwan Y (Carmen)
Sent: Wednesday, November 28, 2018 11:03 AM

To: 'SRaver@HighlandCapital.com' <SRaver@HighlandCapital.com>
Subject: RE: Form 872(s)

Will Mr. Dondero signs the 6-month extension, till 3/31/2020, that will work for us? The reason we need extension is because the Joint Committee ("JC") require us to have one year statute left on the case, so let say if we close the case to JC in next couple months, in January of 2019, then 3/31/2020 should be fine.

Please note that the extension is not only for the refund of $7,073 in 2004, but is for all the refunds that he received from 2004-2007, see table below.

	2004	2005	2006	2007	2008	2009
Tax Refund issued:	11,191,171	23,743,692	48,673,466	53,231,455	Loss year	Loss year

Keep in mind that the refunds that Mr. Dondero received is call Tentative Refund which subject to Joint Committee review ("JCR"), so no matter whether we have the additional refund of $7,073 in 2004, this case is still subject to JCR. Please let me know if you have any questions, thanks

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Shawn Raver <SRaver@HighlandCapital.com>
Sent: Wednesday, November 28, 2018 9:59 AM
To: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Subject: RE: Form 872(s)

Carmen –

Mr. Dondero does not wish to sign a statute extension for that length of time for that amount of a refund.

Thanks,
Shawn

From: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Sent: Tuesday, November 27, 2018 7:50 AM
To: Shawn Raver <SRaver@HighlandCapital.com>
Subject: RE: Form 872(s)

Good morning Shawn,

Do you have any updates on the sign F872(s)? thanks

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Lam Kwan Y (Carmen)
Sent: Thursday, November 15, 2018 2:09 PM
To: 'SRaver@HighlandCapital.com' <SRaver@HighlandCapital.com>
Subject: Form 872(s)

Hi Shawn,

I received an notification from UPS that you received the my 872 package few days ago, please have Mr. Dondero sign the forms and return back to me. Given the holiday season is approaching, so I would like to get this done as soon as possible. Do you think you could get it back to me next week? thanks

By the way, I don't need the 2011 tax return, please ignore my requests, thanks

From: UPS Quantum View <pkginfo@ups.com>
Sent: Monday, November 12, 2018 2:57 PM
To: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Subject: UPS Delivery Notification, Tracking Number 1Z7621240273777860

Your package has been delivered.

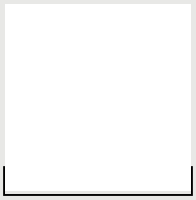
Delivery Date: Monday, 11/12/2018

Delivery Time: 02:53 PM

At the request of INTERNAL REVENUE SERVICE this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	1Z7621240273777860
Ship To:	james d. dondero 300 CRESCENT CT ROOM 700 DALLAS, TX 75201 US
UPS Service:	UPS 2ND DAY AIR
Number of Packages:	1
Weight:	0.3 LBS
Delivery Location:	FRONT DESK STEWART
Reference Number 1:	4510
Reference Number 2:	ad



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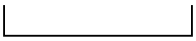

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Lam Kwan Y (Carmen)
Sent: Wednesday, November 07, 2018 11:12 AM
To: 'SRaver@HighlandCapital.com' <SRaver@HighlandCapital.com>
Subject: Heads Up - Few Items

Great, thanks.

This Friday, I will at least mail you the Form(s) 872 to extend the statute for 2008 and 2009, please have the Mr. Dondero to sign them and return back to me as soon as possible.

I am in the process of putting a package for Joint Committee to approval the refund, it appears that they will need all tax returns, as I mentioned to you earlier 2011 return is missing, so if you could please electronically send me the 2011 tax return? thanks

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244

New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Shawn Raver [mailto:SRaver@HighlandCapital.com]
Sent: Wednesday, November 07, 2018 11:06 AM
To: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Subject: RE: Did you get my email dated on Nov. 1st?

Received. No questions at this time.

Thanks,
Shawn

From: Lam Kwan Y (Carmen) <Kwan.Y.Lam@irs.gov>
Sent: Wednesday, November 7, 2018 11:04 AM
To: Shawn Raver <SRaver@HighlandCapital.com>
Subject: Did you get my email dated on Nov. 1st?

Hello Shawn,

I just want to make sure you receive my email dated on November 1st and see if you have any questions for me? Thanks

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

From: Lam Kwan Y (Carmen)
Sent: Thursday, November 01, 2018 2:38 PM
To: 'SRaver@HighlandCapital.com' <SRaver@HighlandCapital.com>
Subject: DOND - Additional Refunds & Need the Form(s) 872

Hi Shawn,

I hope you are doing well. It has been a while since last time we talked. I would like to let you know that I run a report for James Dondero from tax years 2004 through 2009 – the claims that he filed -Form1045(s). It appears that Mr. Dondero will receive an additional refund of $7,073 for tax year 2004, please note that this will be subject to Joint Committee's approval.

Brief Background of the refund:
The refund is resulted under code section §172(b)(1)(H)(v), if a taxpayer makes an election to carryback an NOL to the fifth preceding year, the NOL carryback is limited to 50% of the taxable income in the fifth preceding year.

Taxpayer file Form 1045 which carried back an NOL five years from 200912 to 200412. Taxpayer correctly applied the 50% limitation to the 200412 taxable income of $63,979,554 and carried back $31,974,777 of NOL to 200412; however, taxpayer did not include in the 200412 income $40,417 that was added by an RAR prepared in February 2008. A second RAR dated 02/12/2013 was prepared allowing the NOL carryback to 200412. The agent correctly included the $40,417 of taxable income added by the prior RAR to total taxable income; however, he allowed the carryback of the $31,974,727 shown on Taxpayer's Form 1045 without adjusting for the additional $40,417 of taxable income. The agent should have applied the 50% limitation to the revised taxable income of $63,989,971 which would have increased the NOL carryback by $20,209 for a total carryback of $31,994,986.

Need the signed Form 4549-A, Form 870, and Form 872(s)
Please note that the refund is subject to the Joint Committee's approval. So, I need all the signed Form 4549-A, Form 870, and Form 872(s) – will mail them to you next week. Please note that both tax years 2008 and 2009's statute are expiring on 9/30/2019, we need to extend it till 9/30/2020 – Joint Committee needs at least

one year statute remain on all tax years when we close the case to them for approval. Please let me know when you receive this email, and let me know if you have any questions, thanks

Carmen Lam | Cross Border Activities Practice Area
4050 Alpha Road (MC 4500 NDAL), Farmers Branch, TX 75244
New Tel: (469) 801-0305 | efax: (877) 329-1155

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(Subject to Motion to Seal and Protective Order)

PD - Exhibit 61 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 62 Slipsheet

(Subject to Motion to Seal and Protective Order)

From: Shawn Raver <SRaver@hcmlp.com>
To: "'Wang Sheau-Dong (Betty) (Sheau-Dong.Wang@irs.gov)'" <Sheau-Dong.Wang@irs.gov>
CC: "'Marcia.T.Vanterpool@irs.gov'" <Marcia.T.Vanterpool@irs.gov>, "Mark Patrick" <MPatrick@hcmlp.com>
Subject: RE: Highland 2008 Federal Audit
Date: Fri, 25 Oct 2013 16:02:06 -0500

Hi Betty –

I got your fax stating that you have not been provided the documents that were included on the disc as discussed below. I received notification from UPS that the disc was delivered on the morning of October 18 (the package was signed for by a "N Smith"). I also left you voice mail to discuss whether you never received the disc or you have the disc but are unable to access the documents.

Please give me a call at your convenience – (972) 419-4479

Thanks,
Shawn

From: Shawn Raver
Sent: Thursday, October 17, 2013 2:53 PM
To: 'Wang Sheau-Dong (Betty) (Sheau-Dong.Wang@irs.gov)'
Cc: 'Marcia.T.Vanterpool@irs.gov'; Mark Patrick
Subject: Highland 2008 Federal Audit

Betty –

Attached please find responses to the following IDRs: FP-42, FP-43, FP-47, FP-48 and FP-50. The attachments for all the responses except for FP-48 were too large and/or numerous to attach to this email, so we are putting those attachments on a disc that will be put in the mail today to your attention.

Please let us know of any questions or concerns.

Thanks,
Shawn

Shawn E. Raver
Associate Tax Counsel
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
Email: sraver@hcmlp.com
Phone: (972) 419-4479

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PD - Exhibit 67 Slipsheet

(Subject to Motion to Seal and Protective Order)

From: Shawn Raver <SRaver@hcmlp.com>
To: "'john.a.hoagland@irs.gov'" <john.a.hoagland@irs.gov>
Subject: RE: Okada Audit - 2009
Date: Wed, 31 Jul 2013 13:53:41 -0500

John –

The 2008 Form 1045 was too large to email, so I will put it on a disc and mail it to you.

Thanks,
Shawn

From: Shawn Raver
Sent: Tuesday, July 30, 2013 1:36 PM
To: 'john.a.hoagland@irs.gov'
Subject: Okada Audit - 2009

John –

In follow up to our call, the second request in IDR 1040-18 asks about all information about any amendments, carry backs/forwards or other changes to the 2009 year that were filed on or near November 24, 2010.

Our records show that the Okada's received the refund requested on the 2009 Form 1045 ($11,559,008) via wire transfer on that date. I wanted to see if that could be the information that the tax computation specialist is seeing. At this point, I am not seeing anything else that was filed on or about that date.

Thanks,
Shawn

Shawn E. Raver
Associate Tax Counsel
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
Email: sraver@hcmlp.com
Phone: (972) 419-4479

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PD - Exhibit 69 Slipsheet

(Subject to Motion to Seal and Protective Order)

From: Shawn Raver <SRaver@hcmlp.com>
To: "'Wang Sheau-Dong (Betty) (Sheau-Dong.Wang@irs.gov)'" <Sheau-Dong.Wang@irs.gov>
CC: Mark Patrick <MPatrick@hcmlp.com>
Subject: Highland 2008 Audit
Date: Thu, 31 Oct 2013 09:52:54 -0500

Hi Betty –

I got your fax this morning. I had left you a voice mail yesterday afternoon stating that you could issue the two new IDRs and that we should be able to respond to them by no later than November 22. Also, I mentioned in my message that the two new IDRs should be numbered FP-60 and FP-61. We had previously responded to several IDRs from Ken Telchik and the last IDR he issued was FP-59.

Please let me know of questions or concerns.

Thanks,
Shawn

Shawn E. Raver
Associate Tax Counsel
Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
Email: sraver@hcmlp.com
Phone: (972) 419-4479

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From: Mark Patrick <MPatrick@hcmlp.com>
To: "'Angela.B.Bryant@irs.gov'" <Angela.B.Bryant@irs.gov>
Subject: Re: FP - IDRs - HCMLP 2008
Date: Thu, 25 Aug 2011 18:40:18 -0500

How about 1 on monday

From: Bryant Angela B [mailto:Angela.B.Bryant@irs.gov]
Sent: Thursday, August 25, 2011 06:29 PM
To: Mark Patrick
Subject: RE: FP - IDRs - HCMLP 2008

Monday works for me, but I do have a 3:30 meeting I need to get to .... will that be a problem for your scheduling?

Regards,
Angie

Angela B. Bryant, CPA
Revenue Agent, International Examiner - Exam Team 4
LB&I, IBC, Territory 10
MC: 4510NDAL
4050 Alpha Road Dallas, TX 75244
☎ 972-308-7671 ✉ angela.b.bryant@irs.gov 🖷 972-308-7669

From: Mark Patrick [mailto:MPatrick@hcmlp.com]
Sent: Wednesday, August 24, 2011 10:15 PM
To: Bryant Angela B
Subject: Re: FP - IDRs - HCMLP 2008

How about monday afternoon at tollway site? By the way, you are working too late.

From: Bryant Angela B [mailto:Angela.B.Bryant@irs.gov]
Sent: Wednesday, August 24, 2011 07:17 PM
To: Mark Patrick
Subject: RE: FP - IDRs - HCMLP 2008

Hi Mark - I will be in the IRS office this Friday, but will be at the Tollway audit site all of next week.

Hope you had a nice vacation (sorry, it's still hot here).

Regards,
Angie

Angela B. Bryant, CPA
Revenue Agent, International Examiner - Exam Team 4
LB&I, IBC, Territory 10
MC: 4510NDAL

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71
25-03055

4050 Alpha Road Dallas, TX 75244
☎ 972-308-7671 ✉ angela.b.bryant@irs.gov 🖷 972-308-7669

From: Mark Patrick [mailto:MPatrick@hcmlp.com]
Sent: Wednesday, August 24, 2011 11:37 AM
To: Bryant Angela B
Subject: FP - IDRs - HCMLP 2008

Angie – will you be at the offsite this Friday or early next week for the taxpayer to provide responses to all the outstanding FP- IDRs?

Mark E. Patrick
Tax Counsel
Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Rd., Suite 800
Dallas, TX 75240

972.419.4420 (Office)
214.908.8130 (Cell)
mpatrick@hcmlp.com

31 CFR Part 10, section 10.35, requires me to notify you that any advice herein cannot be used for the purpose of avoiding penalties.

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PD - Exhibit 76 Slipsheet

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PD - Exhibit 77 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 78 - Reserved

From: "Montgomery, Paige" <pmontgomery@sidley.com>
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>, "Newman, Deborah (EXTERNAL @QUINNEMANUEL.COM)" <deborahnewman@quinnemanuel.com>
Cc: "Kirschner, Marc (NON-SIDLEY @TENEO.COM)" <marc.kirschner@teneo.com>, James Seery <jpseeryjr@gmail.com>
Subject: RE: CPCM - Highgate Consulting - Skyview - Ellington
Date: Fri, 17 Dec 2021 16:14:27 +0000
Importance: Normal

Thanks Pat. Merry Christmas and Happy Holidays!

From: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Sent: Friday, December 17, 2021 10:01 AM
To: Montgomery, Paige <pmontgomery@sidley.com>; Newman, Deborah (EXTERNAL @QUINNEMANUEL.COM) <deborahnewman@quinnemanuel.com>
Cc: Kirschner, Marc (NON-SIDLEY @TENEO.COM) <marc.kirschner@teneo.com>; James Seery <jpseeryjr@gmail.com>
Subject: Fw: CPCM - Highgate Consulting - Skyview - Ellington

Going through files and could not remember if I had forwarded this data.

Patrick H Daugherty, Esq.
President and Chief Investment Officer

Glacier Lake Capital Advisors
(t) +1 214.932.9140 **(m)** +1 972.679.7487
(e) pdaugherty@glacierlakecap.com

From: Patrick Daugherty
Sent: Wednesday, March 24, 2021 3:28 PM
To: James Seery <jpseeryjr@gmail.com>
Subject: CPCM - Highgate Consulting - Skyview - Ellington

- CPCM recently acquired the claims of Ellington, Leventon, Sevilla and Waterhouse;
- I believe this was done to circumvent the gatekeeper function of the plan which is limited to "Parties";
- See relevant Texas Secretary of State and Delaware Secretary of State filings attached;
- Highgate Consulting lists the same address (a UPS mailbox and shipping office) as several entities associated with Ellington through his mother's name, Connie or Constance Ellington. She is recently deceased but has engaged in several businesses with Matt Diorio (recently terminated by the Debtor) that were initially created by Scott Ellington;
- I visited 3100 Independence Parkway Suite 311 and learned that there are over 20 entities allocated to this "mailbox". I believe you will find entities associated with SAS doing business through this mailbox.
- The Debtor should subpoena this UPS station to find all entities allocated to this "mailbox". Importantly, a UPS station is not part of the UP Postal system.

Patrick H Daugherty, Esq.
President and Chief Investment Officer

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25-03055

Glacier Lake Capital Advisors
(t) +1 214.932.9140 **(m)** +1 972.679.7487
(e) pdaugherty@glacierlakecap.com

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Deborah J. Newman (admitted *pro hac vice*)
Robert Loigman (*pro hac vice* pending)
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SIDLEY AUSTIN LLP
Paige Holden Montgomery
Juliana L. Hoffman
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300

Co-Counsel for Marc S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Plaintiff, v. JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA	Adv. Pro. No. _____ COMPLAINT AND OBJECTION TO CLAIMS

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25-03055

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

1934054211016000000000002

OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

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PRAYER FOR RELIEF 129

Plaintiff Marc S. Kirschner (the "Litigation Trustee"), as Litigation Trustee of the Litigation Sub-Trust (the "Trust") established pursuant to the Fifth Amended Plan of Reorganization (the "Plan") of Highland Capital Management L.P. ("HCMLP" or the "Reorganized Debtor") (Docket No. 1472), through his undersigned counsel, brings this action and alleges as follows:

I. INTRODUCTION[2]

1. The Litigation Trustee brings this action to recover hundreds of millions of dollars in damages that HCMLP suffered at the hands of its founder, James Dondero, acting in concert with other entities that he owned and/or controlled (collectively, the "Dondero Entities"), and with the aid of other HCMLP officers and attorneys who disregarded their fiduciary duties to HCMLP in favor of Dondero and their own self-interests.

2. HCMLP was founded in 1993 as an investment advisor that also provided middle- and back-office services and engaged in proprietary trading. Prior to its bankruptcy filing on October 16, 2019, HCMLP was one of more than 2,000 Dondero Entities. The Dondero Entities were operated and controlled for Dondero's benefit, with Dondero utilizing complex corporate structures and transactions to transfer money and assets between the various Dondero Entities in the manner he viewed most advantageous to his own bottom line, including to avoid creditors, exploit personal tax benefits, and ensure that assets were preserved for his benefit and profits ultimately flowed to him.

3. HCMLP was at the center of Dondero's web: it employed nearly all of the people who performed services for myriad Dondero Entities, and it was those employees who carried out the substantive work for the Dondero Entities. Even when HCMLP's full role was

[2] Capitalized terms not defined in this section are defined later in the Complaint.

hidden—either because it was not credited at all, or because it was identified only as a sub-advisor or service provider to Dondero's other management companies—it was HCMLP personnel executing Dondero's strategies for a wide array of Dondero Entities.

4. In or about 2008, after years of successful operations, HCMLP was hit hard by the economic recession. The recession gave rise to a multitude of lawsuits against HCMLP, and it became embroiled in litigations that threatened to impose crippling damages amounting to hundreds of millions of dollars.

5. Faced with this looming threat, Dondero devised a plan to siphon business away from HCMLP through the creation of "lifeboats" that he owned and controlled, which he sought to insulate from the claims of HCMLP's litigation creditors once they crystalized. The lifeboats were set up to provide the management services that HCMLP had been providing before the lifeboats' creation. The lifeboats were really HCMLP in disguise, however, as they conducted their business through HCMLP's employees, operated out of HCMLP's office, and in several cases, simply took over HCMLP's contracts, diverting the resulting fees away from HCMLP while HCMLP continued to provide the underlying services. The lifeboats collected the lion's share of the profits for HCMLP's work, while HCMLP bore the majority of expenses.

6. In the years that followed, Dondero—acting with the aid of certain HCMLP officers and employees—operated HCMLP to further his own personal interests, to HCMLP's detriment. Among other transgressions, Dondero, standing behind HCMLP's perceived corporate shield:

- Caused HCMLP to pay tens of millions of dollars to or for the benefit of Dondero and his affiliates in order to evade creditors, at a time when HCMLP was insolvent, inadequately capitalized, or intended to incur debts beyond its ability to pay;

- Caused HCMLP to transfer assets to other Dondero Entities for less than reasonably equivalent value at a time when HCMLP was insolvent, inadequately capitalized, or intended to incur debts beyond its ability to pay, in order to deprive creditors of the value of the transferred assets;

- Exploited HCMLP to exact vendettas on employees he perceived as disloyal, going so far as to destroy value at HCMLP and other Dondero Entities solely to inflict losses on his perceived enemies;

- Used HCMLP as a vehicle to fraudulently induce an investment of approximately $75 million into another Dondero Entity, and used the proceeds to support yet other Dondero Entities;

- Caused the fraudulent transfer of assets worth at least $100 million out of two HCMLP-managed funds to evade pending litigation claims asserted by UBS;

- Disregarded HCMLP's contractual and fiduciary obligations to investors in certain of HCMLP liquidating funds; and

- Siphoned funds out of HCMLP for use by other Dondero Entities, in exchange for artificially low interest, long-term notes that Dondero later purported to extend (by 30 years) or retroactively forgive, all for no consideration to HCMLP.

7. Dondero's conduct resulted in a second wave of litigation against HCMLP, exacerbating HCMLP's insolvency, inadequate capitalization, and inability to pay its debts. As was wholly foreseeable, Dondero's conduct hobbled HCMLP with hundreds of millions of dollars of additional contingent litigation liabilities that were all but certain to come due given Dondero's brazen wrongdoing.

8. In October 2019, the dam broke, and the repercussions of Dondero's actions came crashing down on HCMLP. An arbitration award of approximately $190 million was issued against HCMLP based on Dondero's failure to abide by a negotiated plan of distribution for certain of its liquidating funds, forcing HCMLP to file for bankruptcy protection. Shortly thereafter, a judgment of more than $1 billion was rendered for UBS against two HCMLP-managed funds, leading UBS to file a proof of claim against HCMLP that sought to hold

HCMLP responsible for its role in preventing the Fund Counterparties (defined below) from satisfying any of their debt to UBS.

9. In 2020, HCMLP, finally operating under the control of true and independent fiduciaries, negotiated a settlement with UBS for a total of $75 million in allowed claims. HCMLP was forced to reopen settlement discussions and increase that number to $125 million, however, when HCMLP discovered that in 2017, Dondero and his loyalists had surreptitiously transferred the two funds' remaining assets to a Dondero Entity. Other settlements followed, as HCMLP, burdened by Dondero's blatant wrongdoing, was forced to compromise claim after claim in order to avoid even greater dilution of creditor recoveries.

10. HCMLP now stands liable for more than $350 million in allowed creditor claims—in addition to tens of millions of dollars of costs occasioned by HCMLP's bankruptcy filing—that stem solely from, and would not exist but for, the knowing misconduct of Dondero and his loyalists. The Litigation Trustee thus brings this action to seek redress for the significant harm Dondero and his affiliates and accomplices inflicted on HCMLP, and to ensure that Dondero and those who aided him are not permitted to abscond with or divert value that rightfully belongs to HCMLP and its creditors.

II. PARTIES

11. Plaintiff Marc S. Kirschner is the Litigation Trustee for the Trust established under HCMLP's Plan. Under the Plan, the Trust was established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims, which are defined to include "any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of [HCMLP], and each of the Related Entities, including any promissory notes held by any of the foregoing [excluding] any estate claim or cause of action against any then-current employee of [HCMLP] other than Mr. Dondero." On October 8, 2021, the Claimant

Trust established under the Plan confirmed the assignment of certain Causes of Action (as defined in the Plan) to the Trust, including all claims set forth in this Complaint.

12. Defendant James D. Dondero is an individual who, upon information and belief, at all times relevant to this Complaint was residing in Dallas, Texas. Dondero is the co-founder of HCMLP and, prior to his resignation on January 9, 2020, was the Chief Executive Officer and President of HCMLP. From the time that HCMLP was founded through October 16, 2019 when it filed for bankruptcy (the "Petition Date"), Dondero controlled HCMLP through his position at HCMLP, his ownership of HCMLP's general partner, and his ownership of, or control over the owners of, HCMLP's limited partnership interests. As set forth below, Dondero also owns and/or directly or indirectly controls hundreds of Dondero Entities within the Highland web, including the dozens of Dondero Entities referenced herein.

13. Defendant Mark A. Okada is an individual who, upon information and belief, at all times relevant to this Complaint was residing in Dallas, Texas. Okada is the co-founder of HCMLP and was its Chief Investment Officer until he stepped down in 2019, after which he assumed an advisory role through the end of that year. After Dondero, Okada was the next-largest owner of HCMLP or a beneficiary of the distributions it made to its limited partners. Like Dondero, Okada held his interest in HCMLP directly and through trusts.

14. Defendant Strand Advisors, Inc. ("Strand") is a Delaware corporation that is wholly-owned by Dondero. Since HCMLP's formation, Strand has been its general partner and owned limited partnership interests in HCMLP. At all times relevant to this Complaint, Strand's principal place of business was 300 Crescent Street, Suite 700, Dallas, Texas 75201.

15. Defendant NexPoint Advisors, L.P. ("NexPoint") is a Delaware limited partnership. NexPoint is 99.9% owned by the Dugaboy Investment Trust, its sole limited

partner. NexPoint's general partner, NexPoint Advisors GP, LLC ("NexPoint GP"), owns the remaining 0.1%. NexPoint and NexPoint GP were both formed on March 20, 2012. NexPoint concedes that it is controlled by Dondero, who owns 100% of NexPoint GP and is NexPoint GP's sole member and president. At all times relevant to this Complaint, NexPoint's principal place of business was 300 Crescent Street, Suite 700, Dallas, Texas 75201.

16. Defendant Nancy Dondero is named in her capacity as Trustee of Defendant Dugaboy Investment Trust ("Dugaboy"). Dugaboy is a grantor trust established under the laws of the state of Delaware. Dugaboy was formed pursuant to an October 2010 Trust Agreement between Dana Scott Breault, as Settlor, and James D. Dondero and Commonwealth Trust Company, as Trustees. Dondero is Dugaboy's primary beneficiary. Under the Dugaboy trust agreement, Dondero has the power to remove trustees without cause, as well as the power to appoint successive trustees. Dugaboy's original Family Trustee was Dondero, and Defendant Grant James Scott III ("Scott") was its Independent Trustee. In 2015, Dondero appointed Scott as the Family Trustee, and shortly thereafter replaced Scott with his sister Nancy. Between 2016 through confirmation of the Plan, Dugaboy owned a 0.1866% economic interest and a 74.4426% voting interest in HCMLP's Class A partnership interests, and, as set forth above, owns a 99.9% economic interest in NexPoint. Dugaboy filed multiple proofs of claim in HCMLP's bankruptcy case, which were submitted by Scott in his capacity as trustee of Dugaboy. At all times relevant to this Complaint, Dugaboy's principal place of business was 300 Crescent Street, Suite 700, Dallas, Texas 75201.

17. Defendant Highland Capital Management Fund Advisors, L.P. ("HCMFA") is a Delaware limited partnership.[3] HCMFA is owned by Strand Advisors XVI, Inc.[4] (which is HCMFA's general partner and owns a 1% interest in HCMFA); Highland Capital Management Services, Inc. ("HCMS") (which owns limited partnership interests in HCMFA equal to a 89.6667% ownership interest); and the Okada Family Revocable Trust (which owns limited partnership interests in HCMFA equal to a 9.3333% ownership interest). Dondero controls, and is the sole stockholder and director of, Strand Advisors XVI, Inc. Additionally, Dondero and Okada own 75% and 25% of HCMS, respectively.[5] HCMFA has acknowledged that it is controlled by Dondero. At all times relevant to this Complaint, HCMFA's principal place of business was 300 Crescent Street, Suite 700, Dallas, Texas 75201.

18. Defendant Scott is an individual who currently resides in North Carolina. At all times relevant to this proceeding, Scott had various roles at numerous Dondero-controlled or affiliated entities: he was the trustee of Get Good Trust; a director of the Highland Dallas Foundation; the managing member of Charitable DAF GP, LLC; the sole director of Charitable DAF Holdco, Ltd.; the managing member of the Charitable DAF Fund; and the director of CLO Holdco, Ltd. Scott is Dondero's long-time friend, former college roommate, and was the best man at Dondero's wedding. Scott has testified under oath that Dondero is his "closest friend." Dondero personally selected Scott as his successor to run the Charitable DAF Fund. Dondero

[3] HCMFA was originally created by Dondero on February 9, 2009 as Highland Funds Asset Management, L.P. ("HFAM"). On January 9, 2012, HFAM was renamed Pyxis Capital, L.P. ("Pyxis"), and on February 8, 2013, Pyxis was renamed HCMFA.

[4] Strand Advisors XVI, Inc. purports to be managed by six individuals, all but one of whom were previously on HCMLP's payroll.

[5] Dondero is the Director and President of Highland Capital Management Services, Inc. Scott Ellington is its Secretary and Frank Waterhouse is its Treasurer.

also caused Scott to serve on multiple boards on which Dondero also served, including the boards of the Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc. Scott is also the executor of Dondero's will. Dondero, HCMLP, and/or entities controlled by Dondero transferred tens of thousands of dollars' worth of "business gifts" to Scott in the five years prior to the Petition Date. Scott has no training in finance or compliance and no investment experience. Scott routinely rubber-stamped Dondero's and HCMLP's directives without asking questions or requesting additional information.

19. Defendant Scott Ellington ("Ellington") was HCMLP's Chief Legal Officer and General Counsel until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interest. At all times relevant to this Complaint, Ellington was a Texas resident.

20. Defendant Isaac Leventon ("Leventon") was Assistant General Counsel at HCMLP from March 2011 until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interests. At all times relevant to this Complaint, Leventon was a Texas resident.

21. Defendant Frank Waterhouse ("Waterhouse") was the Chief Financial Officer of HCMLP, and was an HCMLP partner and the Treasurer of HCMLP's general partner, Strand. At all times relevant to this Complaint, Waterhouse was a Texas resident.

22. Defendant CPCM, LLC ("CPCM") is a Texas limited liability company created in February 2021. Upon information and belief, CPCM was created and owned by Ellington, Leventon, and/or Waterhouse.

23. Defendant Charitable DAF Fund, LP (the "DAF") is an exempted company incorporated in the Cayman Islands. Dondero was the initial managing member of the DAF's General Partner, Charitable DAF GP, LLC ("DAF GP"), but in January 2011 he transferred all membership interests to Scott, who held those interests until March 2021. At all times relevant to this proceeding, Scott served as managing member of DAF GP and director of the DAF. HCMLP acted as the formal or informal non-discretionary investment manager for the DAF from its inception through 2020, and provided advisory and back-office services to the DAF and its subsidiaries, including CLO Holdco, Ltd., from 2012 until HCMLP terminated that relationship in February 2021. According to the DAF, Dondero currently serves as its investment advisor (although without an advisory contract).

24. Defendant Charitable DAF Holdco, Ltd. ("DAF Holdco") is an exempted company incorporated in the Cayman Islands. At all times relevant to this proceeding, Scott served as DAF Holdco's managing member and sole director. DAF Holdco is the limited partner of the DAF and owns 100% of the partnership interests in the DAF.

25. Defendant CLO Holdco, Ltd. ("CLO Holdco") is an exempted company incorporated in the Cayman Islands that was formed on December 13, 2010. CLO Holdco is a wholly-owned subsidiary of the DAF. CLO Holdco filed two proofs of claim in HCMLP's bankruptcy case, which were signed by Scott in his capacity as CLO Holdco's sole director.[6] CLO Holdco has no employees or officers. According to CLO Holdco, Dondero currently serves as an investment advisor to CLO Holdco (although without an advisory contract). Until Dondero's departure from HCMLP in January 2020, HCMLP (through Dondero) effectively made all investment decisions for the DAF which allocated the investments to CLO Holdco,

[6] Scott served in that capacity at all times relevant to this proceeding.

which would then be rubber-stamped by Scott. At all times relevant to this Complaint, CLO Holdco's principal place of business was 300 Crescent Street, Suite 700, Dallas, Texas 75201.

26. As of December 31, 2020, CLO Holdco and the DAF collectively controlled approximately $260 million in assets. Dondero has testified under oath that he was unaware of a single investment decision that HCMLP ever recommended to Scott regarding the DAF that Scott rejected. Likewise, Dondero was unaware of any investment Scott made on behalf of the DAF that did not originate with HCMLP.

27. Defendant Highland Dallas Foundation ("Highland Dallas") is registered as a Delaware nonprofit, nonstock corporation. The directors of Highland Dallas at the time of the events relevant to this proceeding were Dondero, Scott, and Mary Jalonick. Dondero also acted as Highland Dallas's president, and Scott served as its treasurer. Highland Dallas's principal office address is 3963 Maple Avenue, Suite 390, Dallas, Texas, 75219.

28. Defendant Scott, in addition to being named above in his individual capacity, is named in his capacity as Trustee of Get Good Trust, a trust established under the laws of the State of Delaware. According to Get Good's July 9, 2021 disclosure to this Court, Get Good consists of three related trusts: Get Good Trust, Get Good Non Exempt Trust No. 1, and Get Good Non Exempt Trust No. 2, all of which are included in the term "Get Good." Dondero is the settlor of Get Good, its beneficiaries are his "living descendants," and Scott was Get Good's trustee at all times relevant to this Complaint. Get Good filed a proof of claim in HCMLP's bankruptcy case, which was submitted by Scott in his capacity as trustee of Get Good.

29. Defendant Hunter Mountain Investment Trust ("Hunter Mountain") is a statutory trust established under the laws of the state of Delaware. Hunter Mountain was formed on December 17, 2015, shortly before it purchased limited partnership interests in HCMLP from

HCMLP's then-existing limited partners (*i.e.*, Dondero, Okada, and entities that they controlled) and HCMLP. Through a complex series of transactions that occurred on December 21, 2015 and December 24, 2015, Dondero caused Hunter Mountain to become the owner-in-name of 99.5% of the economic interests of HCMLP. Meanwhile, Dondero caused Hunter Mountain to issue a series of notes and cash, such that Dondero, Okada, and certain entities that they controlled (including Dugaboy, The Mark & Pamela Okada Family Trust – Exempt Trust #1, and The Mark & Pamela Okada Family Trust – Exempt Trust #2) continued to receive the economic benefit of limited partnership distributions made by HCMLP to Hunter Mountain even after they had purportedly sold their limited partnership interests to Hunter Mountain. Hunter Mountain filed multiple proofs of claim in HCMLP's bankruptcy case, including a proof of claim in the amount of $60,298,739, in connection with alleged setoff rights under a $63 million secured promissory note Hunter Mountain entered into with HCMLP on December 21, 2015 (the "Hunter Mountain Note").

30. Rand PE Fund I, LP, Series 1 ("Rand") is a Delaware series limited partnership. Rand is the indirect parent of Hunter Mountain and is a guarantor of the Hunter Mountain Note.

31. Defendant Lawrence Tonomura is named in his capacity as trustee of Defendant The Mark & Pamela Okada Family Trust – Exempt Trust #1 ("MAP #1"), a trust established under the laws of the state of Texas. Okada controls MAP #1, which he created for the benefit of his children.

32. Defendant Lawrence Tonomura is named in his capacity as trustee of Defendant The Mark & Pamela Okada Family Trust – Exempt Trust #2 ("MAP #2"), a trust established under the laws of the state of Texas. Okada controls MAP #2, which he created for the benefit of his siblings.

33. Defendant Massand Capital, Inc. ("Massand Inc.") is a New York corporation that was created in 2002. Defendant Massand Capital, LLC ("Massand LLC") is a Delaware limited liability company created in 2014, pursuant to a certificate of incorporation signed by Leventon. Massand Inc. received payments from HCMLP between February 4, 2014 and January 7, 2015. Massand LLC received payments from HCMLP between February 25, 2015 and August 1, 2019. Massand Inc. and Massand LLC are referred to collectively herein as "Massand Capital".

34. Defendant SAS Asset Recovery Ltd. ("SAS") is a Cayman Island entity created in 2012, whose principal place of business is Dallas, Texas. Upon information and belief, SAS is a litigation funding and management business created by Dondero and Ellington in 2012 and operated out of HCMLP's headquarters. SAS, along with its direct and indirect subsidiaries, is owned and controlled by Dondero and Ellington, who own 70% and 30% of the economic interests in SAS, respectively. Upon information and belief, Ellington is the Chief Executive Officer of SAS.

III. JURISDICTION AND VENUE

35. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 because this is a civil proceeding arising under or relating to the bankruptcy petition filed by HCMLP under Chapter 11 of the United States Bankruptcy Code. *See In re Highland Capital Management, L.P.*, No. 19-34054-sgj11 (Bankr. N.D. Tex.). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

36. Venue is proper in this Court under 28 U.S.C. § 1409(a).

37. This Court has personal jurisdiction over the defendants because each of the Defendants: (i) is a Texas resident; (ii) was formed under the laws of Texas; (iii) is the alter ego of a Texas resident or an entity that was formed under the laws of Texas; (iv) has a business

presence in Texas; (v) filed a proof of claim in HCMLP's bankruptcy case; and/or (vi) had minimum contacts with the state of Texas by either invoking the benefits and protections of the state of Texas or otherwise purposefully directing conduct toward a Texas resident.

IV. FACTUAL ALLEGATIONS

A. Dondero Creates HCMLP

38. HCMLP was a global alternative investment manager and registered investment advisor that was founded in 1993 by Dondero and Okada. The funds managed by HCMLP originally focused on the leveraged loan market, and subsequently expanded into other asset classes such as high-yield credit, public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific industries.

39. By the mid-2000s, HCMLP employed over 100 employees, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. As of the Petition Date, HCMLP had three primary business lines: (i) investment management; (ii) the provision of middle- and back-office services ("shared services") to other registered investment advisors; and (iii) proprietary trading.

40. Dondero exercised complete control over HCMLP from its founding until January 9, 2020, when this Court entered an order implementing the settlement and term sheet entered into between HCMLP and the unsecured creditors' committee, pursuant to which three new independent directors (the "Independent Board") were appointed at Strand to oversee the management and reorganization of HCMLP. HCMLP's employees have bluntly acknowledged that, prior to the appointment of the Independent Board, Dondero was HCMLP's solitary decision-maker on all matters concerning the company's operation and management. Dondero

served as HCMLP's Chief Executive Officer and President from the time that HCMLP was founded until he resigned from those roles on January 9, 2020.

41. As of December 31, 2006, HCMLP provided investment advisory services pursuant to management agreements for: (i) 22 CLOs, (ii) 1 SLT; (iii) 11 RICs, (iv) 7 warehouse transactions, (v) 4 SMAs; (vi) one trust; and (vii) 10 hedge fund structures.[7] At that time, the value of HCMLP's assets under management ("AUM") was approximately $33.1 billion.[8]

B. HCMLP Narrowly Survives The Financial Crisis Of 2008, And Emerges Facing Hundreds Of Millions Of Dollars In Potential Litigation Damages

42. Around 2008, HCMLP's business began to falter, as the financial crisis began to set in. The funds that HCMLP managed faced large losses, followed by substantial redemptions. In January 2008, HCMLP experienced its worst performance to date, with the value of many of its managed funds deteriorating significantly.

43. At the same time that HCMLP was facing significant losses that threatened its existence, the company also became ensnared in litigation posing the threat of hundreds of millions of dollars in damages. In March 2008, HCMLP and its managed funds Highland CDO

[7] A collateralized loan obligation ("CLO") is a structure that acquires and manage a pool of debt or loans. The CLO issues multiple debt tranches as well as equity, and uses the proceeds of those issuances to obtain loans. A structured loan transaction ("SLT") is a transaction involving structured financial instruments such as collateralized loan obligations. A registered investment company ("RIC") is a corporation, partnership, or trust registered with the Securities and Exchange Commission under the Investment Company Act of 1940. A warehouse transaction is an intermediate transaction that involves purchasing loans or bonds that will undergo the warehousing period prior to serving as collateral for a CLO security. A separately-managed account ("SMA") is a managed investment vehicle that has only one investor. A trust is a fiduciary agreement in which one entity that holds property or assets as its owner for one or more beneficiaries. A hedge fund structure is an actively managed investment pool held by a limited partnership of investors that allows partners to "redeem" their investment, subject to certain limitations.

[8] At its high-water mark, HCMLP's AUM exceeded $40 billion.

Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC" and together with CDO Fund, the "Fund Counterparties")[9] had entered into a transaction with UBS to finance the purchase of various CLO tranches (*i.e.*, tranches of debt issued by existing CLOs) and other assets, including credit default swaps ("CDS"). The governing agreements required the Fund Counterparties to post collateral based on the mark-to-market value of certain collateralized debt obligations. The value of these assets dropped by more than $400 million in the fall of 2008, and in November 2008, the Fund Counterparties failed to meet UBS's margin demand. In December 2008, UBS terminated the agreements, and claimed that it was owed 100% of its losses—which UBS alleged was as much as $745 million—from HCMLP and the Fund Counterparties.

44. On February 24, 2009, UBS commenced an action against HCMLP and the Fund Counterparties in New York state court. As amended and consolidated, UBS asserted claims against HCMLP for actual and constructive fraudulent transfer and breach of the implied covenant of good faith and fair dealing. Among other things, UBS alleged that in March 2009, HCMLP had orchestrated transfers of approximately $233 million of assets from SOHC's parent entity HFP, which UBS alleged was the alter ego of SOHC or its subsidiaries (the "March 2009 Transfers"). UBS sought to disgorge those transfers, and also sought damages against

[9] The CDO Fund is an indirectly-controlled subsidiary of HCMLP. At all times relevant to this proceeding, the CDO Fund was controlled by HCMLP, either pursuant to an investment advisory agreement and/or through HCMLP's indirect ownership of CDO Fund's general partner. SOHC is a subsidiary of Highland Financial Partners, L.P. ("HFP"). At all times relevant to this proceeding, HFP was managed and controlled by Dondero in his capacity as an officer of HFP and its general partner and as a member of HFP's monitoring committee. HFP's general partner is a wholly-owned indirect subsidiary of HCMLP. After 2010, Dondero was the sole member of HFP's monitoring committee until his resignation in mid-2021. At all times relevant to this Complaint, Dondero managed and controlled SOHC through his control of HFP.

HCMLP, including punitive damages, attorneys' fees, and pre-judgment interest (calculated at 9% under New York law).

45. Meanwhile, in December 2008, CDO Fund ceased meeting margin calls issued by Citibank N.A., Citigroup Global Markets Limited, Citigroup Financial Products Inc., and Citigroup Global Markets Inc. (together, "Citi") in connection with CDS entered into by CDO Fund and Citi. Citi seized assets posted by CDO Fund to collateralize the CDS, and, by March 2009, conducted two auctions to sell the collateral. The proceeds of the collateral sales, however, were not sufficient to satisfy CDO Fund's obligations to Citi. On April 5, 2012, CDO Fund sued Citi, alleging various claims arising from the margin calls. On May 3, 2013, Citi answered and countersued CDO Fund, HCMLP, and Highland CDO Opportunity Fund GP, L.P. ("CDO Fund GP") to: (i) recover a deficit of more than $24 million, plus accrued interest, still owed under the agreements governing the CDS; (ii) recoup $3 million in liquidation proceeds mistakenly received from a third party; and (iii) seek indemnification for all losses and costs Citi incurred as a result of CDO Fund's breach.

46. In addition, on April 2, 2009, Barclays Bank PLC ("Barclays PLC") and its wholly-owned subsidiary HYMF, Inc. ("HYMF" and, together with Barclays PLC, "Barclays") commenced an action against HCMLP and certain of its managed funds (the "Fund Defendants") and related entities for breach of contract, breach of fiduciary duty, and equitable accounting (the "Barclays Action"). The Barclays Action focused on hedge contracts that HYMF had entered into with various HCMLP-managed funds, which provided that HYMF would be able to remove its investments in a preferential fashion via a "redemption" right, usually as quickly as one day. Barclays alleged that HYMF attempted to exercise that redemption right in mid-October 2008 but was rejected by HCMLP and its managed funds,

notwithstanding the clear terms of the HYMF contracts. This breach of the HYMF contracts was accompanied by Dondero personally stating he would withhold over $100 million for over a year unless HYMF performed certain unrelated financial services for the Fund Defendants. Barclays alleged that it had invested more than $700 million into the Fund Defendants, that Dondero personally held at least $100 million of that "hostage," and that "hundreds of millions of dollars" were still owed to HYMF.

47. Additionally, on June 3, 2011, HCMLP became aware that on November 1, 2010, the Securities and Exchange Commission (the "SEC") had commenced an investigation with respect to potential violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. While the SEC investigation was settled years later for a reduced amount, HCMLP's understanding in 2011 was that the SEC investigation could result in significant penalties, including substantial monetary penalties, for the company.

C. In A Scheme To Evade HCMLP's Creditors, Dondero Creates "Lifeboats" To Usurp HCMLP's Business

48. In 2012, Dondero explained HCMLP's precarious financial condition, testifying under oath that the 2008 financial crisis took HCMLP "to a state of insolvency and we've been juggling liquidity since that," and that "[t]he last three, four years have been negative to the tune of hundreds of millions of dollars[.]" Dondero testified further that the contingent liabilities resulting from the lawsuits filed against HCMLP were a primary driver of HCMLP's insolvency.

49. It was against this backdrop that in or about 2011, Dondero determined to create a series of new entities—referred to internally by some at HCMLP as "lifeboats"—to take over HCMLP's business, with the aim of placing the resulting profits beyond the reach of HCMLP's

creditors. Ultimately, the most successful of the lifeboats were NexPoint and HCMFA, which are described in greater detail below. However Dondero also created other lifeboats at or around this time, including:

- Tunstall Capital Management, LP—which was created to manage stressed and distressed investing in hedge fund, private equity fund, and retail funds;
- Falcon E&P Opportunities GP, LLC—which was created to manage oil and gas investments in private equity funds;
- Granite Bay Advisors, LP—which was created to manage long-short credit investing; and
- Highland Capital Healthcare Advisors, LP ("HCHA")—which was created to serve as health care equity advisor.

1. NexPoint

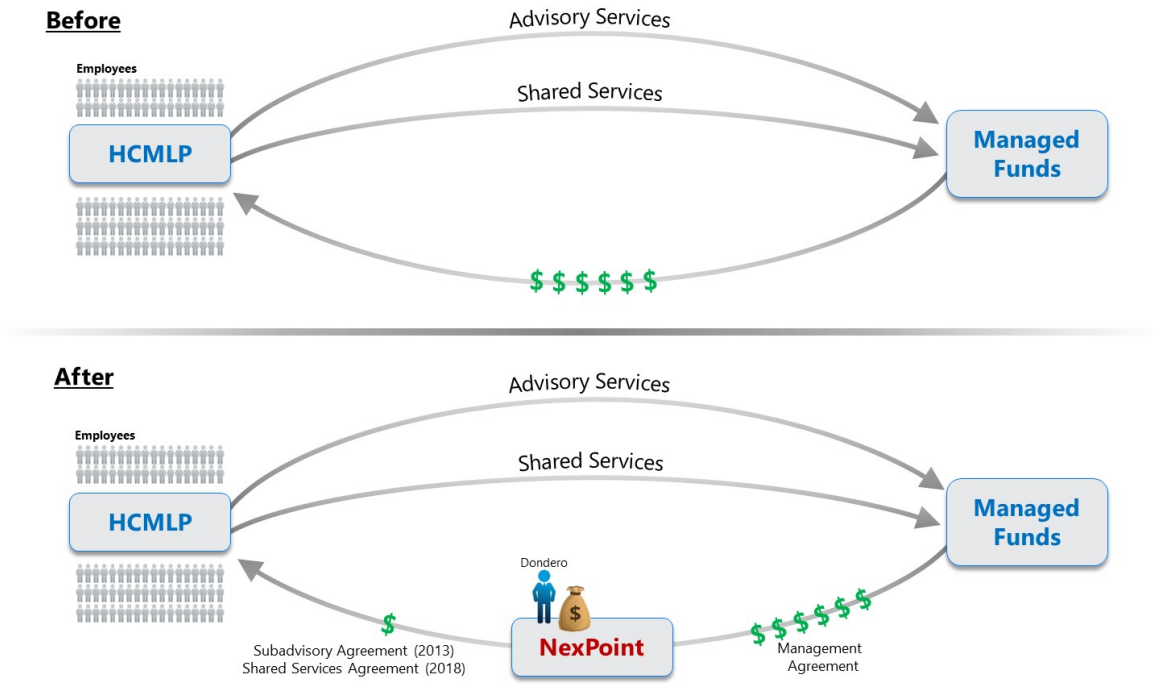
50. NexPoint was effectively a shell entity that Dondero created in March 2012 to siphon profits from HCMLP in order to evade HCMLP's creditors. Dondero's family trust Dugaboy, of which Dondero is the primary beneficiary, owns 99.9% of NexPoint.

51. Between 2012 and 2015, NexPoint had no employees of its own, and performed no business activities that were distinguishable from those performed by HCMLP. To the contrary, NexPoint used HCMLP's employees to perform the same investment management and advisory services—including investment advisory, compliance, accounting, tax, human resources, and information technology services—that were performed by HCMLP.

52. For over a year, HCMLP performed all services for NexPoint, without any sub-advisory or shared services agreements that even purported to compensate HCMLP for the use of its employees. In mid-2013, Dondero attempted to retroactively infuse this scheme with a patina of legitimacy, by causing NexPoint to enter into a shared services agreement with HCMLP that required NexPoint to pay fees to HCMLP based on a formula that resulted in low fee payments. NexPoint continued to reap the vast majority of the generated fees, however.

NexPoint's fees were based on a percentage of AUM, set at a level to yield fees far in excess of those NexPoint was paying HCMLP. The NexPoint scheme is illustrated in Figure 1, below.

Figure 1.



53. Adding insult to injury, HCMLP funded NexPoint's operations whenever needed, seeded large investments made by NexPoint, and funded a large portion of the distributions NexPoint made to its owner, Dugaboy (the beneficiary of which was Dondero). Between 2012 and 2017, HCMLP loaned NexPoint approximately $30 million, and entered into a revolving line of credit to provide NexPoint with additional liquidity. Initially, the loans were in the form of demand notes and were unsecured, frequently below-market, and had few to no covenants. NexPoint paid no principal or interest to HCMLP on the loans during the 2012-2017 period. At the same time, NexPoint made limited partner distributions of approximately $34 million—99.9% of which were made to Dugaboy for Dondero's benefit.

54. Dondero caused HCMLP to enter into multiple forbearance agreements with respect to the NexPoint loans, pursuant to which HCMLP agreed not to collect on the NexPoint loans for a period of one year from the time of the agreement. According to NexPoint's financial statements, these agreements were entered into to provide NexPoint "with the necessary financial support to fund [NexPoint's] obligations as they come due[.]" By May 2017, NexPoint owed HCMLP more than $30 million. Although all of these obligations were payable on demand, HCMLP again agreed not to demand repayment—this time through May 31, 2018—and also agreed to provide support to fund NexPoint's obligations through the same period. Meanwhile, HCMLP recorded the NexPoint loans at face amount on HCMLP's books.

55. Upon information and belief, on May 31, 2017, following discussions with NexPoint's auditors, Dondero restructured the NexPoint loans into a consolidated $30,746,812.33 note (the "NexPoint Loan") with an unusually long 30-year term maturity with a low coupon rate, no covenants, and no security. HCMLP received no consideration in exchange for its agreement to extend the NexPoint loans' maturity date from on-demand to 30 years.

56. Subsequent to Dondero's resignation from HCMLP, on December 31, 2020, NexPoint defaulted on the NexPoint Loan and the full outstanding amount of the loan was accelerated. On January 22, 2021, HCMLP filed an adversary proceeding in the Bankruptcy Court to collect on the NexPoint Loan. *See Highland Capital Management, L.P. v. NexPoint Advisors, L.P.*, Adv. Pro. 21-03005-sgj (Bankr. N.D.Tex. Jan. 22, 2021). NexPoint has raised a series of frivolous defenses to HCMLP's claims, including that HCMLP—acting through the owner of a majority of its Class A interests, Dugaboy (which was acting through Dondero's sister, as Dugaboy's Family Trustee)—orally agreed to forgive the NexPoint Loan as part of

Dondero's compensation. More than $23 million remains outstanding on the NexPoint Loan, and interest and fees continue to accrue.

57. From the time that it was created in 2012 through 2019, NexPoint—which used HCMLP's employees to perform the same management and advisory services that are performed by HCMLP—earned over $150 million in revenues (including over $120 million in advisory and administrative fees) and approximately $50 million in operating income. Between 2012 and 2015, NexPoint's AUM increased 34%, from $700 million to $936 million, and revenues increased from $4.1 million to $16.2 million. Between 2015 and 2019, NexPoint's AUM increased by approximately 408%—from $936 million to $4.8 billion, and revenue increased from $16.2 million to $46.8 million. By contrast, over the same 2015 to 2019 period, HCMLP's AUM decreased from $9.5 billion to $2.3 billion.

2. HCMFA

58. Dondero utilized the same basic playbook for HCMFA, which is directly or indirectly owned by Dondero and Okada. HCMFA was created to replace HCMLP as the new investment manager for certain open-ended retail investment funds, but in a manner similarly designed to ensure that the profits generated by the business would not be available to HCMLP's litigation creditors in the event they achieved favorable judgments.

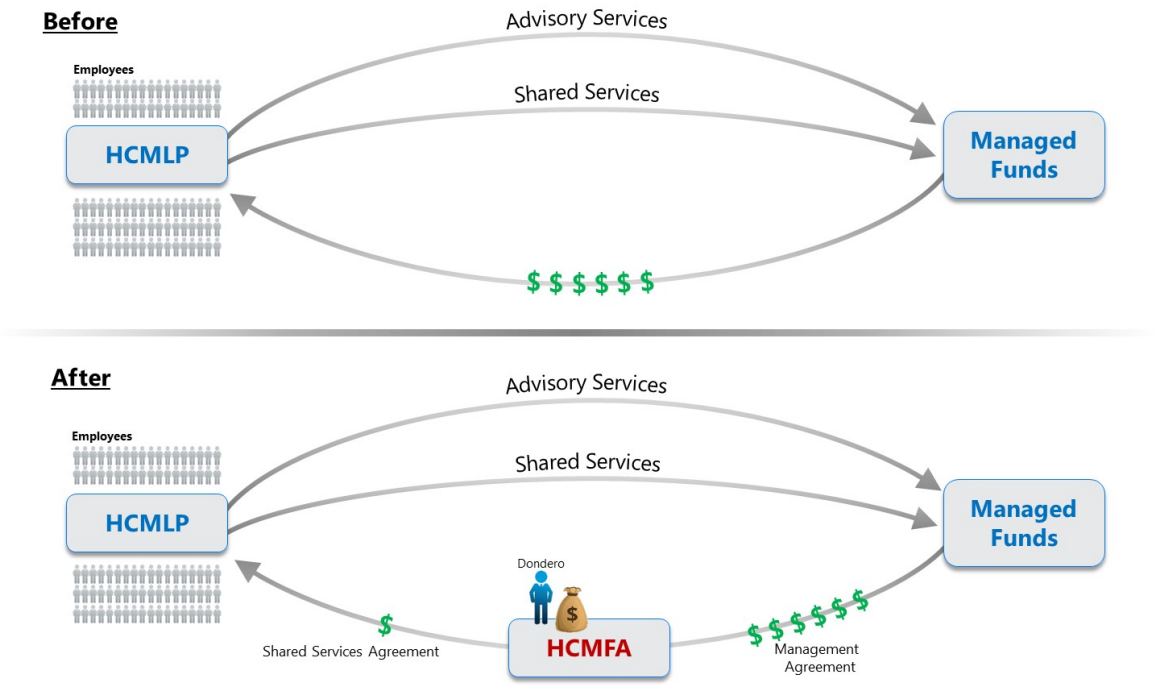
59. On December 15, 2011, Dondero caused HCMLP to transfer HCMLP's rights and obligations to provide investment advisory services for Highland Credit Strategies Fund,[10] Highland Floating Rate Opportunities Fund ("HFRO") (n/k/a Highland Income Fund),

[10] On June 13, 2012, the management agreements for Highland Credit Strategies Fund were purportedly "novated" to the newly-created NexPoint. Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as "NHF." The result of this transfer was simply to shift management fees relating to NHF—which had previously been diverted from HCMLP—from one lifeboat (Pyxis/HCMFA) to another (NexPoint).

Highland Long/Short Equity Fund, Highland Long/Short Healthcare Fund, and Highland Special Situations Fund to HCMFA. HCMLP received no consideration for the transfer. Prior to the transfer, HCMLP received management and advisory fees under those agreements in return for the services it performed. Following the transfer, it was HCMFA rather than HCMLP that received those fees, notwithstanding that HCMFA used HCMLP's employees to perform most services. Thus, the effect of the transfer was to insert a new sham entity to reap the profits earned from the same HCMLP employees performing the same work that had been performed prior to the transfer.

60. HCMFA collected management fees from its managed funds based on a percentage of their net asset value ("NAV"). Meanwhile, HCMLP—whose employees performed most services required by HCMFA—received a low fee that was only a small fraction of the fees earned by HCMFA. And HCMLP received no fee in respect of the advisory services it provided to HCMFA, despite the fact that HCMLP's employees were named portfolio managers, and constituted entire teams of supporting investment analysts, for HCMFA-managed funds. Indeed, HCMFA did not execute a sub-advisory agreement with HCMLP, and it was only in May 2018 that HCMFA executed a payroll reimbursement agreement to partially compensate HCMLP for the services of certain HCMLP employees. If HCMLP had managed the HCMFA-managed funds directly rather than doing so through an entity that was created to evade HCMLP's creditors, then HCMLP would have earned tens of millions of dollars (potentially over $100 million) in additional fees between 2012 and 2018. The HCMFA scheme is illustrated by Figure 2, below.

Figure 2.



61. Following Dondero's "lifeboat" playbook, HCMLP also provided financial support to HCMFA so that HCMFA was well-positioned to earn profits that bypassed HCMLP's creditors and flowed directly to Dondero and his affiliated entities, primarily through HCMFA's largest limited partner, HCMS (of which Dondero and Okada owned 75% and 25%, respectively). Between 2011 and 2019, HCMLP loaned HCMFA approximately $12 million. Those HCMFA loans were evidenced by demand notes, for which Dondero caused HCMLP to enter into multiple forbearances, ultimately preventing HCMLP from demanding payment until May 31, 2021. As of the Petition Date, $6.3 million was outstanding on the notes subject to the forbearance agreement. In May 2019, HCMFA borrowed an additional $7.4 million from HCMLP pursuant to two additional demand notes.

62. Subsequent to Dondero's resignation from HCMLP, HCMFA defaulted on its debt to HCMLP. On January 22, 2021, HCMLP filed an adversary proceeding in the Bankruptcy

Court to collect on the debt. HCMFA has raised a series of frivolous defenses to HCMLP's claims, including that the notes were executed in error. As of December 11, 2020, approximately $7.7 million in principal and interest was due and owing to HCMLP on the HCMFA notes dated May 2 and 3, 2019 and, as of June 4, 2021, approximately $3.1 million in principal and interest was due and owing to HCMLP on the HCMFA notes dated February 26, 2014 and February 26, 2016, and interest and fees continue to accrue.

D. Dondero Causes HCMLP To Engage In Misconduct That Exposes It To Additional Liability

63. As described more fully below, in addition to establishing the lifeboats to usurp HCMLP's business and evade its contingent creditors, Dondero engaged in other actions that meaningfully harmed HCMLP. This included exposing HCMLP to significant liability by utilizing it to exact revenge on Dondero's perceived adversaries, and carrying out schemes that personally benefitted Dondero and, in certain instances, HCMLP's Chief Legal Officer and General Counsel Scott Ellington, but conferred no benefit on HCMLP. As described above, these actions ultimately resulted in more than one billion dollars in litigation and arbitration claims against HCMLP and millions of dollars in legal fees, necessitated HCMLP's bankruptcy filing, and ultimately forced HCMLP to enter into settlements requiring it to pay hundreds of millions of dollars.

1. Dondero Causes HCMLP To Engage In Misconduct Designed To Exact Revenge On Joshua Terry

64. In 2011, Dondero formed Acis Capital Management, L.P. ("Acis") and Acis Capital Management GP, LLC ("Acis GP"). Dondero was President both of Acis and Acis GP, and controlled their overall financial strategies and decisions. Upon information and belief, prior to its bankruptcy filing in 2018, Acis was indirectly owned by Dondero (through Dugaboy), Okada, and Joshua Terry ("Terry"), an HCMLP employee that Dondero tapped to manage Acis.

Like HCMLP, Acis was a registered investment advisor whose purpose was to raise money from third-party investors to launch or invest in CLOs. HCMLP was the investment manager for Acis, and Acis performed almost all of its services through HCMLP employees. Dondero created Acis to act as another lifeboat—*i.e.*, to divert income away from HCMLP when HCMLP was facing the risk that all of its assets would be absorbed by its creditors. In 2013, HCMLP began what proved to be a short-lived turnaround, spurred by improving financial performance and settlement of the Barclays litigation. At this point, Dondero became more troubled by the dilution of his share of Acis's income, caused by Terry's ownership in Acis, than he was about evading HCMLP's liabilities. As a result, Dondero once again redirected the flow of money for his own benefit, this time by siphoning value from Acis back to HCMLP.

65. By 2016, tensions between Dondero and Terry hit a boiling point. Dondero sought to finance an acquisition by an HCMLP portfolio company through a loan from HCMLP-managed CLOs, and an extension of the maturity dates on the portfolio company's notes that were held by the CLOs. Terry was the investment manager for the CLOs, and opposed the plan on the ground that agreeing to extend the notes' maturity dates would breach his fiduciary duties to the CLOs. Dondero responded to Terry's opposition by firing him from Acis and HCMLP, making up a pretextual claim of termination for "cause." Shortly thereafter, Dondero amended the Acis limited partnership agreement to terminate Terry's interests in Acis, and directed Acis to sue Terry in Texas state court. Terry counterclaimed and demanded arbitration.

66. On October 20, 2017, following a ten-day arbitration, the arbitration panel issued Terry an award of $7,949,749.15, plus interest, against Acis. The arbitration panel found, among other things, that (i) Terry's termination was "without cause," and Acis had "knowingly and willfully" invoked HCMLP's false pretext of "for cause" in order to deny Terry his

contractual entitlement to the value of his Acis partnership interest, (ii) Acis had breached its limited partnership agreement, and breached the fiduciary duties it owed to Terry as Acis's limited partner, (iii) beginning in 2013, Dondero had caused Acis to pay HCMLP more than its contractual entitlement for shared expenses in order to reduce the amount of Terry's limited partnership distributions, and (iv) one month after Terry was terminated from Acis, Dondero significantly increased the amounts that Acis was paying HCMLP under their shared services and sub-advisory agreements, retroactive to January 1, 2016.

67. Beginning on October 24, 2017—four days after Terry's arbitration judgment was issued—Dondero, acting through HCMLP, and with the aid of Ellington and Leventon, entered into numerous transactions designed to take control of Acis's assets and business, and strip Acis of assets so that it would be unable to pay Terry's arbitration award. Ellington and Leventon aided Dondero by implementing Dondero's directives and taking the steps necessary to consummate these transactions.

68. Ultimately, Dondero's elaborate schemes to render Acis judgment-proof led Terry to file involuntary petitions for protection under chapter 11 of the United State Bankruptcy Code against Acis and Acis GP on January 30, 2018. In response to the bankruptcy filings, Dondero caused HCMLP, which served as the sub-advisor to the Acis CLOs, to grossly mismanage the Acis CLOs, including by failing to purchase a single loan for the CLOs following the appointment of a chapter 11 trustee in the Acis bankruptcy case. This abrogation of duties caused the chapter 11 trustee to replace HCMLP with Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland"). Put another way, Dondero's use of HCMLP to cause damage to Acis actually harmed HCMLP itself, leading HCMLP to incur exorbitant legal fees attacking Acis, the loss of its investment management

contracts and the income flowing from those contracts, and reputational harm that precluded HCMLP from launching any future CLOs and generating fee income therefrom.

69. Dondero also caused HCMLP to commence litigation against the Acis chapter 11 trustee, prompting a countersuit pursuant to which the chapter 11 trustee sought to recover fraudulent transfers Dondero had directed (through HCMLP) and to stop HCMLP from engaging in a course of conduct that was harmful to Acis and the Acis CLOs. This led to the entry of a temporary restraining order against HCMLP, which Dondero caused HCMLP to violate. Dondero also caused Highland CLO Funding, Ltd. ("HCLOF") to initiate an additional frivolous lawsuit against Terry in the Royal Court of Guernsey (the "Guernsey Suit"), which was ultimately dismissed, resulting in Terry arguing that HCMLP, as the owner of HCLOF's advisor Highland HCF Advisors, Ltd. ("HHCFA"), was liable for Terry's attorneys' fees and expenses under Guernsey's "loser pays" regime.[11]

2. Dondero And Ellington Expose HCMLP To Liability By Fraudulently Inducing An Investment From HarbourVest

70. Dondero and Ellington also exposed HCMLP to substantial liability to third-party investors 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. (collectively,

[11] Dondero's litigation crusade against Terry and Acis continues to date. On May 13, 2021, NexPoint caused one of its managed retail funds, NHF, to commence a lawsuit in the district court for the Southern District of New York against Acis, Terry, U.S. Bank, N.A., and Brigade, alleging that the Acis CLOs had been mismanaged. NHF then filed an action in Acis's bankruptcy case, seeking a ruling that the complaint did not violate the injunction contained in Acis's plan of reorganization. The bankruptcy court declined to issue the order requested by NHF and held that NHF must amend its complaint to comply with the plan injunction. NHF then filed a motion asking the Bankruptcy Court to reconsider its ruling.

"HarbourVest"). At the same time that Dondero was surreptitiously transferring valuable rights associated with the Acis CLOs away from Acis in order to evade Terry's arbitration award, he and Ellington, HCMLP's Chief Legal Officer and General Counsel, were using HCMLP to induce the HarbourVest Entities to purchase 49.9% of HCLOF—the owner of the equity tranche of the Acis CLOs—from CLO Holdco for approximately $75 million in cash, with a commitment to invest an additional $75 million in HCLOF.[12] In soliciting this investment, Dondero and Ellington failed to disclose material facts to HarbourVest regarding the Terry disputes and Acis frauds, thus exposing HCMLP to substantial and unnecessary liability.[13]

71. In inducing HarbourVest's investment, Dondero and Ellington, purportedly acting through HCMLP, made numerous misrepresentations and omissions, including: (1) failing to disclose that Dondero intended to cause Acis to evade Terry's $7.9 million arbitration award against it, including by causing Acis to consummate a series of fraudulent transfers; (2) misrepresenting the reasons that Dondero changed the name of the holding company for the Acis CLOs from Acis Loan Funding, Ltd. ("ALF") to HCLOF immediately prior to the HCLOF Investment; and (3) expressing confidence in HCLOF's ability to reset or redeem the CLOs under its control, when in actuality Dondero's actions to evade Terry's arbitration award against Acis resulted in Acis's bankruptcy, and rendered the resets impossible.

72. Moreover, unbeknownst to HarbourVest, Dondero caused CLO Holdco to use the $75 million that it received from HarbourVest to make investments in other Dondero-owned

[12] CLO Holdco acquired Acis CLO equity tranches when the CLOs were launched and then transferred them to HCLOF in exchange for a 100% ownership interest in HCLOF after it was formed.

[13] HCLOF has never paid a management fee to HHCFA, a wholly-owned subsidiary of HCMLP that is managed and controlled by HCMLP and operated using HCMLP employees. Consequently, HCMLP has indirectly provided free investment management services to HCLOF since its inception.

entities, including entities managed by NexPoint and HCMFA. Thus, the HarbourVest investment benefitted Dondero personally, but left HCMLP exposed to hundreds of millions of dollars in potential damages to HarbourVest.

3. Dondero And His Accomplices Cause HCMLP To Engage In Misconduct That Increases Its Liability To UBS

73. In March 2017, the New York state court presiding over UBS's claims against HCMLP and the Fund Counterparties ruled that UBS's claims against the Fund Counterparties, and its fraudulent transfer claims against HCMLP, could proceed to trial.[14] Shortly thereafter, Dondero and Ellington took steps to transfer the Fund Counterparties' remaining assets to Sentinel Reinsurance, Ltd. ("Sentinel"), a Cayman Islands entity indirectly owned and controlled by Dondero and Ellington,[15] in order to ensure that such assets would be out of UBS's reach in the event that a judgment was entered in its favor.[16] In or around August 2017, Dondero and Ellington orchestrated the surreptitious transfer of substantially all of the Fund Counterparties' assets—with a face amount of $300 million and a fair market value of more than $100 million—to Sentinel.

74. The pretextual justification for these transfers was to satisfy a $25 million premium on an "after the event" insurance policy issued by Sentinel that purportedly insured the first $100 million of liability to UBS. That justification, however, hid the real goal: to drain the Fund Counterparties' assets (but keep them within the control of Dondero and Ellington) and render the Fund Counterparties (and certain related entities) judgment-proof.

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[14] UBS's claim against HCMLP for breach of the implied covenant of good faith and fair dealing was subsequently also permitted to proceed.

[15] Sentinel was created in 2012 and is 70%-owned by Dondero and 30%-owned by Ellington through intermediate holding companies. Sentinel has no employees or physical office space. HCMLP employees, including Leventon, performed work on behalf of Sentinel.

[16] In September 2017, Ellington caused Dilip Massand to be appointed as a director of Sentinel.

75. Moreover, the existence of this purported insurance policy was actively concealed from the Independent Board by Ellington, Leventon, Sevilla, Lucas, and DiOrio. This concealment caused HCMLP to make factually inaccurate statements to the Bankruptcy Court and incur millions of dollars in additional fees litigating (rather than settling) with UBS. After the policy was uncovered through the diligence of the Independent Board, CDO Fund made a claim on the policy in March 2021. Despite CDO Fund's efforts to collect on the policy, Sentinel has refused to make any payments to HCMLP or the Fund Counterparties. This purported insurance policy was the only such policy Sentinel had issued during its existence.

76. On February 10, 2020, the New York state court entered a judgment against the Fund Counterparties in connection with the phase one litigation, in the principal amount of $519,374,149, plus $523,016,882.79 in prejudgment interest, for an overall judgment of $1,042,391,031.79. Trial on UBS's claims against HCMLP was still pending when HCMLP filed for bankruptcy on October 16, 2019 (as discussed *infra*).

4. Dondero Causes HCMLP To Engage In Misconduct That Results In Liability To HERA And Patrick Daugherty

77. HCMLP's poor performance during the 2008-09 financial crisis left it with insufficient available cash and assets to offer incentive-based compensation to key senior employees. After HCMLP defaulted on a credit facility with a group of unsecured banks, the lender group demanded a security interest in all HCMLP's assets, but permitted the creation of a retention program to stave off an exodus of employees. With the consent of the lenders, on June 23, 2009, HCMLP created Highland Employee Retention Assets LLC ("HERA"), an employee-owned (subject to a two-year vesting period) entity that served as a replacement for certain senior employees' deferred compensation, which had been previously-awarded but wiped out by the financial crisis. HCMLP contributed assets to HERA, which then distributed

proceeds from time to time. Patrick Daugherty, a former senior HCMLP employee, was a director of HERA and its largest unitholder.

78. Dondero's relationship with Daugherty deteriorated, and Daugherty resigned from HCMLP in the fall of 2011. Instead of simply allowing HERA to pay Daugherty what he was owed, Dondero caused HCMLP to carry out his personal vendetta against Daugherty through years of spiteful, unnecessary litigation borne out of personal animosity. As a result of that litigation, HCMLP accrued (i) litigation expenses and pre- and post-judgment interest that exceeded the amounts that HERA owed Daugherty in the first place; and (ii) liability in connection with a jury verdict that HCMLP defamed Daugherty with malice and breached the implied covenant of good faith and fair dealing.

79. Moreover, Dondero, through HCMLP, engaged in an asset-stripping campaign designed to render HERA judgment-proof, further exposing HCMLP to liability and unnecessary legal costs. In furtherance of that scheme, Dondero caused: (i) HCMLP to buy out all HERA unitholders except for Daugherty; (ii) HERA's board to transfer its powers to HERA Management, a newly formed entity for which Dondero served as president and sole member; and (iii) HERA to distribute substantially all of HERA's assets to HCMLP, while claiming that HCMLP would place Daugherty's interests in HERA into escrow.

80. When Daugherty demanded payment of his judgment from HERA, HERA claimed it had become insolvent, citing that it owed HCMLP more than $7.5 million for legal expenses—approximately $4.9 million of which HCMLP had written off because of "lack of collectability."

81. Daugherty then sued HCMLP, HERA, HERA Management, and Dondero in the Delaware Chancery Court. A Vice Chancellor concluded that HCMLP, Dondero, and the other

defendants (who were also controlled by Dondero) were "improperly withholding documents," that "there is a reasonable basis to believe" that they perpetrated a fraud—and solicited "the services of attorneys to aid in furtherance of that fraud"—as part of an effort to evade Daugherty's judgment during the pendency of his case. The Vice Chancellor concluded that "defendants, with [counsel's] advice and assistance, were never going to let the assets held in the escrow agreement to make their way to Daugherty."

82. In total, HCMLP suffered approximately $10 million in harm as a result of Dondero's decision to launch a protracted and unnecessary war against Daugherty.

E. Dondero Causes HCMLP To Engage In Conduct That Results In An Arbitration Award Against It Of Approximately $190 Million And Forces HCMLP Into Bankruptcy

83. Dondero also engaged in misconduct relating to HCMLP managed funds Highland Offshore Partners L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Crusader Funds") that resulted in an arbitration award against HCMLP of approximately $190 million. HCMLP had placed the Crusader Funds into wind-down in October 2008. Investors in the funds subsequently commenced lawsuits alleging breach of fiduciary duty claims against HCMLP, based on allegations that Dondero had refused to make mandated distributions and honor redemption requests, and traded the funds' positions in a manner designed to render them illiquid in order to deter future redemptions, which led to multiple disputes among redeeming investors. Certain of these lawsuits were ultimately resolved in July 2011, when the parties entered into a Joint Plan of Distribution of the Crusader Fund and a Scheme of Arrangement for its creditors (together, the "Joint Plan and Scheme"). As part of the Joint Plan and Scheme, a committee referred to as the "Redeemer Committee" was elected from the Crusader Funds' investors to oversee HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors.

84. The peace would not last, however. On July 5, 2016, the Redeemer Committee (i) terminated HCMLP as investment manager; (ii) filed a complaint in Delaware Chancery Court against HCMLP seeking a limited status quo order, a declaration that the Redeemer Committee had "cause" to terminate HCMLP as manager, and a declaration that HCMLP had forfeited any right to indemnification as a result of its failure to distribute proceeds to investors of various funds; and (iii) commenced an arbitration proceeding (the "Redeemer Arbitration") against HCMLP alleging that it had engaged in various forms of misconduct in its role as investment advisor. After two years of arbitration proceedings, the Redeemer Arbitration culminated in a nine-day evidentiary hearing in September 2018 that included testimony from eleven fact witnesses and four expert witnesses. On March 6, 2019, the arbitration panel issued an award in favor of the Redeemer Committee, which resulted in gross damages of $136.8 million and total damages (including interest) of $190.8 million. Ultimately, the panel awarded ten forms of damages: (1) the Deferred Fee Claim ($43,105,395); (2) the Distribution Fee Claim ($22,922,608); (3) the Taking of Plan Claims ($3,277,991); (4) the CLO Trades Claim ($685,195); (5) the Credit Suisse Claim ($3,660,130); (6) the UBS Claim ($2,600,968); (7) the Barclays Claim ($30,811,366); (8) the Legal Fees, Costs, and Expenses Claim ($11,351,850); and (9) the Portfolio Company Award: ($71,894,891).

85. The claims that were asserted against HCMLP by the Redeemer Committee stemmed from the various breaches of fiduciary duty to the Crusader Funds that Dondero caused HCMLP to commit. For example, the "Barclays Claim"—which gave rise to over $30 million in liability for HCMLP—arose out of Dondero causing HCMLP to transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, after the Redeemer Committee had already refused to approve that transfer. In so doing, Dondero

caused HCMLP to violate the Joint Plan and Scheme and its fiduciary duties. Because of Dondero's wrongful conduct, HCMLP was ordered to pay: (1) over $30 million on account of disgorged partnership interests; (2) additional sums for disgorgement of distribution fees (that were included within the $22.9 million Distribution Fee Award); and (3) interest, fees, and expenses incurred in connection with the arbitration.

86. Dondero's conduct also resulted in HCMLP becoming liable to the Redeemer Committee for over $71 million (the "Portfolio Company Claim") in connection with claims arising from a portfolio company that was owned, directly and indirectly, by HCMLP (the "Portfolio Company"). Some of the Portfolio Company's stock was owned by the Crusader Funds. Dondero caused HCMLP to covertly purchase shares in the Portfolio Company from another fund that he controlled at below-market prices, and failed to liquidate the Crusader Funds' shares in Portfolio Company as his fiduciary duties required. Pursuant to the arbitration award, HCMLP was required to purchase the Crusader Funds' shares in the Portfolio Company at a fixed price of $48,070,407, and also to pay pre-judgment interest, which brought the total claim to $71,894,891.

87. Additionally, the Joint Plan and Scheme required HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete. Dondero caused HCMLP to violate that provision of the Joint Plan and Scheme by causing HCMLP to surreptitiously transfer approximately $32 million in Deferred Fees from the Crusader Funds' accounts in early 2016. The arbitration panel ruled that as a consequence of Dondero's blatant breach of the payment requirements of the Joint Plan and Scheme, HCMLP forfeited its right to these fees entirely.

88. The Redeemer Committee set a hearing in Delaware Chancery Court for October 8, 2019 to obtain entry of a judgment with respect to the award. The hearing was subsequently continued to October 16, 2019. HCMLP filed for bankruptcy on the day of oral arguments for the Redeemer Committee's motion to enforce the Award in Delaware Chancery Court.

F. Dondero's Schemes Result In Hundreds Of Millions Of Dollars Of Liability For HCMLP

89. As noted, Dondero's schemes ultimately resulted in hundreds of millions of dollars of liability for HCMLP. As described below, the creditors that Dondero had sought to cheat and evade filed proofs of claim in HCMLP's bankruptcy proceeding, and HCMLP's management, burdened with Dondero's blatant misconduct (and that of Ellington and other of Dondero's loyalists), was forced to settle these claims for amounts that enabled HCMLP to escape the risk of even greater liability.

90. Additionally, HCMLP has incurred in excess of $40 million in professional fees in connection with the bankruptcy filing, which was necessitated solely as a result of Dondero's misconduct. HCMLP also incurred legal expenses for entities that HCMLP did not own, including several of the "lifeboats."

1. HCMLP Incurs $125 Million In Liability To UBS As A Result Of Dondero's, Leventon's, and Ellington's Misconduct

91. On June 26, 2020, UBS filed a proof of claim (the "UBS Claim") in HCMLP's bankruptcy proceeding for the full $1,039,957,799.44 of its judgment against the Fund Counterparties.[17] The UBS claim sought "damages arising from HCMLP's breach of the

[17] The UBS Claim consists of two substantively identical claims: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG, London Branch.

implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP," and interest, punitive damages, and attorneys' fees.

92. In November 2020, the Court considered the value of the UBS Claim for purposes of plan voting. In connection therewith, the Court temporarily allowed the UBS Claim in the amount of $94,761,076. Of that amount, approximately $43 million related to transfers HCMLP caused to be made to one of HCMLP's managed funds, based on the Court's estimation that there was a 90% chance that UBS would prevail on that portion of its claim under either a fraudulent conveyance or breach of implied covenant theory.

93. Subsequently, HCMLP and UBS engaged in settlement discussions and mediation. Following mediation, the parties reached an initial settlement in principle, pursuant to which UBS would receive a $75 million unsecured claim, consisting of a $50 million Class 8 General Unsecured Claim and a $25 million Class 9 Subordinated General Unsecured Claim. That settlement was disclosed to the Court at the February 2, 2021 confirmation hearing. This settlement was in satisfaction of damages resulting from conduct that Dondero, Ellington, and Leventon perpetrated on behalf of HCMLP. But for that conduct, HCMLP would not have been liable to, or required to enter into the settlement with, UBS.

94. While the preliminary settlement for the known misconduct of Dondero, Ellington, and Leventon was being finalized, the Independent Board learned that Dondero and Ellington had surreptitiously caused the Fund Counterparties to transfer their remaining assets to Sentinel, and had caused HCMLP to misrepresent to UBS that the Fund Counterparties had no assets prior to that transfer occurring. Acting on behalf of HCMLP, Dondero, Ellington, and Leventon had concealed this transfer from the Independent Board, while advising the Independent Board that the Fund Counterparties lacked any material assets. The Independent

Board had communicated that information to UBS (and the Court) and negotiated with UBS on those bases.

95. When the Independent Board discovered that Dondero, Ellington, and Leventon engaged in a conspiracy to cover up the fraudulent Sentinel transfer, it disclosed the transfer to UBS. As a result, the parties reopened settlement discussions. Ultimately, in order to limit HCMLP's potential liability to UBS as a result of Dondero's, Leventon's, and Ellington's bad acts, HCMLP entered into a revised settlement with UBS that granted UBS a claim totaling $125 million, consisting of a $65 million Class 8 General Unsecured Claim and a $60 million Class 9 Subordinated Unsecured Claim. In addition to the increased settlement amount and litigation costs, HCMLP is required to expend up to $3 million (subject to reimbursement) pursuant to certain cooperation provisions contained in the settlement agreement with UBS as a result of the fraudulent Sentinel transfer. The Bankruptcy Court approved the UBS settlement on May 27, 2021.

2. HCMLP Incurs More Than $185 Million In Liability To The Redeemer Committee And Crusader Funds As A Result Of Dondero's Misconduct

96. On April 3, 2020, the Redeemer Committee filed a general unsecured claim in the amount of its $190,824,557.00 arbitration award, plus "post-petition interest, attorneys' fees, costs and other expenses that continue to accrue." Likewise, on April 3, 2020, the Crusader Funds filed a claim for $23.5 million, consisting of $8.2 million in management fees and $15.3 million in distribution fees. Faced with this potential liability, HCMLP entered into a settlement whereby, among other things: (i) the Redeemer Committee was granted an allowed general unsecured claim of $136,696,610.00; (ii) the Crusader Funds were granted an allowed general unsecured claim of $50,000.00; (iii) HCMLP and Eames each consented to the cancellation of interests they and the Charitable DAF held in the Crusader Funds that the arbitration panel had

determined were wrongfully-acquired; (iv) HCMLP and Eames each acknowledged that they would not receive any portion of distributions reserved by the Crusader Funds, and HCMLP further acknowledged that it will not receive any future payments from the Crusader Funds in respect of any Deferred Fees, Distribution Fees, or Management Fees; and (v) HCMLP and the Redeemer Committee agreed to a form of amendment to the Portfolio Company's shareholders' agreement and to a process whereby HCMLP would use commercially reasonable efforts to monetize all Portfolio Company shares held by HCMLP, funds managed by HCMLP, and the Crusader Funds.[18] The Bankruptcy Court approved HCMLP's settlement with the Redeemer Committee and Crusader Funds on October 23, 2020.

3. HCMLP Incurs More Than $100 Million In Liability To Acis, Terry, And HarbourVest As A Result Of Dondero's Misconduct

97. Acis also filed proofs of claim against HCMLP, seeking, among other things, the amounts Dondero had caused HCMLP to overcharge Acis in order to diminish Terry's limited partner distributions from Acis, and damages arising from HCMLP's efforts to transfer assets out of Acis, in order to evade Terry's arbitration award and ensure that Dondero would benefit from the transferred assets. Terry and his wife also filed a proof of claim against HCMLP, alleging that HCMLP, acting through Dondero, had misappropriated assets in their retirement account. The Acis and Terry proofs of claim were settled in mediation after Dondero resigned from HCMLP. Pursuant to that settlement, Acis received a $23 million allowed claim

[18] Because HCMLP did not have the money to purchase the shares, the Redeemer Committee and HCMLP agreed to treat the Portfolio Company's shares differently than the process required under the arbitration award. Rather than having HCMLP purchase the Crusader Funds' shares in the Portfolio Company for approximately $48 million, they agreed that the Crusader Funds would retain their shares in the Portfolio Company and that the total damages award would be reduced by approximately $30.5 million to account for the perceived fair market value of those shares.

against HCMLP, and HCMLP was required to pay (1) Terry and his wife $425,000 plus 10% interest to resolve the Terry's claim that HCMLP had misappropriated their retirement account;[19] (ii) Terry $355,000 in legal fees because of HCLOF's frivolous suit in Guernsey; and (iii) Acis an additional $97,000 for legal fees incurred defending another frivolous lawsuit initiated by Dondero.

98. On April 8, 2020, the HarbourVest entities filed proofs of claim against HCMLP (the "HarbourVest Proofs of Claim") alleging that HCMLP had fraudulently induced them into entering into the HCLOF Investment based on HCMLP's misrepresentations and omissions concerning certain material facts, including that HCMLP: (1) failed to disclose that Dondero intended to cause Acis to evade Terry's $7.9 million arbitration award; (2) failed to disclose that it orchestrated a series of fraudulent transfers to prevent Terry from collecting on his arbitration award, and misrepresented the reasons for changing the portfolio manager for HCLOF immediately prior to HarbourVest's HCLOF Investment; (3) indicated that the dispute with Terry would not impact HCLOF's investment activities; and (4) falsely expressed confidence in HCLOF's ability to reset or redeem the CLOs under its control.

99. HarbourVest sought to rescind its HCLOF Investment and alleged damages in excess of $300 million. Ultimately, following Dondero's departure from HCMLP, the parties reached a resolution whereby HarbourVest agreed to transfer its interests in HCLOF to a new entity designated by HCMLP in exchange for a $45 million general unsecured claim and a $35 million subordinated general unsecured allowed claim. These value of the HCLOF interests

[19] Because of the interest component, HCMLP ultimately paid the Terrys approximately $1 million to compensate them for Dondero's theft of their retirement account.

that HarbourVest transferred to the HCMLP-designated entity was tens of millions of dollars less than the allowed amount of HarbourVest's claim against HCMLP.

G. HCMLP Was Insolvent, Inadequately Capitalized, And/Or Intended To Incur Debts Beyond Its Ability To Pay Well Before The Redeemer Committee Arbitration Award Forced It Into Bankruptcy

100. The Redeemer Committee's $190 million arbitration award left HCMLP with no choice but to file for bankruptcy. But HCMLP was insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay well before the Redeemer Committee arbitration award was issued. As Dondero himself has acknowledged under oath, the economic recession of 2008, and the litigation commenced against HCMLP shortly thereafter, left HCMLP in an insolvent state from which HCMLP was still struggling to emerge in 2012. Indeed, valuations based on contemporaneous projections prepared on HCMLP's behalf and conservative valuations of HCMLP's contingent litigation liabilities show that HCMLP was balance sheet insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay in 2011 and 2012, when Dondero created lifeboats NexPoint and HCMFA, and transferred certain of HCMLP's management contracts to HCMFA for no value.

101. The creation of the lifeboats and the subsequent transfer of management contracts (and business value) all but ensured HCMLP's demise. HCMLP's assets under management, operating income from its investment management business, and operating margins steadily declined, and almost no new third-party investor money came into the company. HCMLP continued to shoulder the burden of providing services to NexPoint and HCMFA without compensation. While HCMLP's financial condition began to improve in 2013 due largely to successful proprietary trading and overall improving market conditions, those gains were largely dissipated in 2015 due to Dondero's reckless trading.

102. However, by 2015, the company was again firmly insolvent, inadequately capitalized and/or unable to pay its debts as they came due, in large part because its CLOs were generating diminishing returns, and the company was earning only minimal fees for servicing other Dondero Entities rather than generating new business of its own, while continuing to bear significant employee expenses. HCMLP's financial condition deteriorated further between 2016 and 2019, as additional litigation claims were levied against the company, and it was forced to answer for the misconduct perpetrated in its name by Dondero and his loyalists.

H. At All Time Relevant To This Complaint, Dondero Hopelessly Commingled And Exploited Entities Within His Enterprise For His Own Personal Benefit

103. At all times relevant to this Complaint, Dondero exploited HCMLP, Strand, and the various entities he controlled within the Highland empire for his own personal benefit, both directly and through other HCMLP fiduciaries whose loyalties ran to Dondero rather than HCMLP, and who aided Dondero in his various schemes. Dondero treated the elaborate corporate web he had created as a series of integrated entities that existed solely to further his own self-enriching schemes, rather than as individual entities with their own respective stakeholders and corporate governance.

1. Prior To Dondero's Resignation From Strand, Dondero Was The Alter Ego Of Strand

104. Dondero singularly dominated and controlled HCMLP and was its solitary decision-maker. Dondero made every material business, operational, management, and financial decision for HCMLP. Dondero exercised his complete control of HCMLP through HCMLP's general partner Strand, which Dondero similarly dominated and controlled. Dondero was Strand's 100% owner, sole director, and president between 1993 and 2020. For eight years he was also its secretary and only officer.

105. Strand did not even attempt to maintain the pretenses of observing corporate formalities. As an initial matter, Strand did not hold regular board meetings. Indeed, the Litigation Trustee, having reviewed HCMLP's books and records, has been unable to identify a single instance in which a Strand board meeting was held prior to the Petition Date. This is consistent with Dondero's own testimony in 2020 in an unrelated proceeding that he cannot recall ever attending a board meeting for Strand or seeing Strand board meeting minutes.

106. Although Strand's bylaws require annual meetings of stockholders, based on the Litigation Trustee's review of materials available to him, over the 26 years that Dondero controlled Strand, only six annual stockholder meetings were ever held, and no such meetings took place after 2005. The Litigation Trustee was able to identify only twelve instances of documented corporate action taken by the Strand board over the course of approximately 26 years, eight of which related to the appointment or removal of officers.

107. Dondero was the only officer of Strand between 1993 and 2001. Although Strand had certain elected officers between 2001 and 2019, they performed no duties in their capacities as officers of Strand and were appointed or fired from their roles based on their loyalty to, and standing with, Dondero. Indeed, when Dondero was asked under oath in 2020 about Strand's officers, he testified that he did not know if Strand even had officers, and stated that he was "not aware of [Strand] having any employees or active … governance." Moreover, he did not know whether Strand had a board of directors or if he was solely Strand's president.

2. Dondero Routinely Commingled Entities And Employees Throughout The Dondero Corporate Web And Abused The Corporate Form

108. As of the Petition Date, the Highland complex spanned more than 2,000 entities. For at least the last two decades, it has functioned largely as a single economic unit that was directly or indirectly operated and controlled by Dondero for his own personal benefit. Dondero

directed the integrated enterprise himself, using friends, family members, and directors-for-hire that the Court has previously described as "nominal figureheads"[20] to carry out his will. As high-level HCMLP employees have testified under oath, Dondero was the "ultimate decision-maker" for "every [] entity in the firm and for the firm as a whole."

109. Dondero managed the entities as a single integrated unit. Internal business plans and projections were prepared in the aggregate across entities, including entities that were not owned by HCMLP, but were instead otherwise directly or indirectly owned by Dondero. Internal financial forecasts even projected AUM growth in non-HCMLP entities that was predicated upon HCMLP acting as support and service provider, even though HCMLP itself was effectively a melting ice-cube when those projections were made. Indeed, as far back as 2011, company projections provided to the valuation advisor CBiz Valuation Group projected negative operating income for HCMLP.

110. Dondero also pillaged HCMLP for the benefit of other entities he created or controlled. In or around 2013, the Swiss entity Highland Capital Management AG ("HCM AG"), which is majority-owned by Dugaboy (which is ultimately owned and controlled by Dondero), entered into a joint venture with a Brazilian entity named Brasilinvest Investimentos e Participacoes Ltda ("Brasilinvest Investimentos") for a shared interest in a Brazilian entity named Highland Capital Brasilinvest Gestora de Recursos, Ltda (a.k.a Highland Capital Brasil Gestora de Recursos). With Dondero's approval, HCM AG acquired Brasilinvest Investimentos's shares in this joint venture through a $230,000 cash payment in October 2016.

[20] *See In re Acis Cap. Mgmt., L.P.*, No. 18-30264-SGJ-11, 2019 WL 417149, at *17 (Bankr. N.D. Tex. Jan. 31, 2019), *aff'd*, 604 B.R. 484 (N.D. Tex. 2019), *appeal dismissed as moot sub nom. Matter of Acis Cap. Mgmt. G.P., L.L.C.*, 850 F. App'x 300 (5th Cir. 2021), and *aff'd sub nom. Matter of Acis Cap. Mgmt., L.P.*, 850 F. App'x 302 (5th Cir. 2021).

However, at Dondero's direction, the $230,000 was paid by HCMLP rather than HCM AG or Dugaboy.

111. Dondero also funneled his own personal expenses through HCMLP, routinely seeking expense reimbursements from HCMLP in excess of $1 million per year. At Dondero's direction, HCMLP employed certain employees whose only responsibilities and obligations were to manage Dondero's and Okada's personal affairs and private business interests. For example, Melissa Schroth was employed by HCMLP, but her only duties were to serve as Dondero's and Okada's personal bookkeeper. Her duties involved no work for HCMLP, but rather concerned Dondero's and Okada's personal investments and entities, including but not limited to Dugaboy and Get Good.

112. Indeed, notwithstanding the fact that Schroth was nominally an HCMLP employee, she subordinated the interests of HCMLP to Dondero's personal interests. For example, following the commencement of HCMLP's bankruptcy, Schroth instructed Dondero's sister, Nancy, to send a letter in her capacity as a trustee of Dugaboy instructing a Swiss entity, Highland Capital AG, to write off a liability that it owed to HCMLP for payments that HCMLP had made on its behalf. Schroth even ghost-wrote a letter for Nancy Dondero to send to Highland Capital AG authorizing this theft.

113. Schroth was not an anomaly. Several other professionals on HCMLP's payroll dedicated material amounts of their working time to performing work in connection with Dondero's personal businesses, investments, and homes. Likewise, Dondero frequently instructed HCMLP's legal department to perform legal services in connection with Dondero's personal and business interests, which conferred no value on HCMLP.

114. Highland employees frequently did not know whether they or their colleagues were employees of HCMLP or another entity within the Dondero web. Employees shared the same office space in HCMLP's headquarters. Indeed, each of Strand, NexPoint, NexPoint GP, HCMFA, Dugaboy, CLO Holdco, the Highland Dallas Foundation, the Highland Santa Barbara Foundation, the Highland Kansas City Foundation, HFP, SAS, and Acis listed its business headquarters at this same address: 300 Crescent Court, Suite 700, Dallas, Texas 75201. Moreover, when employees of HCMLP performed services for other Dondero entities, they sometimes did so pursuant to agreements that Dondero signed for both HCMLP, on the one hand, and the counterparty, on the other hand. In other instances, HCMLP's employees performed services for non-HCMLP entities without any formal agreements in place at all. For example, Leventon testified that he performed work for SAS "on and off" for approximately seven years (*e.g.*, in connection with whether to invest in a new litigation funding case), notwithstanding that he was never an employee of SAS and HCMLP did not have a shared services agreement with SAS.[21] Moreover, when shared services and advisory agreements were in place, HCMLP frequently charged Dondero's other entities below-market rates for use of HCMLP's employees and resources.

115. Additionally, Dondero would delegate authority to his loyalists irrespective of their titles or roles. For example, Dondero delegated decision-making authority for Acis to

[21] Similarly, several HCMLP employees, including Ellington, Leventon, Katie Irving, and JP Sevilla, had SAS email addresses, and there were frequent meetings among HCMLP's legal department—including Ellington, Leventon, and Sevilla—and Dilip Massand in connection with SAS. SAS did not compensate any of these HCMLP employees for their work for SAS. Moreover, in 2014, when a telephone call was placed to the number listed on SAS's website, the call was routed to HCMLP's office in Dallas with a message that stated: "Thank you for calling SAS Asset Recovery. For reception press 0. For Scott [Ellington], press 1. For Dilip [Massand], press 2. For JP [Sevilla], press 3. For Tabor [Pittman, former HCMLP Associate GC], press 4. For Katie [Irving], press 5. For Isaac [Leventon], press 6. Thanks and have a good day."

Ellington, notwithstanding that he was not an officer, director, or employee of Acis. And Leventon testified that although he was an HCMLP employee, HCMLP could request that he perform legal services for any of the 2,000 entities in the Highland web.

116. Dondero would also use HCMLP as his own personal piggy-bank (in addition to using HCMLP as NexPoint's and HCMFA's piggy-bank, as described above). For example, between January and August of 2018, Dondero borrowed $16,725,000 on four demand notes. Dondero remains obligated on three of the demand notes and maintains an outstanding principal balance of approximately $9 million. HCMLP has demanded payment on all of the outstanding demand notes, but to date, Dondero has failed to make any repayments on that debt.[22]

117. Dondero also effectively paid himself and Okada distributions from HCMLP through other Dondero Entities, including HCMS. Between 2013 and 2017, HCMS issued dozens of demand notes to HCMLP in return for tens of millions of dollars in cash, and between May 2017 through 2020, HCMS issued four additional promissory demand notes with an aggregate face amount of $900,000. Frequently, these notes functioned as disguised distributions to Dondero and Okada, by virtue of a "loan" from HCMLP to HCMS followed by a "loan" from HCMS to Dondero and Okada. As with other intercompany notes between HCMLP and other Dondero Entities, these notes had minimal covenants. Moreover, Dondero caused HCMLP to issue these loans to HCMS with minimal interest.

[22] On January 1, 2021, HCMLP filed an adversary proceeding in the Bankruptcy Court to collect on these notes. *Highland Capital Management, L.P. v. James Dondero*, Adv. Pro. 21-03003-sgj (Bankr. N.D. Tex. Jan. 22, 2021). Dondero has raised a series of frivolous defenses to repayment of the notes, including that Dugaboy—acting through Dondero's sister—agreed to forgive the notes as part of Dondero's compensation. As of December 3, 2020, Dondero owed $9,004,013 in past-due principal and interest on the notes.

118. To take yet another example, Dondero exploited HCMLP's employees and capital in order to launch HCRE Partners, LLC ("HCRE"), another entity designed to evade HCMLP's creditors.[23] HCRE pursued financial and real estate investments, failing to pay HCMLP any consideration for advisory, administrative, and other services HCMLP provided. Moreover, Dondero (1) caused HCMLP to loan HCRE tens of millions of dollars on terms that were unfair to HCMLP; (2) used the proceeds of those loans to pay approximately $32 million in distributions (between 2016 and 2020) to Dugaboy, Ellington, and another former HCMLP employee; and (3) caused HCRE to default on its debt to HCMLP and assert frivolous defenses to HCMLP's right to repayment. As of January 8, 2021, approximately $6.1 million in principal and interest was due and owing to HCMLP on HCRE notes.

119. As explained above, Dondero also used HCMLP to support the growth of lifeboats like NexPoint and HCMFA. Additionally, in December 2010, certain preferred tranches of CLOs managed by HCMLP and held by Highland CDO Holding Company, a portion of which was indirectly owned by HCMLP, were sold to CLO Holdco, a Cayman Islands entity then owned and controlled by a Dondero trust. CLO Holdco purported to pay approximately $39 million in return, but $33 million of that amount consisted of a note that was never repaid. The value of these preferred securities predictably skyrocketed soon thereafter, and generated substantial income that was used to benefit Dondero's lifeboats. An analysis of CLO Holdco's cash flows over time demonstrates that income generated from these assets was used to seed a variety of NexPoint-managed funds and entities, HCMFA managed funds and

[23] HCRE is 70% owned by Dugaboy, 25% owned by Highland Capital Management Real Estate Holdings I, LLC ("HCMRE I") (owned by a former HCMLP managing director) and 5% owned by Highland Capital Management Real Estate Holdings II, LLC ("HCMRE II") (owned by Ellington).

entities, and Acis-managed CLOs and other vehicles—all for Dondero's benefit—rather than accruing in favor of HCMLP or its subsidiaries.

120. Dondero did not bother to distinguish between himself and HCMLP. After Dondero resigned from HCMLP, he continued using his HCMLP email account and continued working out of HCMLP's headquarters until December 2020. When the Court entered an order restraining Dondero from communicating with HCMLP employees, Dondero flouted the order, including by communicating with Ellington and instructing Melissa Schroth (an HCMLP employee at the time) to resist Dugaboy-related document production requests, even though those documents were always kept on HCMLP's computer system. Likewise, a temporary restraining order entered by this Court prohibited Dondero from participating in, or encouraging others to participate in, any action that undermined decisions made by HCMLP's Chief Restructuring Officer, James Seery ("Seery"), regarding the disposition of HCMLP assets. Nevertheless, Dondero did so multiple times, including by contacting various employees and instructing them to act in a manner that was inconsistent with Seery's directions.

121. Dondero evinced no respect for HCMLP as an entity separate and apart from himself. Thus, he disposed of a cell phone that belonged to HCMLP that contained relevant data, likely resulting in the spoliation of valuable evidence that HCMLP could have used to pursue claims benefitting HCMLP. In addition, Dondero interfered with document productions of HCMLP and trespassed on HCMLP's property.

122. Separately, in Court orders entered in January 2020 and July 2020, the Court included "gatekeeper" provisions that prevented parties from suing the Independent Board, Seery, and their agents (among others), unless they sought permission from the bankruptcy court. Dondero and his affiliated entities flouted this order, too, and this Court subsequently

held Dondero, the DAF, CLO Holdco, Mark Patrick, and Sbaiti & Co. (counsel to the DAF and CLO Holdco) in contempt. As this Court observed, Dondero "sparked th[e] fire" to bring actions in the district court in violation of the Bankruptcy Court's order.

123. Dondero also used HCMLP and its employees for the benefit of his personal trusts. For example, as the control person for HCMLP, Dugaboy, and Get Good, Dondero treated HCMLP, its employees, and its resources as available to Dugaboy and Get Good at his sole discretion. HCMLP employees were involved in creating, managing, and accounting for Dugaboy, and certain of those employees, including Melissa Schroth, performed work on behalf of Get Good in connection with Dondero's estate planning and transactions between Get Good and other Dondero Entities. Moreover, both Dugaboy and Get Good have acknowledged in the course of HCMLP's bankruptcy that HCMLP hosted their documents on its server. However, neither Dugaboy nor Get Good compensated HCMLP for the use of its employees or its resources. And, Dondero is now causing Dugaboy to falsely assert in HCMLP's notes litigation that Dugaboy, acting through Nancy Dondero, caused HCMLP to forgive the notes owed to HCMLP by various Dondero Entities as compensation to Dondero.

I. Dondero And His Loyalists Also Engaged In Other Conduct That Harmed HCMLP

1. Dondero And His Loyalists Fraudulently Transferred Assets To Themselves And Their Affiliated Entities

124. Dondero and his loyalists also engaged in other transactions that siphoned value from HCMLP to themselves. As described in greater detail below, these included (i) transfers of liquid assets for illiquid notes that could not have been monetized for the same value as the assets for which they were exchanged, (ii) limited partner distributions, and (iii) payments for services provided to other Dondero Entities rather than HCMLP.

(a) The Fraudulent CLO Holdco Transaction

125. On December 28, 2016, shortly after the Redeemer Committee commenced its Delaware state court action and arbitration against HCMLP, and while UBS's action against HCMLP was pending, Dondero, acting with substantial assistance from Scott, undertook a scheme whereby HCMLP transferred assets through a series of related assignments worth approximately $24 million or potentially more (the "Transferred CLO Holdco Assets") to CLO Holdco, in exchange for an assignment from Get Good of an existing Dugaboy obligation (the "Dugaboy Note"), which was worth significantly less than the transferred assets (the "CLO Holdco Transaction").

126. Upon information and belief, Dondero consummated the CLO Holdco Transaction in order to claim a charitable deduction on his tax returns, and to place value out of his ex-wife's reach. Specifically, Dondero wanted to transfer assets out of Get Good so that they would not be available to his ex-wife, and to do so through a charitable donation so that he would get the added benefit of a tax deduction. Get Good, however, did not own enough assets that qualified for a tax-deductible charitable donation. Accordingly, Dondero caused Get Good to exchange the Dugaboy Note, which did not qualify for a tax-deductible donation, for HCMLP's Transferred CLO Holdco Assets, which did. Dondero, acting with Scott's assistance, then caused the Transferred CLO Holdco Assets to be immediately transferred from Get Good to Highland Dallas, to the Charitable DAF, to the DAF, and ultimately to CLO Holdco. The CLO Holdco Transaction thus furthered Dondero's personal interests, but harmed HCMLP and its creditors by replacing liquid and liquidating assets with an illiquid note of significantly less value.

127. The Transferred CLO Holdco Assets consisted of: (1) $2,032,183.24 or potentially more in Series A Interests in Highland Capital Loan Fund, L.P., an HCMLP-

managed hedge fund investing primarily in liquid loans; (2) a participation interest worth $8,710,000 or potentially more in call options of publicly-traded American Airlines Group, Inc. (the "AA Interests"); and (3) a participation interest in certain Highland Crusader Fund L.P. and Highland Crusader Fund II, Ltd. shares, as well as a tracking interest in certain participation shares of Highland Crusader Fund II, Ltd., which at the time of the transfer were collectively valued at $12,625,395.44 and worth potentially more (the "Crusader Interests"). The transfer of the Transferred CLO Holdco Assets was initiated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good. Pursuant to that agreement, the Transferred CLO Holdco Assets were received by Get Good.

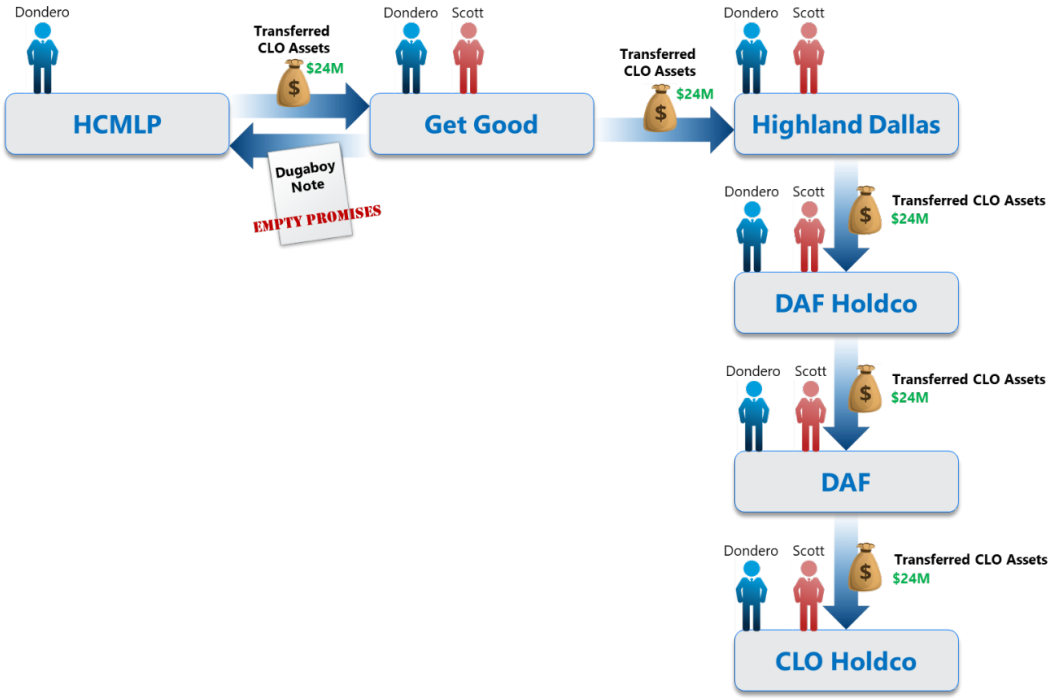
128. Dondero caused HCMLP to transfer the Transferred CLO Holdco Assets to Get Good in exchange for the Dugaboy Note. While the face amount of the Dugaboy Note was equal to the reported value of the Transferred CLO Holdco Assets, in actuality, the value of the Dugaboy Note did not come close to the value of the Transferred CLO Holdco Assets. The interest rate on the Dugaboy Note was a paltry 2.75%. There was no security interest provided in respect of the Dugaboy Note or other material covenants or lender protections other than rights to cost of collections. No payments of principal or interest were required on the note until 2036. And because Dugaboy was a completely private and opaque counterparty, there was no third-party market for the sale of the Dugaboy Note. Lastly, from a counterparty risk perspective, Dondero's control over the repayment of a note clearly does not ensure timely repayment without litigation, as evidenced by the several entities controlled by Dondero that are currently seeking to evade their unambiguous payment obligations on other notes owed to HCMLP, on frivolous grounds such as mistake and subsequent alleged oral agreements between

Dondero and his sister. In the end, Dondero caused HCMLP to exchange valuable liquid or otherwise near-term liquidating assets for a paper-thin promise 20 years into the future.

129. Following Get Good's receipt of the Transferred CLO Holdco Assets, Scott—at Dondero's direction—immediately caused Get Good to donate the assets to Highland Dallas Foundation by Scott in his capacity as trustee of Get Good. Dondero and Scott caused the Highland Dallas Fund to immediately contribute the Transferred CLO Holdco Assets to DAF Holdco by unanimous written consent executed by Dondero, Scott, and Jalonick, each in their capacity as the directors of Highland Dallas Foundation. Following that transfer, through an omnibus assignment agreement, Scott caused DAF Holdco to transfer the Transferred CLO Holdco Assets to the DAF, which itself immediately transferred them to CLO Holdco. The DAF GP issued a written resolution, as general partner of the DAF and as 100% owner of CLO Holdco, contributing the Transferred CLO Holdco Assets to CLO Holdco. Scott again executed this document as managing member of DAF GP. As purported consideration for these transfers, the Highland Dallas Foundation, DAF Holdco, the DAF, and CLO Holdco all agreed to be fully bound by apparently unrelated "Multi Strat Governing Documents." Scott executed the requisite consent documents on behalf of each entity, in his capacities as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Upon information and belief, Scott consented to each step of the CLO Holdco Transaction on behalf of Get Good, DAF Holdco, the DAF, DAF GP, and CLO Holdco solely at Dondero's request, and without performing any independent analysis.

130. The structure of the CLO Holdco Transaction is set forth below in Figure 3.

Figure 3.



(b) Fraudulent Distributions

131. Notwithstanding HCMLP's limited liquidity and hundreds of millions of dollars in looming liabilities, Dondero caused HCMLP to make a series of equity distributions between 2010 and 2012, and 2015 and 2019, for Dondero's and Okada's ultimate benefit, and to the detriment of HCMLP's creditors. These distributions were made at a time when HCMLP was insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay, and were intended to hinder, delay, and/or defraud creditors by siphoning value to limited partners that should have been preserved for creditors' benefit.

132. Although Dondero and Okada placed certain of their limited partnership interests in trusts that they ultimately owned or controlled, Dondero frequently disregarded corporate formalities, including with respect to limited partnership distributions. Until 2015, distributions were made to Dondero personally, notwithstanding that he owned HCMLP largely through

certain trusts. Beginning in 2015, it appears that distributions were made directly to Strand and Dugaboy, *i.e.*, the Dondero Entities that actually held HCMLP limited partnership interests. As such, the distributions made to Dondero between April 9, 2010 and February 28, 2015 (identified below) were made for the benefit of Dondero, Dugaboy, and/or Strand. The distributions made after February 28, 2015 were, upon information and belief, made directly to the limited partnership interest holders, for the benefit of Dondero and Okada.

133. Likewise, until 2015, distributions were made to Okada individually, rather than HCMLP's limited partners MAP #1 and MAP #2. As such, the distributions made to Okada between April 9, 2010 and February 28, 2015 (identified below) were made for the benefit of Okada, MAP #1, and/or MAP #2. The distributions to Okada made after February 28, 2015 were broken out into three transfers in HCMLP's records, in amounts proportionate to the limited partnership interests of Okada, MAP #1, and MAP #2.

134. On or around April 9, 2010, HCMLP made "distributions" to Dondero and Okada, in the amounts of $1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87) and $405,585.62 (two transfers of $375,000.00 and $30,585.62), respectively (the "April 9, 2010 Distributions").

135. On or around April 13, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $649,318.45 and $216,439.49, respectively (the "April 13, 2011 Distributions").

136. On or around May 3, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $3,124,435.00 and $1,024,018.00, respectively (the "May 3, 2011 Distributions").

137. On or around September 13, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $5,351,316.00 and $1,705,813.00, respectively (the "September 13, 2011 Distributions").

138. On or around November 25, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $5,250,000.00 and $1,750,000.00, respectively (the "November 25, 2011 Distributions").

139. On or around February 23, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $3,000,000.00 and $1,000,000.00, respectively (the "February 23, 2012 Distributions").

140. On or around February 29, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $4,514,780.25 and $1,504,926.75, respectively (the "February 29, 2012 Distributions").

141. On or around April 10, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $6,221,364.15 and $2,073,788.05, respectively (the "April 10, 2012 Distributions").

142. On or around April 30, 2013, HCMLP made distributions to Dondero and Okada, in the amounts of $25,375,083.16 and $8,440,148.31, respectively (the "April 30, 2013 Distributions").

143. On or around February 28, 2015, HCMLP made distributions to Dondero in the amount of $2,850,000, and to or for the benefit of Okada, MAP #1, and MAP #2,[24] in the

[24] At the time of these distributions, Okada and two trusts (MAP #1 and MAP #2) established for the benefit of Okada's children held economic interests in HCMLP. HCMLP's accounting records indicate that distributions allocated to Okada, MAP #1, and MAP #2 were all made to a single account in Okada's name. Thus, with respect to this and subsequent, applicable distributions, Plaintiff pleads that they were made to or for the benefit of Okada, MAP #1, and MAP #2.

amounts of $738,217.40, $148,247.82, and $63,534.78, respectively (the "February 28, 2015 Distributions").

144. On or around September 30, 2015, HCMLP made distributions to Dugaboy and Strand in the amounts of $16,005,159 and $119,820, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $4,176,762, $838,780, and $359,480, respectively (the "September 30, 2015 Distributions").

145. On or around December 8, 2015, HCMLP made in-kind distributions of shares of the company Ocean Rig UDW, Inc. (ORIG), which had a value of $1.51 per share at the time of the distribution. These in-kind distributions were made to Dugaboy in the amount of 4,813,132 shares valued at $7,267,829.32, and to or for the benefit of Okada, MAP #1, and MAP #2 in the amounts of 1,246,710 shares valued at $1,882,532.10; 250,336 shares valued at $378,052.66; and 107,301 shares valued at $162,024.51, respectively (the "December 8, 2015 In-Kind Distributions").

146. On or around December 31, 2015, HCMLP made distributions to Dugaboy and Strand in the amounts of $16,005,159 and $119,820, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $4,176,762, $838,780, and $359,480, respectively (the "December 31, 2015 Distributions").

147. On or around July 31, 2016, HCMLP made distributions to Hunter Mountain,[25] Dugaboy, and Strand in the amounts of $1,600,000, $3,001, and $4,033, respectively, and to or

[25] In December 2015, Dondero orchestrated two sequential transactions, whereby Hunter Mountain purchased virtually all of HCMLP's limited partnership interests in exchange for cash and notes (collectively, the "Hunter Mountain Transaction"). The effect of the Hunter Mountain Transaction was to consolidate over 99% of all existing limited partners' interests in HCMLP into a single entity, Hunter Mountain. Hunter Mountain is owned through a series of intermediate shell companies, and ultimately all economic interests are held in a series of tax-favored life insurance

for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $783, $158, and $68, respectively (the "July 31, 2016 Distributions").

148. On or around December 31, 2016, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $4,769,570, $8,945, and $12,017, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $2,334, $470, and $201, respectively (the "December 31, 2016 Distributions").

149. On or around January 31, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $11,034,754, $20,694, and $27,803, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $5,401, $1,087, and $466, respectively (the "January 31, 2017 Distributions").

150. On or around February 28, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $7,169,970.00, $13,446.40, and $18,065.44, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $3,509.32, $706.19, and $302.65, respectively (the "February 28, 2017 Distributions").

151. On or around June 30, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $79,600.00, $149.28, and $200.56, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $38.96, $7.84, and $3.36, respectively (the "June 30, 2017 Distributions").

152. On or around December 31, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $2,651,675.00, $4,972,89, and $6,681.16,

accounts at Crown Global Life Insurance Ltd. ("Crown Global"). On information and belief, these accounts were created by Dondero and Okada, who were the direct or indirect owners of nearly all of the Debtor's limited partner interests prior to the Hunter Mountain Transaction. Dondero orchestrated the Hunter Mountain Transaction in order to avail himself of personal tax benefits.

respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $1,297.86, $261.17, and $111.93, respectively (the "December 31, 2017 Distributions").

153. On or around March 31, 2018, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $84,575.00, $158.61, and $213.10, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $41.40, $8.33, and $3.57, respectively (the "March 31, 2018 Distributions").

154. On or around December 31, 2018, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $4,930,722.50, $9,246.96, and $12,423.44, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $2,413.33, $485.64, and $208.13, respectively (the "December 31, 2018 Distributions").

155. On or around March 31, 2019, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $3,711,456.47, $6,960.38, and $9,351.38, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $1,816.56, $365.55, and $156.66, respectively (the "March 31, 2019 Distributions," and together with the April 9, 2010 Distributions, April 13, 2011 Distributions, May 3, 2011 Distributions, September 13, 2011 Distributions, November 25, 2011 Distributions, February 23, 2012 Distributions, February 29, 2021 Distributions, April 10, 2012 Distributions, April 30, 2013 Distributions, February 28, 2015 Distributions, September 30, 2015 Distributions, December 8, 2015 In-Kind Distributions, December 31, 2015 Distributions, July 31, 2016 Distributions, December 31, 2016 Distributions, January 31, 2017 Distributions, June 30, 2017 Distributions, December 31, 2017 Distributions, March 31, 2018 Distributions, December 31, 2018 Distributions, March 31, 2019 Distributions, the "HCMLP Distributions").

156. All of these distributions were made at a time when HCMLP was insolvent and as part of a scheme to, transfer HCMLP's value to Dondero and Okada and divert value away from HCMLP's current and potential future creditors. The March 31, 2019 Distributions, which were made shortly after the arbitration panel awarded the Redeemer Committee over $190 million, were the final distributions made by HCMLP. The distributions ceased at that time—the end result of HCMLP's valuable businesses being usurped by the "lifeboats" and a years-long effort to transfer HCMLP's remaining cash to its limited partners via distributions.

(c) Fraudulent Transfers To Massand

157. HCMLP also made payments of at least $519,000 per year to Massand Capital from November 2014 through 2019. On January 1, 2014, HCMLP entered into a one-year consulting agreement with Massand Inc., pursuant to which HCMLP agreed to pay Massand Inc. $25,000 per month in fees, $7,500 per month in "accommodations," $750 per month in cell phone expenses, and other "reasonable" expenses. Then, on January 5, 2015, HCMLP entered into a consulting agreement (together, the "Massand Consulting Agreements") on the same terms with Massand LLC, pursuant to which HCMLP agreed to pay Massand LLC $35,000 per month in fees, $7,500 per month in "accommodations," $750 per month in cell phone expenses, and other "reasonable" expenses. In exchange, the Massand Consulting Agreements provided that HCMLP's Chairman, Dondero, and its General Counsel, Ellington, would assign certain unspecified "tasks" to Massand Capital.

158. Massand Capital's monthly invoices to HCMLP were consecutively numbered, indicating that Massand Capital had no customers other than HCMLP. Moreover, Massand Capital's invoices contained no information about the services it purportedly rendered to HCMLP.

159. The Massand Consulting Agreements noted that Massand Capital would be responsible for advising HCMLP on its "Investment Recovery Strategies business in the Countries of the Gulf Cooperation Council"—specifically Bahrain, Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, and Oman. Based upon a review of information to date, it appears that Massand Capital provided no actual services to HCMLP, and that HCMLP did not have any "business" that was related to "investment recovery strategies."

160. Rather, Massand Capital appears to have provided services solely to SAS—a separate entity that was owned and controlled by Dondero. The owner of Massand Capital, Dilip Massand, was assigned an SAS email address, was bestowed the title of "Managing Director" of SAS, and was involved in communications relating to SAS's claims purchase litigation financing business.[26] As set forth above, SAS was owned by Dondero and Ellington, not HCMLP.

161. Thus, based on the documents and information that Plaintiff has reviewed to date, Dondero caused HCMLP to pay millions of dollars in consulting fees to Massand Capital in exchange for no value to HCMLP, all solely to benefit other Dondero-controlled entities. HCMLP received no value for the payments that Dondero and Ellington directed to Massand Capital.

J. Dondero And Ellington Breach Their Fiduciary Duties To HCMLP By Misappropriating Its Funds

162. HCMLP owned a 97.5% interest in HE Capital 232 Phase I, LLC ("HE Capital 232"). In February 2018, HE Capital 232 and its wholly-owned subsidiary, HE Capital 232 Phase I Property, LLC ("HE Capital 232 Property"), sold real property in Arizona for

[26] In a speaker profile in 2014, Dilip Massand was described as overseeing "the operations of SAS Asset Recovery in the Middle East."

$8,687,245.15. The proceeds were placed in an escrow account maintained by HCMLP's counsel, Wick Phillips Gould & Martin LLP ("Wick Phillips"), "pending distribution of the proceeds to the direct and indirect owners of interests in [HE Capital 232 Property]."

163. On March 2, 2018, Wick Phillips disbursed $4,510,000 to HCMLP out of the escrow account, $2,977,245.15 less than HCMLP was due. On information and belief, Dondero and Ellington directed Wick Phillips to withhold these proceeds in a scheme to funnel the money to themselves through shell companies they owned in the Cayman Islands. Indeed, on June 4, 2018, at Ellington's direction, Wick Phillips disbursed the remainder to Maple FS, a so-called fiduciary services company in the Cayman Islands, which subsequently transferred the full amount to Grey Royale Ltd., a Cayman Islands shell company owned and controlled by Dondero and Ellington.

K. Dondero Loyalists Receive Their Deferred Compensation By Engaging In The Tall Pine Transaction

164. HCMLP employees other than Dondero also engaged in self-interested transactions and schemes involving HCMLP.

165. In early 2020, only months after the Petition Date, Ellington and Leventon formed a group of entities that have received millions of dollars of payments from four Dondero Entities pursuant to a services agreement dated March 13, 2020, among Tall Pine, NexBank, DAF Holdco, NexPoint, and HCMFA (the "Tall Pine Services Agreement"). The Tall Pine scheme was an elaborate arrangement pursuant to which Dondero would be able to keep certain key employees, including Ellington, Leventon, and Waterhouse, loyal to Dondero during the bankruptcy.

166. Pursuant to the Tall Pine Services Agreement, HCMLP employees, including Ellington, Leventon, and Waterhouse would receive approximately $17 million through pass-

through entities that they created and owned over the course of two years. When Tall Pine would receive a payment from any of the counterparties to the Tall Pine Services Agreement, Tall Pine contemporaneously transferred funds to Waterhouse's and Leventon's pass-through entities, FHCT Consulting, LLC ("FHCT") (owned and controlled by Waterhouse) and Clairmont Holdings, LLC ("Clairmont") (owned and controlled by Leventon). Ellington, who owned Tall Pine, profited from the amounts that remained in Tall Pine after it had distributed sums to Clairmont and FHCT.

167. After the Petition Date, Dondero and Waterhouse surreptitiously approved wire transfers from accounts held by NexPoint, NexBank, and the DAF to Tall Pine for the benefit of himself, Ellington, and Leventon. These payments were made to compensate Waterhouse, Ellington, and Leventon for the amounts that would have been paid to them in 2020 but for the Committee's objection. Indeed, Waterhouse, Ellington, and Leventon did not disclose these payments to the Independent Board.[27]

V. CAUSES OF ACTION

COUNT I
Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain)

168. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

[27] On September 21, 2021, HCMLP filed a motion under 11 U.S.C. §§ 105(a) and 502(j) seeking to disallow in its entirety Waterhouse's claim that was previously resolved pursuant to that *Senior Employee Stipulation and Tolling Agreement Extending Statutes of Limitation*, dated as of January 20, 2021 (Docket No. 1811-13) based on, among other things, these payments. *See Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502* (Docket No. 2857) (the "Waterhouse Motion").

169. As set forth below, HCMLP made the following HCMLP Distributions to or for the benefit of Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain.

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
April 9, 2010 Distributions	$1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87)	N/A	N/A	$405,585.62 (two transfers of $375,000.00 and $30,585.62)			N/A
April 13, 2011 Distributions	$649,318.45	N/A	N/A	$216,439.49			N/A
May 3, 2011 Distributions	$3,124,435.00	N/A	N/A	$1,024,018.00			N/A
September 13, 2011 Distributions	$5,351,316.00	N/A	N/A	$1,705,813.00			N/A
November 25, 2011 Distributions	$5,250,000.00	N/A	N/A	$1,750,000.00			N/A
February 23, 2012 Distributions	$3,000,000.00	N/A	N/A	$1,000,000.00			N/A
February 29, 2012 Distributions	$4,514,780.25	N/A	N/A	$1,504,926.75			N/A
April 10, 2012 Distributions	$6,221,364.15	N/A	N/A	$2,073,788.05			N/A
April 30, 2013 Distributions	$25,375,083.16	N/A	N/A	$8,440,148.31			N/A
February 28, 2015 Distributions	$2,850,000.00	N/A	N/A	$950,000.00			N/A
September 30, 2015 Distributions	N/A	N/A	$16,005,159.00	$4,176,762.00	$838,780.00	$359,480.00	$119,820.00
December 8, 2015 In-Kind Distributions	N/A	N/A	$7,267,829.32	$1,882,532.10	$378,052.66	$162,024.51	N/A
December 31, 2015 Distributions	N/A	N/A	$16,005,159.00	$4,176,762.00	$838,780.00	$359,480.00	$119,820.00
July 31, 2016 Distributions	N/A	$1,600,000.00	$3,001.00	$783.00	$158.00	$68.00	$4,033.00
December 31, 2016 Distributions	N/A	$4,769,570.00	$8,945.00	$2,334.00	$470.00	$201.00	$12,017.00
January 31, 2017 Distributions	N/A	$11,034,754.00	$20,694.00	$5,401.00	$1,087.00	$466.00	$27,803.00

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	Hunter Mountain	Dugaboy	Okada (for the benefit of Okada)	Okada (for the benefit of MAP #1)	Okada (for the benefit of MAP #2)	Strand
February 28, 2017 Distributions	N/A	$7,169,970.00	$13,446.40	$3,509.32	$706.19	$302.65	$18,065.44
June 30, 2017 Distributions	N/A	$79,600.00	$149.28	$38.96	$7.84	$3.36	$200.56
December 31, 2017 Distributions	N/A	$2,651,675.00	$4,972.89	$1,297.86	$261.17	$111.93	$6,681.16
March 31, 2018 Distributions	N/A	$84,575.00	$158.61	$41.40	$8.33	$3.57	$213.10
December 31, 2018 Distributions	N/A	$4,930,722.50	$9,246.96	$2,413.33	$485.64	$208.13	$12,423.44
March 31, 2019 Distributions	N/A	$3,711,456.47	$6,960.38	$1,816.56	$365.55	$156.66	$9,351.38
Total	$57,553,053.88	$36,032,322.97	$39,345,721.84	$32,266,078.94			$330,428.08

170. At the time of each HCMLP Distribution, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

171. HCMLP received less than reasonably equivalent value in exchange for each of HCMLP Distributions set forth above. Indeed, HCMLP received no value for HCMLP the Distributions, each of which was a gratuitous transfer from HCMLP, either to one of its limited partners or for the benefit of one of its limited partners and/or Dondero.

172. Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain did not receive HCMLP Distributions in good faith. To the contrary, at the times that Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain received each of HCMLP Distributions, they knew that HCMLP was balance sheet insolvent (or would be rendered

balance sheet insolvent), inadequately capitalized, and/or unable to pay its debts as they came due. Each of these defendants was aware that Dondero had siphoned HCMLP's valuable assets and business opportunities after HCMLP had incurred substantial contingent liabilities. Moreover, each of these defendants was aware that HCMLP Distributions were yet another effort to siphon value from HCMLP to Dondero, Okada, and their affiliated entities at a time when HCMLP was insolvent, inadequately capitalized, and unable to pay its debts as they came due.

173. Dondero, Dugaboy, Okada, MAP #1, and MAP #2 were the beneficiaries of distributions made to Hunter Mountain, given that Hunter Mountain transferred proceeds of such distributions to them.

174. Each HCMLP Distribution is voidable as a constructively fraudulent transfer. Accordingly, each HCMLP Distribution should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT II
Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain)

175. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

176. As set forth below, HCMLP made the following HCMLP Distributions to or for the benefit of Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain.

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
April 9, 2010 Distributions	$1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87)	N/A	N/A	$405,585.62 (two transfers of $375,000.00 and $30,585.62)			N/A
April 13, 2011 Distributions	$649,318.45	N/A	N/A	$216,439.49			N/A
May 3, 2011 Distributions	$3,124,435.00	N/A	N/A	$1,024,018.00			N/A
September 13, 2011 Distributions	$5,351,316.00	N/A	N/A	$1,705,813.00			N/A
November 25, 2011 Distributions	$5,250,000.00	N/A	N/A	$1,750,000.00			N/A
February 23, 2012 Distributions	$3,000,000.00	N/A	N/A	$1,000,000.00			N/A
February 29, 2012 Distributions	$4,514,780.25	N/A	N/A	$1,504,926.75			N/A
April 10, 2012 Distributions	$6,221,364.15	N/A	N/A	$2,073,788.05			N/A
April 30, 2013 Distributions	$25,375,083.16	N/A	N/A	$8,440,148.31			N/A
February 28, 2015 Distributions	$2,850,000.00	N/A	N/A	$950,000.00			N/A
September 30, 2015 Distributions	N/A	N/A	$16,005,159.00	$4,176,762.00	$838,780.00	$359,480.00	$119,820.00
December 8, 2015 In-Kind Distributions	N/A	N/A	$7,267,829.32	$1,882,532.10	$378,052.66	$162,024.51	N/A
December 31, 2015 Distributions	N/A	N/A	$16,005,159.00	$4,176,762.00	$838,780.00	$359,480.00	$119,820.00
July 31, 2016 Distributions	N/A	$1,600,000.00	$3,001.00	$783.00	$158.00	$68.00	$4,033.00
December 31, 2016 Distributions	N/A	$4,769,570.00	$8,945.00	$2,334.00	$470.00	$201.00	$12,017.00
January 31, 2017 Distributions	N/A	$11,034,754.00	$20,694.00	$5,401.00	$1,087.00	$466.00	$27,803.00
February 28, 2017 Distributions	N/A	$7,169,970.00	$13,446.40	$3,509.32	$706.19	$302.65	$18,065.44

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
June 30, 2017 Distributions	N/A	$79,600.00	$149.28	$38.96	$7.84	$3.36	$200.56
December 31, 2017 Distributions	N/A	$2,651,675.00	$4,972.89	$1,297.86	$261.17	$111.93	$6,681.16
March 31, 2018 Distributions	N/A	$84,575.00	$158.61	$41.40	$8.33	$3.57	$213.10
December 31, 2018 Distributions	N/A	$4,930,722.50	$9,246.96	$2,413.33	$485.64	$208.13	$12,423.44
March 31, 2019 Distributions	N/A	$3,711,456.47	$6,960.38	$1,816.56	$365.55	$156.66	$9,351.38
Total	$57,553,053.88	$36,032,322.97	$39,345,721.84	$32,266,078.94			$330,428.08

177. Dondero was HCMLP's Chief Executive Officer, President, Co-Chief Investment Officer, and Co-Founder. Okada was HCMLP's Co-Chief Investment Officer and Co-Founder. Together, Dondero and Okada directly or indirectly owned substantially all of the equity interests in HCMLP, or were the beneficiaries of all distributions HCMLP made to its limited partners. Dondero exercised complete control over HCMLP, and Okada acquiesced to and profited from schemes orchestrated by Dondero to enrich HCMLP's direct and indirect owners.

178. To that end, Dondero caused HCMLP to make the HCMLP Distributions set forth above with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero and Okada were insiders of HCMLP;

(b) before HCMLP Distributions were made, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved both siphoning HCMLP's valuable business opportunities through newly-created "lifeboat" entities and siphoning HCMLP's value through HCMLP Distributions (among other means);

(d) HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the HCMLP Distributions;

(e) at the time of each HCMLP Distribution, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(f) The initial recipients of the HCMLP Distributions were Dondero, Dugaboy, Okada, Strand, and Hunter Mountain, each of which was owned and/or controlled by Dondero and Okada;

(g) Dondero and Okada personally received certain HCMLP Distributions instead of HCMLP's limited partners Dugaboy, Strand, MAP #1, and MAP #2; and

(h) Dondero made HCMLP Distributions during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that such value would not be available to satisfy HCMLP's creditors.

179. Dondero, Dugaboy, Okada, MAP #1, and MAP #2 were the beneficiaries of distributions made to Hunter Mountain, given that Hunter Mountain transferred proceeds of such distributions to them.

180. Each HCMLP Distribution is voidable as an intentionally fraudulent transfer. Accordingly, each of the HCMLP Distributions should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT III
Illegal Distributions Under Delaware Revised Uniform Limited Partnership Act
(Against Dondero, Dugaboy, Strand, and Hunter Mountain)

181. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

182. The Delaware Revised Uniform Limited Partnership Act ("DRULPA") § 17-607(a) prohibits distributions "to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership … exceed the fair value of the assets of the limited partnership[.]"

183. Under 17-607(b), "[a] limited partner who receives a distribution in violation of subsection (a) … and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited partnership for the amount of the distribution."

184. As set forth below, between December 31, 2016 and the Petition Date, HCMLP made the following distributions to Hunter Mountain, Dugaboy, and Strand (the "Illegal Distributions").

	Hunter Mountain	**Dugaboy**	**Strand**
December 31, 2016 Distributions	$4,769,570.00	$8,945.00	$12,017.00
January 31, 2017 Distributions	$11,034,754.00	$20,694.00	$27,803.00
February 28, 2017 Distributions	$7,169,970.00	$13,446.40	$18,065.44
June 30, 2017 Distributions	$79,600.00	$149.28	$200.56
December 31, 2017 Distributions	$2,651,675.00	$4,972.89	$6,681.16
March 31, 2018 Distributions	$84,575.00	$158.61	$213.10
December 31, 2018 Distributions	$4,930,722.50	$9,246.96	$12,423.44
March 31, 2019 Distributions	$3,711,456.47	$6,960.38	$9,351.38
Total	$34,432,322.97	$64,573.52	$86,755.08

185. Strand, Hunter Mountain, and Dugaboy knew that HCMLP made the Illegal Distributions at a time that its liabilities exceeded the fair value of its assets. As set forth herein and in the counts below, each of Strand, Hunter Mountain, and Dugaboy were the alter egos of Dondero. Even if Strand, Hunter Mountain, or Dugaboy were not the alter egos of Dondero, they would be imputed with Dondero's knowledge. Dondero was the sole owner of Strand. Likewise, Dondero created Hunter Mountain as a shell entity whose sole purpose was to purchase the majority of HCMLP's limited partnership interests from himself and his Dugaboy trust (among others). Through Hunter Mountain, Dondero continued to receive the economic benefit of HCMLP's limited partnership distributions through distributions on notes that would be triggered by those Illegal Distributions made to Hunter Mountain.

186. Hunter Mountain, Dugaboy, and Strand are liable to HCMLP and its creditors for the full amount of the Illegal Distributions, plus interest.

COUNT IV
Breach of Fiduciary Duty Arising Out Of Dondero's Lifeboat Scheme
(Against Dondero and Strand)

187. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

188. During all periods relevant to the allegations set forth herein, Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner. Likewise, during all periods relevant to the allegations set forth herein, Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP and as an officer of HCMLP.

189. Dondero and Strand transferred HCMLP's valuable business to the lifeboat entities, including but not limited to NexPoint and HCMFA. Pursuant to the scheme, the lifeboats utilized HCMLP's employees to perform management and advisory services that HCMLP had provided directly, and should have continued to provide directly. As a result of this scheme, HCMLP would perform the same services via the same employees, but would now either receive only a small fraction of the profits that were generated or, in some instances, provide these services at a loss because the service agreements between HCMLP and the lifeboats would not even cover HCMLP's costs of providing the services. The majority of profits were paid to the lifeboats, which were owned by Dondero and/or entities that he controlled, placing those profits beyond the reach of HCMLP's creditors.

190. Dondero and Strand willfully and wantonly orchestrated this scheme in bad faith in order to evade HCMLP's present and future creditors.

191. Strand was dominated and controlled by its sole owner, Dondero. Dondero also owned substantial economic interests in each of the lifeboats either directly or through entities that he owned and/or controlled. As such, Dondero appeared on both sides of the agreements

and transactions entered into between HCMLP, on one hand, and NexPoint, HCMFA, Acis, and the other lifeboats, on the other hand.

192. The wrongful acts that Dondero and Strand committed in connection with the lifeboat scheme—including but not limited to funneling new business to the lifeboat entities and undercompensating HCMLP for the use of its employees—continued through the Petition Date. Likewise, injury to HCMLP—in the form of lost profits and misappropriation of its employees and resources—continued through the Petition Date.

193. HCMLP suffered tens or hundreds of millions of dollars of harm, as the result of Dondero's and Strand's breaches, in the form of lost management and advisory fee revenue that far exceeded the amounts that the lifeboats paid to HCMLP under their respective shared services and other agreements. Between the date of its formation and the Petition Date, NexPoint earned approximately $120 million in advisory and administrative fees and approximately $50 million in profits. Between the date of its formation and the Petition Date, HCMFA earned approximately $150 million in advisory and administrative fees.

194. Strand and Dondero profited from their breaches of fiduciary duties in connection with their lifeboat scheme in violation of Delaware law. Strand and Dondero are liable to HCMLP for their breaches of fiduciary duty in connection with the lifeboat scheme in an amount to be proven at trial.

COUNT V
Breach of Fiduciary Duty Arising Out Of Conduct That Resulted in HCMLP Liabilities
(Against Dondero, Strand, Ellington, and Leventon)

195. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

196. During all periods relevant to the allegations set forth herein: (1) Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner; (2) Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP, and as an officer of HCMLP; (3) Ellington owed fiduciary duties to HCMLP in his capacity as HCMLP's Chief Legal Officer and General Counsel; and (4) Leventon owed fiduciary duties to HCMLP in his capacity as HCMLP's Assistant General Counsel.

197. Dondero (and in turn, Strand), Ellington, and Leventon each breached their fiduciary duties to HCMLP by engaging in willful and wanton misconduct that foreseeably resulted in liability to HCMLP. In total, these breaches resulted in more than $350 million in allowed claims against HCMLP. But for their breaches of fiduciary duty, either HCMLP never would have incurred these claims, or HCMLP would have resolved these claims for substantially lower amounts.

198. **Liabilities to UBS.** Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to incur substantial liability to UBS. Dondero exposed HCMLP and its subsidiaries to litigation against UBS that resulted in an adverse judgment that exceeded $1 billion. Among other things, acting through HCMLP, Dondero caused the Fund Counterparties to refuse to meet their obligations to UBS, and orchestrated transfers of more than $233 million of assets from HFP, exposing HCMLP to claims for fraudulent transfer, breach of the implied covenant of good faith and fair dealing, and extensive prejudgment interest and legal fees.

199. Then, in 2017, after a New York state court ruled that UBS's fraudulent transfer claims against HCMLP and claims against the Fund Counterparties could proceed to trial, Dondero and Ellington caused HCMLP, in its capacity as investment manager for the Fund Counterparties, to orchestrate a surreptitious transfer of more than $300 million in face amount

of assets from the Fund Counterparties to Sentinel, an entity located in the Cayman Islands that was indirectly owned and controlled by Dondero and Ellington. Neither HCMLP nor the Fund Counterparties received legitimate value in exchange for this transfer.

200. After the Petition Date, Dondero, Ellington, and Leventon actively concealed this transfer from the Independent Board, UBS, and the Bankruptcy Court. Ellington even went so far as to state in August 2020 that "[Leventon] and myself have spent in excess of 100 hours trying to piece together everything we can [about the Fund Counterparties' assets] to create a true and accurate document based record of what happened with these target entities['s assets]." Ellington made this statement knowing that the Fund Counterparties' assets had been transferred to an offshore entity he owned and controlled. When this transfer was uncovered, HCMLP was forced to increase the amount of its settlement with UBS from a total of $75 million in allowed claims to $125 million in allowed claims.

201. **Liabilities to Acis.** Dondero willfully and wantonly caused HCMLP to incur over $23 million in liability to Acis and Terry. As with NexPoint and HCMFA, Acis was originally created to perform management and advisory services that were previously provided by HCMLP. When Dondero's relationship with Terry deteriorated, Dondero set in motion a series of contentious litigation with Terry, which resulted in Terry obtaining a $7.95 million arbitration award against Acis.

202. Dondero then embarked on a crusade to ensure Terry would not collect from Acis. In connection therewith, Dondero acted through HCMLP to, among other things: (1) siphon assets from Acis, causing Terry to commence an involuntary bankruptcy against Acis and causing HCMLP to lose its advisory and shared services contracts with Acis; (2) enter into costly, frivolous litigation with Terry in Guernsey, a "loser pays" jurisdiction; (3) convert the

retirement accounts owned by Terry and his wife, leading to additional legal fees incurred in litigation in Texas state court; (4) violate injunctive provisions set forth in Acis's plan of reorganization, exposing HCMLP to additional liability; (5) enter into costly litigation with Acis's chapter 11 trustee in connection with Acis's bankruptcy case; and (6) mismanage Acis CLOs, exposing HCMLP to substantial liability in its capacity as advisor and fiduciary to Acis. As a result of these actions and the reputational harm they caused, it became impossible for HCMLP to launch another CLO either directly or indirectly.

203. In connection with his vendetta against Terry, Dondero willfully and wantonly subjected HCMLP to substantial liability to Acis and Terry, including by giving testimony at trial which, along with Leventon's testimony, was found "to be of questionable reliability" and structured "to convey plausible deniability." Ultimately, in order to avoid further liability to Terry and Acis, HCMLP settled those claims for more than $23 million pursuant to a settlement approved by this Court.

204. Leventon knowingly participated in the scheme to transfer value away from Acis in an attempt to make it judgment-proof. Among other things, Leventon assisted in the drafting and execution of the agreement that transferred Acis's interest in a note receivable from HCMLP, which had a balance owing of over $9.5 million, to Cayman Island entity Highland CLO Management Ltd. just ten days after Terry obtained his arbitration award. The agreement recites that (1) HCMLP is no longer willing to continue providing support services to Acis; (2) Acis, therefore, can no longer fulfill its duties as a collateral manager; and (3) Highland CLO Management Ltd. agrees to step in to the collateral manager role. Given the timing of the assignment—just days after Terry's arbitration award—Leventon knew that it was part of a

scheme to strip Acis of its assets, which ultimately resulted in millions of dollars of damage to HCMLP.

205. **Liabilities to HarbourVest.** Dondero also willfully and wantonly caused harm to HCMLP by exposing it to substantial liability to HarbourVest. Dondero, acting through HCMLP, fraudulently induced HarbourVest to purchase 49% of HCLOF from CLO HoldCo for approximately $75 million in cash, with a commitment for an additional $75 million in the future, while concealing that he was actively engaged in a campaign against Terry that would significantly impair the value of HarbourVest's investment. In addition, Dondero did not intend to use the $75 million that CLO Holdco received from HarbourVest to satisfy capital calls at HCLOF, and instead surreptitiously caused CLO Holdco to use those funds as part of a scheme to infuse other Dondero Entities (including entities that benefitted the NexPoint and HCMFA lifeboats) with additional cash. Ultimately, HCMLP was forced to settle with HarbourVest by providing it with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to a new entity designated by HCMLP. But for Dondero's conduct, HCMLP would not have incurred the foregoing liabilities. As a result of Dondero's conduct, those interests in HCLOF were then worth tens of millions of dollars less than the $75 million HarbourVest paid to acquire them.

206. **Liabilities to Crusader Funds.** Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to incur substantial liability to the Redeemer Committee due to his conduct in connection with HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors. Among other things, Dondero, Ellington, and Leventon caused HCMLP to: (1) transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, Ltd., after the Redeemer Committee had refused to approve that

transfer, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (2) covertly purchase the stock of the Portfolio Company and fail to liquidate the Crusader Funds' shares in the Portfolio Company, in violation of HCMLP's fiduciary duties; and (3) violate the provision of the Joint Plan and Scheme requiring HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete, causing HCMLP to forfeit its rights to those fees entirely. Additionally, both Ellington and Leventon were active participants in Dondero's scheme; they both provided false narratives or misrepresentations in furtherance of Dondero's harm to the Crusader Funds. The Redeemer Arbitration panel found, for example, that Leventon "was significantly involved in providing direction" to keep the Redeemer Committee in the dark and "was the principal instrument through which [certain] misrepresentation[s] and omission[s] were communicated." As a result of Dondero's, Ellington's, and Leventon's conduct, the Redeemer Committee received an arbitration award against HCMLP in excess of $190 million, and in HCMLP's bankruptcy, HCMLP agreed to pay over $136 million in connection therewith.

207. Beyond the direct losses identified in the preceding paragraphs, HCMLP suffered additional harm from the breaches of fiduciary duty committed by Dondero, Strand, Ellington, and Leventon. For example, the $190 million Redeemer arbitration award—which was itself caused by Dondero's, Ellington's, Leventon's, and Strand's breaches of their fiduciary duty to HCMLP—caused HCMLP to file for bankruptcy. To date, HCMLP has incurred in excess of $40 million in professional fees in connection with the bankruptcy. But for Dondero's, Ellington's, Leventon's, and Strand's willful and wanton misconduct, HCMLP would not have been obligated to pay any of these fees.

208. In light of the foregoing, Dondero, Strand, Ellington, and Leventon are liable for breaches of their fiduciary duties to HCMLP in an amount to be determined at trial.

COUNT VI
Declaratory Judgment That Strand Is Liable For HCMLP's Debts In Its Capacity As HCMLP's General Partner
(Against Strand)

209. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

210. Under DRULPA § 17-403(b), "a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law … to persons other than the partnership and the other partners." Moreover, "[e]xcept as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law … to the partnership and to the other partners." *Id.*

211. Under Delaware Uniform Partnership Law ("DUPL") § 15-306(a), partners of a partnership "are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law."

212. During all periods relevant to the allegations set forth herein, Strand was the general partner of HCMLP. Moreover, Strand has not been relieved of its obligation to satisfy HCMLP's obligations by agreement or law.

213. Accordingly, under the operative partnership agreements and applicable law, Strand is liable to HCMLP and "to persons other than [HCMLP]" for the full amount of HCMLP's liabilities.

COUNT VII
Declaratory Judgment That Dondero Is Liable For Strand's Debts As Strand's Alter Ego
(Against Dondero)

214. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

215. Between the formation of Strand and the Petition Date, Dondero dominated and controlled Strand and was its sole equity owner. Dondero was the only officer of Strand between 1993 and 2001. Although Strand elected certain officers between 2001 and the Petition Date, they performed no duties in their capacities as officers of Strand and were appointed or fired from their roles based on their loyalty to, and their current relationship with, Dondero. Dondero testified that he did not know whether Strand even had any officers, stating that he was "not aware of [Strand] ever having any employees or active … governance." Likewise, Dondero did not know whether Strand had a board of directors and whether he sat on Strand's board.

216. Strand did not observe corporate formalities. Based on a review of HCMLP's books and records, between the formation of Strand and the Petition Date, Strand never held a board meeting. Indeed, Dondero testified that he is not aware of attending a board meeting for Strand and does not recall ever seeing board minutes for Strand.

217. Strand did not comply with its own bylaws, which require annual meetings of stockholders.

218. Although Strand was the general partner of HCMLP, Strand—as opposed to Dondero himself—rarely took any official corporate action. Based on the Litigation Trustee's review of documents, between its formation and the Petition Date, Strand documented only 12 instances in which it took corporate action, eight of which related to the appointment or removal of officers.

219. Strand was a sham entity whose sole purpose was to serve as a vehicle through which Dondero was able to dominate and control HCMLP, while seeking to insulate from HCMLP's liabilities, which were frequently the direct result of Dondero's own wrongdoing. As such, Dondero is Strand's alter ego, and the Court should pierce the corporate veil to hold Dondero liable for Strand's debts.

COUNT VIII
Declaratory Judgment That Dondero and Strand Are Liable For HCMLP's Debts In Their Capacities As HCMLP's Alter Ego
(Against Dondero and Strand)

220. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

221. Dondero, both through Strand and as an officer of HCMLP, dominated and exercised total control over HCMLP from its formation through the Petition Date. Dondero had total decision-making authority and governed HCMLP by decree—notwithstanding the existence of Strand (itself a sham entity) and the terms and obligations imposed by HCMLP's limited partnership agreement. HCMLP was a mere instrumentality of Dondero, and HCMLP had no independence and could not exercise any business discretion separate and apart from Dondero.

222. Strand, like myriad entities within Dondero's empire—including NexPoint GP, HCMFA, Dugaboy, CLO Holdco, Highland Dallas, Highland Santa Barbara, Highland Kansas City, HFP, and Acis—listed HCMLP's headquarters as its business address.

223. Dondero failed to observe corporate formalities with regard to HCMLP. Indeed, he did not distinguish between HCMLP and his personal interests and businesses. Dondero used HCMLP employees to service his own interests that were unrelated to HCMLP. For example, Dondero caused HCMLP to employ individuals notwithstanding that their role was to

serve Dondero personally. Such employees included Dondero's accountant, security guard, and landscaper. Dondero also frequently instructed HCMLP's legal department to perform legal services in connection with his own personal and business interests, which conferred no value on HCMLP.

224. Dondero used his domination and control over HCMLP to perpetrate numerous injustices, abuses, and frauds.

225. Dondero caused HCMLP's employees and resources to be used for his lifeboat businesses as part of his fraudulent scheme to siphon value from HCMLP to other entities he owned and controlled. In connection with these schemes, Dondero exploited HCMLP by using its employees and resources for the benefit of other lifeboat entities, either at no cost to the lifeboats, at a loss to HCMLP, or at substantially below-market rates. In fact, HCMLP should have received all of the profits generated from the services performed by the lifeboats, which in fact were performed by HCMLP's employees. The purpose and effect of this scheme was to cause HCMLP to provide the employees and infrastructure that were needed by Dondero's profitable business ventures, while also ensuring that HCMLP would remain cash poor and lack the funds to satisfy its own obligations.

226. Dondero caused HCMLP to enter into agreements, including the Massand Consulting Agreement, the object and purpose of which were to cause HCMLP to incur obligations for services that conferred benefits on Dondero Entities other than HCMLP.

227. Dondero, both through Strand and as HCMLP's President and CEO, caused HCMLP's assets to be commingled with those of his other businesses, without observing corporate formalities. By commingling entities and using HCMLP's employees and resources to further his own personal goals, Dondero exposed HCMLP to hundreds of millions of dollars

in liability to numerous parties, including UBS, Acis, Terry, HarbourVest, the Redeemer Committee, and the Crusader Funds.

228. By virtue of his complete control over HCMLP, Dondero caused HCMLP to willfully and wantonly breach contractual obligations and take measures to render HCMLP and other Dondero Entities "judgment-proof." Ultimately, this brazen disregard for HCMLP as an independent entity with its own contractual and fiduciary obligations resulted in multiple adverse awards, including the $190 million arbitration award that caused HCMLP to file for bankruptcy.

229. Dondero wielded his control over his web of entities to orchestrate intercompany transfers that were designed to siphon assets from HCMLP. For example, Dondero orchestrated the CLO Holdco Transaction, through which he caused HCMLP to transfer $24 million or potentially more worth of assets through a series of entities he controlled in exchange for consideration that was worth a small fraction of the value of the transferred assets.

230. As the alter egos of HCMLP, Dondero and Strand should be held liable for the full amount of HCMLP's obligations.

COUNT IX
Declaratory Judgment That NexPoint and HCMFA Are Liable For The Debts Of HCMLP, Strand, And Dondero As Their Alter Egos
(Against NexPoint and HCMFA)

231. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

232. NexPoint and HCMFA were created as facades of HCMLP, in order to siphon profits away from HCMLP and to Dondero and other entities he controlled. Pursuant to the scheme, Dondero sought to place the profits that were generated from HCMLP's business and services beyond the reach of HCMLP's then present and future creditors.

233. NexPoint was owned and controlled by Dondero through Dugaboy and NexPoint GP. Between 2012 and 2015, NexPoint had no employees of its own, and performed no business activities that were distinguishable from those performed by HCMLP. NexPoint was a facade of HCMLP that used HCMLP's employees to perform the same investment management and advisory services that HCMLP routinely performed.

234. For over one year, HCMLP performed all services for NexPoint without any sub-advisory or shared services agreements that even purported to compensate HCMLP for the use of its employees. Even after Dondero attempted to infuse this scheme with a patina of legitimacy by causing NexPoint to enter into agreements with HCMLP, they were structured to ensure that NexPoint retained the vast majority of profits for the work performed by HCMLP and its employees.

235. Dondero used HCMLP's resources to establish NexPoint and perpetrate his scheme to extract value from HCMLP. Dondero caused HCMLP to fund NexPoint's operations, seed its investments, and provide a substantial amount of the capital that ultimately funded distributions NexPoint made to its owner, Dugaboy. Between 2012 and 2017, HCMLP loaned NexPoint approximately $30 million, and during that same period, NexPoint made limited partner distributions of approximately $34 million—99.9% of which were paid to Dugaboy. Distributions to Dugaboy were made at the direction of, and for the benefit of, Dondero. Meanwhile, as of the Petition Date, NexPoint owed HCMLP approximately $23 million, and HCMLP is currently embroiled in litigation with Dondero following a payment default that occurred January 2021. Dondero exercised complete control over the terms of the note and whether it would be repaid, and caused HCMLP to enter into multiple agreements with NexPoint providing for forbearance and other relief.

236. Likewise, HCMFA was owned by Dondero and Okada through a series of entities owned and controlled by Dondero through its general partner, Strand Advisors XVI, Inc., which was wholly-owned by Dondero. HCMFA was effectively a shell entity that was created to replace HCMLP as the new investment manager for open-ended retail investment funds. To the extent that sub-advisory and shared services agreements existed between HCMLP and HCMFA, they existed to lend credibility to Dondero's fraudulent scheme to divert HCMLP's profits to himself and Okada through HCMFA.

237. Dondero used HCMLP's resources to support HCMFA as well. Between 2011 and 2019, HCMLP loaned HCMFA approximately $12 million and entered into multiple forbearances on HCMFA's debts, and in May 2019 HCMFA borrowed an additional $7.4 million from HCMLP that it failed to repay. Dondero was on both sides of those agreements, and used HCMLP in order to establish HCMFA as a successor to HCMLP.

238. As such, NexPoint and HCMFA are the alter egos of each of HCMLP, Dondero, and Strand, and the Court should pierce the corporate veil to hold NexPoint and HCMFA liable for the debts of each of HCMLP, Dondero, and Strand.

COUNT X
Declaratory Judgment That Dugaboy Is Liable For The Debts Of Dondero In Their Capacities As Dondero's Alter Ego
(Against Dugaboy)

239. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

240. Dondero operated Dugaboy—Dondero's personal trust—as an extension of himself and HCMLP. Dondero used HCMLP employees, on HCMLP's payroll, to transact business on behalf of Dugaboy, without any compensation to HCMLP. Dondero used HCMLP

employees for Dondero's personal estate planning and caused HCMLP to comingle Dugaboy's electronically stored information with HCMLP's data.

241. Dondero dominated and controlled Dugaboy. Dondero appointed Scott, his longtime personal friend, as the trustee of Dugaboy, for the purpose of serving as a rubber stamp of approval for all transactions that Dondero (or HCMLP employees acting at Dondero's direction) presented to Scott.

242. Under the terms of Dugaboy's trust agreement, Dondero also has the power to remove trustees without cause—leverage that allowed him to control what transactions Dugaboy was involved in.

243. As such, Dugaboy is the alter ego of Dondero, and the Court should pierce the corporate veil to hold Dugaboy liable for the debts of each of HCMLP, Dondero, and Strand.

COUNT XI
Avoidance of Transfer of Management Agreements As Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against HCMFA and NexPoint)

244. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

245. On December 15, 2011, HCMLP entered into a novation agreement, pursuant to which HCMFA became the investment advisor for Highland Credit Strategies Fund, Highland Floating Rate Opportunities Fund, the Highland Long/Short Equity Fund, the Highland Long/Short Healthcare Fund, and the Highland Special Situations Fund (collectively, the "Transferred Funds"). Dondero caused HCMLP to transfer these agreements to HCMFA as part of his scheme to evade HCMLP's creditors.

246. HCMLP received less than reasonably equivalent value in connection with the novation agreement. Prior to the transfer, HCMLP received management and advisory fees in

return for the services that its employees performed for the Transferred Funds. After the transfer, HCMLP's employees provided the same services for the Transferred Funds, except that the vast majority of the profits were diverted to HCMFA following the extinguishment of HCMLP's credit facility.

247. At the time of the transfer, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

248. On June 13, 2012, Dondero caused HCMFA to transfer the Highland Credit Strategies Fund to the newly-created NexPoint, after which Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as NHF. The result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another.

249. The transfer of HCMLP's valuable management and advisory contracts with the Transferred Funds is voidable as constructively fraudulent against HCMFA and its subsequent transferee, NexPoint. Accordingly, these transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XII
Avoidance of Transfer of Management Agreements As Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against HCMFA and NexPoint)

250. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

251. On December 15, 2011, HCMLP entered into a novation agreement, pursuant to which HCMFA became the investment advisor for the Transferred Funds. Dondero caused HCMLP to transfer these agreements to HCMFA as part of his scheme to evade HCMLP's creditors.

252. Dondero caused HCMLP to make the transfer with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP and HCMFA;

(b) before the transfer, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, causing HCMLP to transfer its valuable management contracts and business opportunities to newly-created "lifeboat" entities;

(d) at the time of the transfer, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) Dondero caused HCMLP to make the transfer during a period when he believed the value of HCMLP may ultimately be distributed to its creditors, as a result of its looming contingent liabilities, and effected the transfers in

order to siphon value so that it would not be available to satisfy HCMLP's present and future creditors; and

(f) HCMLP did not receive reasonably equivalent value in return for transferring its valuable management and advisory contracts with the Transferred Funds to HCMFA.

253. On June 13, 2012, Dondero caused HCMFA to transfer the Highland Credit Strategies Fund to the newly-created NexPoint, after which Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as NHF. The result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another.

254. The transfer of HCMLP's valuable management and advisory contracts with the Transferred Funds is voidable as intentionally fraudulent against HCMFA and its subsequent transferee, NexPoint. Accordingly, these transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIII
Successor Liability
(Against HCMFA and NexPoint)

255. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

256. HCMFA and NexPoint each were mere continuations of HCMLP. Dondero caused each of HCMFA and NexPoint to perform the same investment and advisory services as HCMLP, using HCMLP's employees, in order to service HCMLP's managed funds. HCMFA and NexPoint were dependent on HCMLP employees and personnel.

257. HCMLP, HCMFA, and NexPoint were each dominated and controlled by Dondero. Under his common direction, there was continuity of management, personnel, physical location, assets, and general business operations between HCMLP, on one hand, and HCMFA and NexPoint, on the other hand. After HCMFA and NexPoint were created, HCMLP ceased launching any new RIC or real estate investment funds. HCMFA and NexPoint took over these aspects of HCMLP's business such that there was uninterrupted continuation of normal business operations, including new fund launches, generating substantial fee income and AUM growth.

258. As such, HCMFA and NexPoint are liable for HCMLP's debts as the successors to HCMLP.

COUNT XIV
Breach of Fiduciary Duty In Connection With Fraudulent Transfers And Schemes
(Against Dondero, Strand, Ellington, and Okada)

259. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

260. Dondero and Ellington caused HCMLP to enter into the Massand Consulting Agreements, with the intent to have Massand Capital perform services for SAS, an entity that they surreptitiously created and owned. Likewise, Dondero and Ellington oversaw and approved the Massand Transfers. The payment obligations Dondero and Ellington caused HCMLP to incur, and the payments that Dondero and Ellington caused HCMLP to make, conferred no benefit on HCMLP. In addition, Dondero and Ellington caused HCMLP employees to perform work for SAS—at least seven HCMLP employees received SAS email addresses—without compensating HCMLP.

261. Likewise, Dondero orchestrated the fraudulent CLO Holdco Transaction, pursuant to which he (acting through Strand) siphoned valuable assets from HCMLP in return

for illusory consideration, in the form of a note from Dugaboy, an entity that he controlled. Dondero siphoned these assets from HCMLP in order to benefit other entities that he owned and controlled, including CLO Holdco, NexPoint, and HCMFA.

262. Moreover, as part of his scheme to evade HCMLP's creditors, Dondero, acting through Strand, approved hundreds of millions of dollars of distributions from HCMLP at a time that Dondero believed HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

263. As Dondero's co-founder and HCMLP's Chief Investment Officer, Okada knew or willfully blinded himself to the fact that the HCMLP Distributions—including the distributions made to Okada, MAP #1, and MAP #2—were made at a time that HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

264. Dondero and Ellington breached their fiduciary duties by diverting approximately $3 million that was held in escrow for HCMLP to an entity that they owned in the Cayman Islands.

265. By willfully and wantonly orchestrating these fraudulent transfers, Dondero, Strand, and Ellington breached their fiduciary duties to HCMLP.

COUNT XV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law
(Against NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, Highland Dallas)

266. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

267. NexPoint and HCMFA aided and abetted the breaches of fiduciary duty committed by Dondero and Strand. NexPoint and HCMFA were each dominated and controlled by Dondero. As such, each of NexPoint and HCMFA knowingly participated in their breaches

of their fiduciary duties to HCMLP. NexPoint and HCMFA knowingly participated in Dondero's scheme to divert HCMLP's valuable business into new "lifeboat" entities that he owned and controlled. The breaches of fiduciary duty that were aided and abetted by NexPoint and HCMFA caused tens of million (and potentially over one hundred million) of dollars in damage to HCMLP.

268. SAS, which was owned and controlled by Dondero and Ellington, knowingly participated in Dondero's and Ellington's breaches of their fiduciary duties in connection with the Massand Consulting Agreement and Massand Transfers. SAS was aware of the fiduciary duties that Dondero and Ellington owed to HCMLP as high ranking officers. SAS received the benefit of the services performed by Massand Capital, which Dondero and Ellington surreptitiously charged to HCMLP. The breaches of fiduciary duty that were aided and abetted by SAS caused millions of dollars of damage to HCMLP.

269. Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas aided and abetted Dondero's breach of fiduciary duties relating to the CLO Holdco Transaction. Scott—and in turn, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas—knowingly participated in the scheme to transfer $24 million or potentially more of assets to CLO Holdco in exchange for a note worth significantly less than the transferred assets. Scott either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP by orchestrating the CLO Holdco Transaction, as evidenced by, among other things, the low interest rate on the Dugaboy Note; the lack of security, material covenants; or other protections; the unfair repayment terms; and the fact that Dondero stood on both sides of the transaction. Moreover, Scott dutifully executed the necessary documentation in order to cause

the Transferred CLO Holdco Assets to be transferred to Get Good, DAF Holdco, DAF, CLO Holdco, and Highland Dallas.

COUNT XVI
Civil Conspiracy to Breach Fiduciary Duties Under Texas Law
(Against Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, Highland Dallas)

270. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

271. Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets away from HCMLP to evade HCMLP's creditors.

272. Dondero, Ellington, and Leventon orchestrated myriad transactions to divert funds from HCMLP to Dondero and the entities that he owned and controlled. NexPoint and HCMFA took over valuable HCMLP management agreements and used HCMLP's employees to usurp HCMLP's business in return for little or no consideration to HCMLP. SAS received valuable services from Massand while HCMLP bore the expense. Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas participated in the fraudulent CLO Holdco Transaction that siphoned valuable assets from HCMLP in return for patently insufficient consideration.

273. Ellington and Leventon understood that their conduct was directed at enriching Dondero at the expense of HCMLP, and each of them were compensated by Dondero (sometimes via minority ownership in an entity, like Ellington's stake in SAS, and sometimes via complex, circuitous schemes like the Tall Pine arrangement) for their participation. NexPoint, HCMFA, and SAS—each of which was controlled by Dondero—likewise

understood that their role in the conspiracy was to obtain value for Dondero at HCMLP's expense. Scott, too, understood that he was appointed to be a rubber-stamp for Dondero's self-interested schemes to siphon value from HCMLP and distribute it throughout the vast web of Dondero Entities. Scott acted on the basis of his longstanding loyalty to his "closest friend" Dondero and was compensated with "business gifts" for his service in furtherance of the conspiracy.

274. In furtherance of the conspiracy, Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, CLO Holdco, DAF Holdco, the DAF, Get Good, and Highland Dallas undertook, *inter alia*, the following schemes and overt acts:

(a) Dondero, NexPoint, and HCMFA conspired to perpetrate the lifeboat scheme in order to place valuable assets outside the reach of HCMLP's creditors, in violation of Dondero's fiduciary duties. NexPoint and HCMFA were each dominated and controlled by Dondero and, as such, they each consciously acted in furtherance of the conspiracy, including by transferring existing business to NexPoint and HCMFA, generating new business through NexPoint and HCMFA, and failing to compensate HCMLP for the use of its employees and resources. NexPoint and HCMFA were aware that the lifeboat scheme caused substantial damages to HCMLP.

(b) Dondero, Ellington, and SAS caused HCMLP to enter into the fraudulent Massand Consulting Agreements, pursuant to which HCMLP paid Massand millions of dollars in return for services that were rendered for SAS, which Dondero and Ellington owned and controlled. Likewise, SAS acted in furtherance of the conspiracy by surreptitiously receiving the benefits from

the Massand Consulting Agreements while HCMLP incurred the costs under those agreements. Each of Dondero, Ellington, and SAS were aware that causing HCMLP to pay SAS's expenses—for the benefit of SAS and its owners Dondero and Ellington—harmed HCMLP.

(c) Dondero, Scott, CLO Holdco, DAF Holdco, the DAF, Get Good, and Highland Dallas conspired to cause HCMLP to transfer valuable assets to CLO HoldCo for less than reasonably equivalent value. Scott—and in turn, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas—consciously participated in the scheme to transfer $24 million or potentially more of assets to CLO Holdco in exchange for a note worth significantly less than the transferred assets, including by executing the necessary documentation to cause the Transferred CLO Holdco Assets to be transferred to Get Good, DAF Holdco, DAF, CLO Holdco, and Highland Dallas. Each of Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas were aware that the CLO Holdco Transaction breached fiduciary duties to HCMLP, constituted a fraudulent transfer, and harmed HCMLP by diverting valuable assets in exchange for the far less valuable Dugaboy Note.

275. Each of Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas understood that his or its conduct was causing damage to HCMLP and that Dondero was breaching his fiduciary duties to HCMLP by orchestrating and participating in these transactions. The participants specifically intended to benefit themselves and Dondero at the expense of HCMLP, and agreed with

Dondero to undertake acts in furtherance of the conspiracy notwithstanding the harm to HCMLP.

COUNT XVII
Tortious Interference with Prospective Business Relations
(Against Dondero, NexPoint, and HCMFA)

276. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

277. Dondero siphoned business away from HCMLP and its creditors through the creation of "lifeboats" owned and controlled by Dondero. The "lifeboats," which included NexPoint and HCMFA, were companies set up to provide management services that HCMLP had previously been providing.

278. But for the actions of Dondero, NexPoint, and HCMFA, HCMLP would have continued to pursue the business opportunities that Dondero diverted to NexPoint and HCMFA. Indeed, NexPoint and HCMFA used HCMLP's employees, operated out of HCMLP's office, and performed the same advisory and administrative services for its managed funds that HCMLP had previously performed.

279. By using NexPoint and HCMFA as part of his lifeboat scheme, Dondero breached his fiduciary duties to HCMLP. In addition, Dondero breached his fiduciary duties to HCMLP by causing HCMLP to fraudulently transfer certain of its existing management contracts to NexPoint and HCMFA. NexPoint and HCMFA conspired with, and aided and abetted, Dondero's breaches of his fiduciary duties and HCMLP's fraudulent transfers.

280. Dondero, NexPoint, and HCMFA acted with a conscious desire to prevent HCMLP from continuing to directly manage the funds that were subsequently managed by

NexPoint and HCMFA. Moreover, Dondero, NexPoint, and HCMFA knew that their interference in HCMLP's business relationships was certain to occur as a result of their conduct.

281. HCMLP suffered, at minimum, tens of millions of dollars in damage from Dondero's, NexPoint's, and HCMFA's tortious interference with its prospective business relations.

COUNT XVIII
Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550 and Applicable State Law
(Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas Foundation)

282. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

283. On December 28, 2016, HCMLP transferred to Get Good the Transferred CLO Holdco Assets, which were worth approximately $24 million or potentially more. The transfer of the Transferred CLO Holdco Assets was effectuated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good.

284. As purported consideration for the Transferred CLO Holdco Assets, HCMLP received the Dugaboy Note, which was worth substantially less than the Transferred CLO Holdco Assets. The Dugaboy Note replaced HCMLP's liquid or liquidating assets with an illiquid, private loan on below market terms.

285. Immediately after HCMLP transferred the Transferred CLO Holdco Assets to Get Good, Dondero caused Get Good to transfer the Transferred CLO Holdco Assets to Highland Dallas by an exercise of discretion executed by Scott in his capacity as trustee of Get Good.

286. Immediately after the Transferred CLO Holdco Assets were transferred to Highland Dallas by Get Good, Dondero caused Highland Dallas to transfer the Transferred CLO Holdco Assets to DAF Holdco by unanimous written consent executed by Dondero, Scott, and Jalonick in their capacities as the sole directors of Highland Dallas.

287. Immediately after the Transferred CLO Holdco Assets were transferred to DAF Holdco by Highland Dallas, Dondero caused DAF Holdco, DAF, and CLO Holdco to enter into an omnibus assignment agreement, pursuant to which DAF Holdco transferred the Transferred CLO Holdco Assets to DAF, and DAF transferred the Transferred CLO Holdco Assets to CLO Holdco. Scott signed on behalf of each entity, as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Scott also executed a written resolution by DAF GP, in his capacity as the managing member of the general partner of the DAF, effectuating the transfer of the Transferred CLO Holdco Assets to CLO Holdco (which was wholly-owned by the DAF).

288. Dondero directly or indirectly controlled each entity in the chain of transfers that together constitute the CLO Holdco Transaction. Dondero controlled each of Get Good, Highland Dallas, DAF Holdco, DAF, and CLO Holdco either along with or through Scott, who was Dondero's longtime friend, former roommate, loyalist, and fellow board member on multiple boards of directors.

289. At the time of the CLO Holdco Transaction, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

290. None of Get Good, DAF Holdco, the DAF, or CLO Holdco paid reasonably equivalent value for the Transferred CLO Holdco Assets, or received the Transferred CLO Holdco Assets in good faith.

291. At all relevant times, each of Get Good, DAF Holdco, the DAF, and CLO Holdco was aware that, pursuant to the CLO Holdco Transaction, HCMLP transferred its assets to CLO Holdco for less than reasonably equivalent value.

292. The CLO Holdco Transaction is voidable as constructively fraudulent transfers. Accordingly, the CLO Holdco Transaction should be set aside and avoided and Transferred CLO Holdco Assets should be recovered under 11 U.S.C. §§ 544 and 550 and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIX
Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550 and Applicable State Law
(Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas Foundation)

293. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

294. On December 28, 2016, HCMLP transferred to Get Good the Transferred CLO Holdco Assets, which were worth $24 million or potentially more. The transfer of the Transferred CLO Holdco Assets was effectuated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good.

295. As purported consideration for the Transferred CLO Holdco Assets, HCMLP received the Dugaboy Note, which was worth substantially less than the Transferred CLO

Holdco Assets. The Dugaboy Note replaced HCMLP's liquid or liquidating assets with an illiquid, private loan that was worth significantly less than the value of the transferred assets.

296. After HCMLP transferred the Transferred CLO Holdco Assets to Get Good, Dondero caused the assets to be transferred to Get Good, Highland Dallas, DAF Holdco, DAF, and CLO Holdco. Dondero effected each transfer through his direct or indirect control of each of these entities.

297. Dondero caused HCMLP to enter into the CLO Holdco Transaction with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP;

(b) Dondero controlled Get Good, the initial transferee, and each of the subsequent transferees, Highland Dallas, DAF Holdco, DAF, and CLO Holdco, through Scott;

(c) before the CLO Holdco Transaction, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(d) at the time of the CLO Holdco Transaction, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) The CLO Holdco Transaction siphoned value away from HCMLP, so that such value would not be available to satisfy HCMLP's creditors; and

(f) The purported consideration for the Transferred CLO Holdco Assets, the Dugaboy Note, was worth less than the reasonably equivalent value of the Transferred CLO Holdco Assets, and replaced HCMLP's liquid or liquidating assets with an illiquid, private loan on below-market terms, the repayment of which was subject to Dondero's control.

298. None of Get Good, DAF Holdco, the DAF, or CLO Holdco paid reasonably equivalent value for the Transferred CLO Holdco Assets, or received the Transferred CLO Holdco Assets in good faith.

299. At all relevant times, each of Get Good, DAF Holdco, the DAF, and CLO Holdco was aware that the CLO Holdco Transaction transferred HCMLP's assets to CLO Holdco for less than reasonably equivalent value.

300. The CLO Holdco Transaction is voidable as an intentionally fraudulent transfer. Accordingly, the CLO Holdco Transaction should be set aside and avoided, and the Transferred CLO Holdco Assets should be recovered under 11 U.S.C. §§ 544 and 550 and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XX
Avoidance of Obligations Under Massand Consulting Agreement as Constructively Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand LLC)

301. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

302. On January 5, 2015, HCMLP entered into a consulting agreement with Massand LLC. Pursuant to each agreement, HCMLP agreed to pay Massand Capital tens of thousands of dollars per month.

303. HCMLP received less than reasonably equivalent value in exchange for the payment obligations that it incurred under the Massand Consulting Agreements (and in fact, received zero value). Dondero and Ellington caused HCMLP to hire Massand Capital in order for Massand Capital to provide services to SAS, which conferred no benefit to HCMLP.

304. At the time it entered into the Massand Consulting Agreements, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

305. HCMLP's obligations incurred under the Massand Consulting Agreements are voidable as constructively fraudulent.

COUNT XXI
Avoidance of Obligations Under Massand Consulting Agreement as Intentionally Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital)

306. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

307. On January 1, 2014, HCMLP entered into a consulting agreement with Massand Inc. On January 5, 2015, HCMLP entered into a consulting agreement with Massand LLC. Pursuant to each agreement, HCMLP agreed to pay them tens of thousands of dollars per month.

308. Dondero caused HCMLP to enter into the Massand Consulting Agreements with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP;

(b) Dondero was an insider of SAS;

(c) Dondero benefitted from HCMLP's payments to Massand Capital because they conferred value on SAS, an entity that Dondero owned and controlled;

(d) before HCMLP entered into the Massand Consulting Agreements, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(e) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved, among other things, causing HCMLP to incur obligations of other entities owned or controlled by Dondero, including SAS;

(f) at the time HCMLP entered into the consulting agreement with Massand LLC, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due; and

(g) Dondero caused HCMLP to enter into the Massand Consulting Agreements during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's creditors.

309. HCMLP's obligations incurred under the Massand Consulting Agreements are voidable as intentionally fraudulent.

COUNT XXII
Avoidance and Recovery of Certain Massand Transfers as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital, SAS, Dondero, and Ellington)

310. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

311. HCMLP entered into the fraudulent Massand Consulting Agreements, pursuant to which HCMLP agreed to pay Massand Capital tens of thousands of dollars per month. The transfers from HCMLP to Massand Capital (the "Massand Transfers") are set forth below:

Date	Amount	Date	Amount
January 7, 2015	$38,054	May 1, 2017	$57,861
February 25, 2015	$47,748	June 1, 2017	$60,814
March 3, 2015	$54,954	July 3, 2017	$51,974
March 31, 2015	$53,261	August 1, 2017	$58,074
May 5, 2015	$47,531	September 5, 2017	$50,371
June 2, 2015	$51,328	October 2, 2017	$53,016
June 30, 2015	$48,532	November 1, 2017	$59,971
August 5, 2015	$59,856	December 1, 2017	$56,031
September 1, 2015	$57,776	January 2, 2018	$52,894
September 29, 2015	$48,376	February 1, 2018	$51,378
November 2, 2015	$50,890	March 1, 2018	$54,396
December 1, 2015	$48,671	April 3, 2018	$54,538
January 4, 2016	$57,197	May 1, 2018	$55,852
February 1, 2016	$51,343	June 1, 2018	$55,093
March 1, 2016	$61,857	July 2, 2018	$64,516
April 1, 2016	$50,081	August 1, 2018	$56,539
May 2, 2016	$47,801	September 4, 2018	$53,749
May 10, 2016	$6	October 1, 2018	$52,537

Date	Amount	Date	Amount
June 2, 2016	$52,970	November 1, 2018	$53,278
July 1, 2016	$60,029	December 3, 2018	$52,219
August 2, 2016	$47,402	January 2, 2019	$47,812
September 1, 2016	$50,457	February 1, 2019	$51,437
October 4, 2016	$55,668	March 1, 2019	$51,156
November 1, 2016	$53,199	April 2, 2019	$54,063
December 1, 2016	$51,901	May 1, 2019	$55,359
January 3, 2017	$49,644	June 3, 2019	$56,470
February 1, 2017	$55,691	July 1, 2019	$54,878
March 3, 2017	$47,929	August 1, 2019	$54,979
April 3, 2017	$57,563		
		Total	$2,988,970

312. HCMLP did not receive any consideration in exchange for its payments to Massand Capital. The consulting agreement between Massand Capital and HCMLP provided that Massand would be responsible for advising HCMLP on its "investment recovery strategies" business in certain countries where HCMLP did not have any business.

313. Rather, upon information and belief, Massand Capital provided services to SAS, a separate entity owned and controlled by Dondero. As such, HCMLP's transfers to Massand Capital were made for the benefit of SAS and Dondero.

314. Massand Capital's monthly invoices to HCMLP were consecutively numbered, indicating that Massand Capital had no customers other than HCMLP, and Massand Capital's invoices contained no information about the services it purportedly rendered to HCMLP.

315. At the time of each of the Massand Transfers, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or

reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

316. The Massand Transfers are voidable as constructively fraudulent transfers. Accordingly, the Massand Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXIII
Avoidance and Recovery of Massand Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital, SAS, Dondero, and Ellington)

317. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

318. On January 5, 2015, HCMLP entered into a fraudulent consulting agreement, pursuant to which HCMLP agreed to pay Massand Capital tens of thousands of dollars per month. The transfers from HCMLP to Massand Capital (the "Massand Transfers") are set forth below:

Date	Amount	Date	Amount
January 7, 2015	$38,054	May 1, 2017	$57,861
February 25, 2015	$47,748	June 1, 2017	$60,814
March 3, 2015	$54,954	July 3, 2017	$51,974
March 31, 2015	$53,261	August 1, 2017	$58,074
May 5, 2015	$47,531	September 5, 2017	$50,371
June 2, 2015	$51,328	October 2, 2017	$53,016
June 30, 2015	$48,532	November 1, 2017	$59,971
August 5, 2015	$59,856	December 1, 2017	$56,031
September 1, 2015	$57,776	January 2, 2018	$52,894
September 29, 2015	$48,376	February 1, 2018	$51,378

Date	Amount	Date	Amount
November 2, 2015	$50,890	March 1, 2018	$54,396
December 1, 2015	$48,671	April 3, 2018	$54,538
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February 1, 2016	$51,343	June 1, 2018	$55,093
March 1, 2016	$61,857	July 2, 2018	$64,516
April 1, 2016	$50,081	August 1, 2018	$56,539
May 2, 2016	$47,801	September 4, 2018	$53,749
May 10, 2016	$6	October 1, 2018	$52,537
June 2, 2016	$52,970	November 1, 2018	$53,278
July 1, 2016	$60,029	December 3, 2018	$52,219
August 2, 2016	$47,402	January 2, 2019	$47,812
September 1, 2016	$50,457	February 1, 2019	$51,437
October 4, 2016	$55,668	March 1, 2019	$51,156
November 1, 2016	$53,199	April 2, 2019	$54,063
December 1, 2016	$51,901	May 1, 2019	$55,359
January 3, 2017	$49,644	June 3, 2019	$56,470
February 1, 2017	$55,691	July 1, 2019	$54,878
March 3, 2017	$47,929	August 1, 2019	$54,979
April 3, 2017	$57,563		
		Total	$2,988,970

319. Dondero caused HCMLP to make the Massand Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP and Massand Capital;

(b) before the Massand Transfers, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, causing HCMLP to become an obligor on certain contracts, including the Massand Consulting Agreements, that did not confer value on HCMLP;

(d) at the time of the transfers to Massand LLC, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) Dondero caused HCMLP to make the Massand Transfers during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's creditors; and

(f) The Massand Transfers were made for no consideration to HCMLP, and the services provided by Massand were made for the benefit of SAS, an entity that was not owned by HCMLP.

320. The Massand Transfers are voidable as intentionally fraudulent transfers. Accordingly, the Massand Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXIV
Breach of Contract Arising Out of Hunter Mountain Note
(Against Hunter Mountain and Rand)

321. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

322. On December 21, 2015, HCMLP and Hunter Mountain entered into the Hunter Mountain Note, pursuant to which Hunter Mountain agreed to pay HCMLP $63 million at an interest rate of 2.61% per annum.

323. Rand is a guarantor on the Hunter Mountain Note.

324. Pursuant to the Hunter Mountain Note, accrued interest and principal is due and payable in accordance with an amortization schedule attached to the note.

325. Hunter Mountain breached the Hunter Mountain Note by failing to make the payments due under the note on December 21, 2019 and December 21, 2020.

326. On May 3, 2021, HCMLP sent a demand letter to Hunter Mountain stating that the Hunter Mountain Note was in default and therefore, pursuant to the "Remedies" section of the note, all principal, interest, and any other amounts due and owing on the Hunter Mountain Note are immediately due and payable. As of May 5, 2021, that amount was more than $72 million, with interest continuing to accrue.

327. The Hunter Mountain Note is currently in default. Pursuant to the Hunter Mountain Note, HCMLP is entitled to damages from Hunter Mountain and Rand in an amount equal to all unpaid principal and interest, in addition to HCMLP's cost of collection, including attorneys' fees.

COUNT XXV
Conversion
(Against Dondero and Ellington)

328. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

329. In February 2018, HE Capital 232 and its wholly-owned subsidiary, HE Capital 232 Property obtained the HE Capital 232 Proceeds and placed them in an escrow account maintained by HCMLP's counsel, Wick Phillips, "pending distribution of the proceeds to the direct and indirect interest owners in [HE Capital 232 Property]."

330. On March 2, 2018, Wick Phillips disbursed a portion of those funds from the escrow account. The Remaining HE Capital 232 Proceeds, worth approximately $2.98, were never disbursed to HCMLP.

331. HCMLP owned, had possession of (through its counsel Wick Phillips), or had entitlement to possession of the Remaining HE Capital 232 Proceeds.

332. The Remaining HE Capital 232 Proceeds had been held for safekeeping, were intended to be kept segregated, specific and identifiable money, in the form they were received, and not subject to a claim by anyone other than HCMLP.

333. Upon information and belief, Dondero and Ellington directed Wick Phillips to withhold the Remaining HE Capital 232 Proceeds in a scheme to funnel the money to themselves through shell companies that they owned in the Cayman Islands. Indeed, on June 4, 2018, at Ellington's direction, Wick Phillips disbursed the remainder of the proceeds to Maple FS, a so-called fiduciary services company in the Cayman Islands, which subsequently transferred the full amount to Grey Royale Ltd., a Cayman Islands shell company owned and controlled by Dondero and Ellington.

334. Dondero's and Ellington's acts manifest a clear repudiation of HCMLP's rights in the Remaining HE Capital 232 Proceeds.

COUNT XXVI
Unjust Enrichment
(Against Dondero)

335. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

336. As set forth above, Dondero caused HCMLP to enter into myriad intercompany note transactions with other Dondero Entities in order to, among other things: (i) fund distributions to himself and his loyalists; (ii) inject funds into other entities he owns; and (iii) obtain personal tax benefits. Now, Dondero is actively spearheading an expensive, frivolous litigation campaign against HCMLP, through these same Dondero Entities, in order to avoid or delay their repayment obligations.

337. Dondero exploited HCMLP by using it to pursue goals that did not benefit HCMLP. Dondero orchestrated myriad transactions and schemes designed to benefit himself and other Dondero Entities at the expense of HCMLP, including but not limited to: (i) the lifeboat scheme; (ii) distributions from HCMLP to himself and certain trusts he owned and controlled during periods when HCMLP was insolvent; and (iii) intercompany transactions involving various Dondero Entities that distributed cash throughout his vast web of entities. Dondero unjustly profited from these schemes, either by directly transferring value to himself (*e.g.*, through distributions) or by using HCMLP money in order to seed business activities and investments that would accrue to his own personal benefit. Likewise, Dondero was willing to harm HCMLP even when it would seem economically irrational for him to do so, such as when he caused HCMLP to incur more in legal fees pursuing a vendetta against Daugherty than the total funds Daugherty was owed.

338. Dondero, together with Ellington, caused HCMLP's counsel to improperly divert approximately $3 million of HCMLP cash being held in an escrow account to an entity that they owned and controlled in the Cayman Islands.

339. Dondero obtained personal services from individuals who were employed and paid by HCMLP, including with respect to private business ventures.

340. Plaintiff seeks restitution from Dondero and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by him as a result of the unjust conduct set forth above.

COUNT XXVII
Unjust Enrichment
(Against Ellington and Leventon)

341. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

342. Ellington and Leventon were employees of HCMLP who received millions of dollars in compensation. However, each of them understood and performed their duties as functionaries for Dondero. As such, both Ellington and Leventon subordinated the interests of HCMLP to the interests of Dondero, and actively participated in and implemented his schemes to divert value from HCMLP. Portions of Ellington's and Leventon's compensation was consideration for their willingness to elevate Dondero's interests over those of HCMLP.

343. Together with Dondero, Ellington caused HCMLP's counsel to improperly divert approximately $3 million of HCMLP cash being held in an escrow account to an entity that they owned and controlled in the Cayman Islands.

344. Ellington and Leventon engaged in willful and wanton misconduct that gave rise to more than $350 million in allowed claims against HCMLP. Among other things, Ellington

and Leventon participated in the scheme to evade UBS collection efforts by fraudulently transferring assets to Sentinel.

345. Plaintiff seeks restitution from Ellington and Leventon and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXVIII
Unjust Enrichment
(Against NexPoint and HCMFA)

346. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

347. The lifeboat scheme was perpetrated primarily through NexPoint and HCMFA. NexPoint and HCMFA utilized HCMLP's employees to perform management and advisory services that HCMLP had directly provided, and should have continued to provide directly. Neither NexPoint nor HCMFA fairly compensated HCMLP for the use of its employees or resources.

348. HCMLP provided substantial financial support for NexPoint and HCMFA, including in the form of note agreements. Both NexPoint and HCMFA have defaulted on their debts to HCMLP and are currently pursuing expensive, frivolous litigation against HCMLP in an effort to evade their payment obligations.

349. NexPoint and HCMFA were effectively HCMLP in disguise, conducting HCMLP's business, with HCMLP's employees, operating out of HCMLP's office, beginning with HCMLP's contracts.

350. Through their exploitation of HCMLP, NexPoint and HCMFA received tens or hundreds of millions of dollars of profits.

351. Plaintiff seeks restitution from NexPoint and HCMFA and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXIX
Unjust Enrichment
(Against Massand Capital and SAS)

352. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

353. Massand Capital received millions of dollars in payments from HCMLP under the Massand Consulting Agreements. Nevertheless, Massand Capital was aware that it was not performing any services on behalf of HCMLP. Rather, Massand Capital was performing services on behalf of SAS. HCMLP received no benefit under the Massand Consulting Agreements.

354. HCMLP employees performed work for SAS. Indeed, at least four HCMLP even receiving SAS email addresses. SAS did not compensate HCMLP for these services.

355. SAS has profited from the services performed by Massand Capital and from the use of HCMLP's employees and resources.

356. Plaintiff seeks restitution from Massand Capital and SAS and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXX
Unjust Enrichment
(Against CLO Holdco)

357. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

358. Dondero, acting through HCMLP, fraudulently induced HarbourVest to purchase 49% of HCLOF for approximately $75 million, with a commitment to fund an additional $75 million. CLO Holdco was the beneficiary of the funds invested by HarbourVest. HCMLP received no benefit from the HarbourVest investment. Nevertheless, HarbourVest filed a proof of claim against HCMLP for fraudulently inducing the HarbourVest investment, and HCMLP was ultimately forced to settle with HarbourVest by providing them with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to a new entity designated by HCMLP. As a result of Dondero's conduct, however, the HCLOF interests were then worth significantly less than the face amount of HarbourVest's allowed claim.

359. Plaintiff seeks restitution from CLO Holdco and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by it as a result of its unjust receipt and use of the proceeds of the HarbourVest investment.

COUNT XXXI
Avoidance and Recovery of the One-Year Transfers as Preferential Transfers under 11 U.S.C. §§ 547 and 550
(Against Dondero and Ellington)

360. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

361. Dondero and Ellington are insiders of HCMLP.

362. As set forth below, within one year of the Petition Date, HCMLP made payments to Dondero of $4,755,2017 and payments to Ellington of $326,225 (the "Alleged Expense Transfers" and the "March 28, 2019 Repayment Transfer," as set forth below, and collectively the "One-Year Transfers"):

March 28, 2019 Repayment Transfer		
Date	Transferee	Amount
March 28, 2019	Dondero	$3,750,000
Alleged Expense Transfers		
Date	Transferee	Amount
October 31, 2018	Dondero	$8,986
November 15, 2018	Dondero	$65,078
November 15, 2018	Ellington	$1,296
December 14, 2018	Dondero	$115,481
December 31, 2018	Dondero	$548
December 31, 2018	Ellington	$5,150
January 15, 2019	Dondero	$96,786
January 15, 2019	Ellington	$60
January 31, 2019	Dondero	$38,628
February 15, 2019	Dondero	$42,435
February 15, 2019	Ellington	$102
February 28, 2019	Dondero	$19,063
March 15, 2019	Dondero	$50,771
March 29, 2019	Dondero	$21,935
March 29, 2019	Ellington	$60
April 15, 2019	Dondero	$60,191
April 30, 2019	Dondero	$7,164
April 30, 2019	Ellington	$60
May 15, 2019	Dondero	$89,257
May 15, 2019	Ellington	$365
May 31, 2019	Dondero	$38,804
June 14, 2019	Dondero	$82,710
June 28, 2019	Dondero	$7,605
June 28, 2019	Ellington	$60
July 15, 2019	Dondero	$47,006
July 15, 2019	Ellington	$60
July 31, 2019	Dondero	$748
August 15, 2019	Dondero	$85,059
August 30, 2019	Dondero	$12,714
August 30, 2019	Ellington	$205,788
September 13, 2019	Dondero	$56,763
September 30, 2019	Dondero	$24,498
September 30, 2019	Ellington	$60
October 15, 2019	Dondero	$32,977

October 15, 2019	Ellington	$60
October 15, 2019	Ellington	$113,105
Total	Dondero	$4,755,207
Total	Ellington	$326,226

363. The One-Year Transfers were made on account of antecedent debt.

364. HCMLP was insolvent when each One-Year Transfer was made.

365. Each One-Year Transfer enabled Dondero and Ellington to receive more than they would have if (i) the One-Year Transfers had not been made; and (ii) Dondero and Ellington received payment on account of the debt paid by the One-Year Transfers to the extent provided by the Bankruptcy Code.

366. Each One-Year Transfer constitutes an avoidable preference pursuant to Section 547(b) of the Bankruptcy Code.

367. Plaintiff is entitled to an order and judgment under 11 U.S.C. §§ 547 and 550 that each of the One-Year Transfers is avoided and recoverable.

COUNT XXXII
Avoidance and Recovery of the Alleged Expense Transfers as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, and Other Applicable Law
(Against Dondero and Ellington)

368. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

369. To the extent the Alleged Expense Transfers do not constitute reimbursement for valid expenses, they constitute constructive fraudulent transfers that were made to or for the benefit of Dondero and Ellington.

370. At the time of each Alleged Expense Transfer, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or

reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

371. HCMLP received less than reasonably equivalent value in exchange for each of the Alleged Expense Transfers. Indeed, HCMLP received no value for the Alleged Expense Transfers, each of which was a gratuitous transfer from HCMLP to or for the benefit of Dondero and Ellington.

372. Each Alleged Expense Transfer is voidable as a constructively fraudulent transfer. Accordingly, each Alleged Expense Transfer should be set aside, avoided, and recovered under 11 U.S.C. §§ 544, 548, and 550, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXXIII
Avoidance and Recovery of the Alleged Expense Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, and Other Applicable Law
(Against Dondero and Ellington)

373. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

374. To the extent the Alleged Expense Transfers do not constitute reimbursement for valid expenses, they constitute intentional fraudulent transfers that were made to or for the benefit of Dondero and Ellington.

375. Dondero was HCMLP's Chief Executive Officer, President, Co-Chief Investment Officer, and Co-Founder. Ellington was HCMLP's Chief Legal Officer and General Counsel until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interest. Dondero exercised complete control over HCMLP, and Ellington

acquiesced to and profited from schemes orchestrated by Dondero to enrich Dondero, Ellington, and HCMLP's direct and indirect owners.

376. To that end, Dondero and Ellington caused HCMLP to make the Alleged Expense Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero and Ellington were insiders of HCMLP;

(b) although Dondero and Ellington assert that the Alleged Expense Transfers constitute reimbursement for valid expenses, on information and belief, there is no factual basis for that assertion;

(c) before the Alleged Expense Transfers were made, HCMLP had been sued and Dondero and Ellington believed HCMLP's legal exposure rendered it insolvent;

(d) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved both siphoning HCMLP's valuable business opportunities through newly-created "lifeboat" entities and siphoning HCMLP's value through HCMLP Distributions (among other means);

(e) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved siphoning HCMLP's value through the Alleged Expense Transfers (among other means);

(f) HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the Alleged Expense Transfers;

(g) at the time of each Alleged Expense Transfer, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(h) Dondero and Ellington made the Alleged Expense Transfers during a period when they believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that such value would not be available to satisfy HCMLP's creditors.

377. Each Alleged Expense Transfer is voidable as an intentionally fraudulent transfer. Accordingly, each of the Alleged Expense Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544, 548, and 550, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXXIV
Disallowance of Claims Under Sections 502(b), 502(d), and 502(e) of the Bankruptcy Code
(Against Dondero, Ellington, Leventon, Waterhouse, and CPCM)

378. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

379. Each of Dondero, Ellington, Leventon, and Waterhouse filed multiple proofs of claim in HCMLP's bankruptcy case. Moreover, Ellington, Leventon, and Waterhouse

transferred certain of their alleged claims against HCMLP to CPCM. The claims that Dondero, Ellington, Leventon, Waterhouse, and CPCM currently have outstanding against HCMLP are set forth below (collectively, the "Proofs of Claim").

Claim No.	Filed By	Description	Amount
138	Dondero	• Expense reimbursement for expenses paid for HCMLP and "various related entities"	Not less than $100,000
142	Dondero	• Indemnification for acts performed or omitted to be performed on behalf of HCMLP.	Undisclosed
188	Dondero	• Contingent claim related to possible efforts to collect on various promissory notes. In the event collection efforts are made, Dondero asserts the notes were issued by him for funds in lieu of compensation.	Notes total $69,471,056.08
214	Leventon	• Indemnification for acts performed or omitted to be performed on behalf of HCMLP; • Damages for wrongful termination.	Undisclosed
216	CPCM (transferred by Leventon)	• Performance bonuses for 2018; • Deferred performance awards for 2016 through 2018.	$687,594.79 (as of January 30, 2021)
217	CPCM (transferred by Waterhouse)	• Performance bonuses for 2018; • Deferred performance awards (2016 through 2018); • Compensation in accordance with the terms of the Senior Employee Stipulation (as defined in claim).	$1,514,105.57 (as of January 30, 2021)
218	Waterhouse	• Indemnification for acts performed or omitted to be performed on behalf of HCMLP; • Vacation and paid time off.	$24,676.92 (liquidated) plus undisclosed amount for indemnification
244	CPCM (transferred by Ellington)	• Performance bonuses for 2018; • Deferred performance awards for 2015 through 2018.	$3,074,408.16 (as of January 30, 2021)
255	Ellington	• Vacation and paid time off.	$38,900.40 (liquidated)

380. Dondero, Ellington, and Waterhouse owed fiduciary duties to HCMLP in their capacities as officers of HCMLP. Leventon owed fiduciary duties to HCMLP in his capacity as counsel to HCMLP.

381. The Proofs of Claim are all subject to disallowance under Section 502(b). As set forth above, Dondero, Ellington, Leventon, and Waterhouse have committed multiple breaches of their fiduciary duties to HCMLP, including in connection with the SAS, Massand, Sentinel, Acis, and Crusader schemes. Ultimately, Dondero, Ellington and Leventon were terminated on account of their conduct. Because of this misconduct and their repeated breaches of fiduciary duty, Dondero, Ellington, Leventon, and Waterhouse are no longer entitled to their compensation-related claims, including any claims for vacation, paid time off, or bonuses or similar awards, whether individually held or transferred to CPCM.

382. Moreover, pursuant to the Tall Pine scheme, each of Ellington, Leventon, and Waterhouse received surreptitious payments from various Dondero Entities. Ellington, Leventon, and Waterhouse did not perform any services in exchange for these fees; rather, the payments were on account of deferred compensation that is currently requested in the Proofs of Claim. Therefore, Ellington's and Leventon's Proofs of Claim for compensation-related payments should, at a minimum, be reduced by the amount of the payments these individuals received from the Dondero- and Ellington-controlled payments as part of the Tall Pine scheme.[28]

[28] Waterhouse's proof of claim should also be reduced in an amount equal to what Waterhouse received in the Tall Pine scheme; however, HCMLP is seeking a reduction of Waterhouse's claim pursuant to the Waterhouse Motion.

383. For these same reasons, Leventon's claim for wrongful termination should be disallowed, as he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interests.

384. HCMLP's Code of Ethics required all employees of HCMLP to "devote their full time and efforts to the business of the Company;" "adhere to the highest standards of ethical conduct," and "disclose any activities that may create an actual or potential conflict of interest between the Employee, the Company and/or any Client." Indeed, the Code required employees to submit a required disclosure form and receive approval from the Chief Compliance Officer prior to: (1) serving as a director, officer, general partner or trustee of, or as a consultant to, any business, corporation or partnership, including family owned businesses and charitable, non-profit and political organizations; (2) accepting a second job or part time job of any kind or engaging in any other business outside of the HCMLP; or (3) receiving compensation of any nature, directly or indirectly, from any person, firm, corporation, estate, trust or association, other than HCMLP, whether as a fee, commission, bonus or other consideration such as stock, options or warrants. Upon information and belief, no such form was submitted by Ellington, Leventon, or Waterhouse in connection with the Tall Pine scheme.

385. Further, any Proof of Claim transferred or assigned to CPCM should be disallowed under Section 502(b) because Ellington's, Leventon's, and Waterhouse's: (1) performance bonuses are non-transferable under the terms of HCMLP's annual bonus plan; (2) deferred performance awards are non-transferable under the terms of HCMLP's deferred incentive plan; and (3) deferred performance awards are non-transferable under their respective Contingent Bonus Award Agreements. Pursuant to those agreements governing payment of

performance bonuses and deferred performance awards, any transfer of such awards to CPCM are null and void and create no obligation or liability of HCMLP.

386. To the extent CPCM's Proofs of Claim seek payment for any deferred performance awards or annual bonus awards allegedly payable to Ellington, Leventon, and Waterhouse, those claims should be disallowed because (i) all amounts due and owing under such awards have already been paid, (ii) such amounts are subject to offset as set forth above, or (iii) Ellington's, Leventon's, and Waterhouse's employment with HCMLP was terminated prior to the vesting date of those awards. Any such awards were automatically forfeited at the end of their respective employments.

387. To the extent the Proofs of Claim seek payment for indemnification, those claims should similarly be disallowed. Dondero, Waterhouse, and Leventon claim they are generally entitled to indemnification for "all acts performed or omitted to be performed on behalf of or in connection with [HCMLP]'s business" pursuant to Article 4.1(h) of the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "Previous LPA") and the Resolution of the Board of Directors of Strand Advisor, Inc., dated May 12, 2020 (the "Resolution"). The Previous LPA ceased to be operative upon the effective date of the Plan. The Plan required entry into the current limited partnership agreement (which did not include any indemnification for Dondero, Leventon, or Waterhouse) and also expressly disclaimed any prior indemnification claims. Further, under the terms of the Previous LPA and the Resolution, HCMLP has no obligation to indemnify Dondero, Leventon, or Waterhouse for any conduct that constitutes gross negligence or willful or wanton misconduct. Therefore, to the extent that the indemnification claims arose from conduct constituting gross negligence or

willful or wanton misconduct (whether detailed in this Complaint or not) such claims should be disallowed.

388. As set forth above, Dondero is a transferee of transfers avoidable under sections 544 and 548 of the Bankruptcy Code, and property is recoverable from Dondero under section 550 of the Bankruptcy Code. Accordingly, pursuant to section 502(d), all claims asserted by Dondero should be disallowed unless and until Dondero pays to Plaintiff the value of any transfer avoided pursuant to this Complaint.

389. Dondero's, Leventon's, Ellington's, and Waterhouse's claims for indemnification should be similarly disallowed pursuant to Section 502(e)(1)(B). Until such liabilities are established, the claims for indemnification are contingent. And because the purported claims for indemnification are for actions made on behalf of HCMLP, HCMLP could be co-liable. Therefore, these contingent claims for indemnification should be disallowed on that basis pursuant to Section 502(e)(1)(B).

390. The Proofs of Claim should be disallowed and expunged in their entirety pursuant to section 502 of the Bankruptcy Code.

391. Plaintiff expressly reserves its right to supplement or amend this objection to the Proofs of Claim and any other proof of claim. Plaintiff hereby reserves all objections and defenses to the Proofs of Claim and any other proof of claim filed in the bankruptcy proceeding.

COUNT XXXV
Disallowance or Subordination of Claims Under
Section 502 and 510 of the Bankruptcy Code
(Against Dondero, Dugaboy, Get Good, Okada, MAP #1, MAP #2, and Hunter Mountain)

392. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

393. Each of Dondero, Dugaboy, Get Good, Okada, MAP #1, MAP #2, and Hunter Mountain filed unripe proofs of claim in HCMLP's bankruptcy case arising from a tax audit currently being conducted by the Internal Revenue Service (the "IRS"). The claims that Dondero, Dugaboy, Get Good, Okada, MAP #1, MAP #2, and Hunter Mountain currently have outstanding against HCMLP are set forth below (collectively, the "Unripe Proofs of Claim").

Claim No.	Filed By	Description	Amount
70	Hunter Mountain	• Indemnification for obligations related to a secured promissory note	$60,298,739
113	Dugaboy[29]	• Potential claims against HCMLP related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP related to failure to make tax distributions to its limited partners for certain years between 2004 and 2018.	Undisclosed
120	Get Good	• Potential claims against HCMLP related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP related to failure to make tax distributions to its limited partners for certain years between 2004 and 2018.	Undisclosed
128	Get Good Non Exempt Trust No. 1	• Potential claims against HCMLP related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP related to failure to make tax distributions to its limited partners for certain years between 2004 and 2018.	Undisclosed
129	Get Good Non Exempt Trust No. 2	• Potential claims against HCMLP related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP related to failure to make tax distributions to its	Undisclosed

[29] Dugaboy has two other proofs of claim on file (Claim Nos. 131 and 177). HCMLP previously objected to these claims [Docket Nos. 2796, 2819] and they are subject to a separate proceeding.

		limited partners for certain years between 2004 and 2018.	
135	Okada	• Potential claims against HCMLP related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP related to failure to make tax distributions to its limited partners for certain years between 2004 and 2018.	Undisclosed
137	MAP #1	• Potential claims against HCMLP related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP related to failure to make tax distributions to its limited partners for certain years between 2004 and 2018.	Undisclosed
139	MAP #2	• Potential claims against HCMLP related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP related to failure to make tax distributions to its limited partners for certain years between 2004 and 2018.	Undisclosed
141	Dondero	• Potential claims against HCMLP related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP via Dondero's trusts related to failure to make tax distributions to its limited partners for certain years between 2004 and 2018.	Undisclosed
145	Dondero	• Potential claims against HCMLP as successor-in-interest to The Canis Major Trust, a limited partner of HCMLP, related to HCMLP's 2008 tax return, which is being audited. • Potential claims against HCMLP as successor-in-interest to The Canis Major Trust, a limited partner of HCMLP, related to HCMLP's failure to make tax distributions to its limited partners for certain years between 2004 and 2018.	Undisclosed

394. The Unripe Proofs of Claim are contingent on the IRS assessing tax liability against HCMLP's former limited partners and may never materialize against HCMLP. For example, Strand is currently defending an IRS audit and a determination as to the limited partners' tax liability is expected prior to year end. If the tax audit determines that there is no tax exposure, the Unripe Proofs of Claim will be moot. However, to the extent these Unripe Proofs of Claim mature into claims against HCMLP, they should be disallowed or subordinated pursuant to Section 502 or Section 510.

395. Further, Hunter Mountain's Proof of Claim should be disallowed. Hunter Mountain amended its Proof of Claim on April 8, 2020. Hunter Mountain later entered into a settlement agreement and withdrew its amended Proof of Claim in connection with that settlement. Although its original Proof of Claim remains on the ledger, Hunter Mountain's amended Proof of Claim superseded the original Proof of Claim and was withdrawn. The original Proof of Claim, accordingly, should be disallowed.

396. Plaintiff expressly reserves its right to supplement or amend this objection to the Unripe Proofs of Claim and any other proof of claim. Plaintiff hereby reserves all objections and defenses to the Unripe Proofs of Claim and any other proof of claim filed in the bankruptcy proceeding.

COUNT XXXVI
Disallowance or Subordination of Claims Under Section 502 and 510 of the Bankruptcy Code
(Against CLO Holdco)

397. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

398. On April 8, 2020, CLO HoldCo filed Claim No. 133 seeking approximately $11 million (the "CLO Holdco Claim"). The basis of the CLO HoldCo Claim was that CLO Holdco purchased a participation interest in certain interests that HCMLP held in the Crusader Fund.

399. HCMLP acquired the interests in the Crusader Fund that are the subject of the CLO Holdco Claim in violation of the Joint Plan and Scheme. HCMLP released its claim on those interests in connection with HCMLP's settlement with the Redeemer Committee. Accordingly, CLO Holdco is not entitled to any value on account of the CLO Holdco Claim. In recognition of this fact, on October 21, 2020, CLO Holdco amended its claim to seek $0.

400. Additionally, CLO Holdco subsequently agreed to withdraw the CLO Holdco Claim. Nevertheless, CLO Holdco has failed to date to actually withdraw the claim, notwithstanding the Reorganized Debtor's request. Accordingly, out of an abundance of caution, and to the extent that CLO Holdco attempts to pursue the CLO Holdco Claim, the Litigation Trustee objects to the CLO Holdco Claim, and the CLO Holdco Claim should be disallowed in its entirety or subordinated.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendants as follows:

A. awarding Plaintiff damages against, and disgorgement and restitution from each Defendant in an amount to be determined at trial;

B. setting aside, avoiding, and granting recovery of the HCMLP Distributions;

C. setting aside, avoiding, and granting recovery of the CLO Holdco Transfer;

D. setting aside and avoiding the payment obligations under the Massand Consulting Agreement;

E. setting aside, avoiding, and granting recovery of the Massand Transfers;

F. setting aside and avoiding the transfers of management and advisory agreements to HCMFA and NexPoint;

G. setting aside, avoiding, and granting recovery of the One-Year Transfers;

H. disallowing or subordinating the Proofs of Claim and, to the extent applicable, the Unripe Proofs of Claim and the CLO Holdco Claim;

I. awarding Plaintiff pre- and post-judgment interest at the maximum rate permitted by law;

J. awarding Plaintiff his attorneys' fees, costs, and other expenses incurred in this action; and

K. awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: October 15, 2021
Dallas, Texas

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, Plaintiff, v. JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST –	Adv. Pro. No. 21-03076-sgj AMENDED COMPLAINT AND OBJECTION TO CLAIMS

DEFENDANT'S EXHIBIT
81
25-03055

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

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PRAYER FOR RELIEF 141

Plaintiff Marc S. Kirschner (the "Litigation Trustee"), as Litigation Trustee of the Litigation Sub-Trust (the "Trust") established pursuant to the Fifth Amended Plan of Reorganization (the "Plan") of Highland Capital Management L.P. ("HCMLP" or the "Reorganized Debtor") (Docket No. 1472), through his undersigned counsel, brings this action and alleges as follows:

I. INTRODUCTION[2]

1. The Litigation Trustee brings this action to recover hundreds of millions of dollars in damages that HCMLP suffered at the hands of its founder, James Dondero, acting in concert with other entities that he owned and/or controlled (collectively, the "Dondero Entities"), and with the aid of other HCMLP officers and attorneys who disregarded their fiduciary duties to HCMLP in favor of Dondero and their own self-interests.

2. HCMLP was founded in 1993 as an investment advisor that also provided middle- and back-office services and engaged in proprietary trading. Prior to its bankruptcy filing on October 16, 2019, HCMLP was one of more than 2,000 Dondero Entities. The Dondero Entities were operated and controlled for Dondero's benefit, with Dondero utilizing complex corporate structures and transactions to transfer money and assets between the various Dondero Entities in the manner he viewed most advantageous to his own bottom line, including to avoid creditors, exploit personal tax benefits, and ensure that assets were preserved for his benefit and profits ultimately flowed to him.

3. HCMLP was at the center of Dondero's web: it employed nearly all of the people who performed services for myriad Dondero Entities, and it was those employees who carried out the substantive work for the Dondero Entities. Even when HCMLP's full role was hidden—

[2] Capitalized terms not defined in this section are defined later in the Amended Complaint.

either because it was not credited at all, or because it was identified only as a sub-advisor or service provider to Dondero's other management companies—it was HCMLP personnel executing Dondero's strategies for a wide array of Dondero Entities.

4. In or about 2008, after years of successful operations, HCMLP was hit hard by the economic recession. The recession gave rise to a multitude of lawsuits against HCMLP, and it became embroiled in litigations that threatened to impose crippling damages amounting to hundreds of millions of dollars.

5. Faced with this looming threat, Dondero devised a plan to siphon business away from HCMLP through the creation of "lifeboats" that he owned and controlled, which he sought to insulate from the claims of HCMLP's litigation creditors once they crystalized. The lifeboats were set up to provide the management services that HCMLP had been providing before the lifeboats' creation. The lifeboats were really HCMLP in disguise, however, as they conducted their business through HCMLP's employees, operated out of HCMLP's office, and in several cases, simply took over HCMLP's contracts, diverting the resulting fees away from HCMLP while HCMLP continued to provide the underlying services. The lifeboats collected the lion's share of the profits for HCMLP's work, while HCMLP bore the majority of expenses.

6. In the years that followed, Dondero—acting with the aid of certain HCMLP officers and employees—operated HCMLP to further his own personal interests, to HCMLP's detriment. Among other transgressions, Dondero, standing behind HCMLP's perceived corporate shield:

- Caused HCMLP to pay tens of millions of dollars to or for the benefit of Dondero and his affiliates in order to evade creditors, at a time when HCMLP was insolvent, inadequately capitalized, or intended to incur debts beyond its ability to pay;

- Caused HCMLP to transfer assets to other Dondero Entities for less than reasonably equivalent value at a time when HCMLP was insolvent, inadequately capitalized, or intended to incur debts beyond its ability to pay, in order to deprive creditors of the value of the transferred assets;

- Exploited HCMLP to exact vendettas on employees he perceived as disloyal, going so far as to destroy value at HCMLP and other Dondero Entities solely to inflict losses on his perceived enemies;

- Used HCMLP as a vehicle to fraudulently induce an investment of approximately $75 million into another Dondero Entity, with the goal of moving funds to yet another Dondero Entity;

- Caused the fraudulent transfer of assets worth at least $100 million out of HCMLP-managed funds to evade pending litigation claims asserted by UBS;

- Disregarded HCMLP's contractual and fiduciary obligations to investors in certain of HCMLP liquidating funds; and

- Siphoned funds out of HCMLP for use by other Dondero Entities, in exchange for artificially low interest, long-term notes that Dondero later purported to extend (by 30 years) or retroactively forgive, all for no consideration to HCMLP.

7. Dondero's conduct resulted in a second wave of litigation against HCMLP, exacerbating HCMLP's insolvency, inadequate capitalization, and inability to pay its debts. As was wholly foreseeable, Dondero's conduct hobbled HCMLP with hundreds of millions of dollars of additional contingent litigation liabilities that were all but certain to come due given Dondero's brazen wrongdoing.

8. In October 2019, the dam broke, and the repercussions of Dondero's actions came crashing down on HCMLP. An arbitration award of approximately $190 million was issued against HCMLP based on Dondero's failure to abide by a negotiated plan of distribution for certain of its liquidating funds, forcing HCMLP to file for bankruptcy protection. Shortly thereafter, a judgment of more than $1 billion was rendered for UBS against two HCMLP-managed funds, leading UBS to file a proof of claim against HCMLP that sought to hold

HCMLP responsible for its role in preventing the Fund Counterparties (defined below) from satisfying any of their debt to UBS.

9. In 2020, HCMLP, finally operating under the control of true and independent fiduciaries, negotiated a settlement with UBS for a total of $75 million in allowed claims. HCMLP was forced to reopen settlement discussions and increase that number to $125 million, however, when HCMLP discovered that in 2017, Dondero and his loyalists had surreptitiously transferred the two funds' remaining assets to a Dondero Entity. Other settlements followed, as HCMLP, burdened by Dondero's blatant wrongdoing, was forced to compromise claim after claim in order to avoid even greater dilution of creditor recoveries.

10. HCMLP now stands liable for more than $350 million in allowed creditor claims—in addition to tens of millions of dollars of costs occasioned by HCMLP's bankruptcy filing—that stem solely from, and would not exist but for, the knowing misconduct of Dondero and his loyalists. The Litigation Trustee thus brings this action to seek redress for the significant harm Dondero and his affiliates and accomplices inflicted on HCMLP, and to ensure that Dondero and those who aided him are not permitted to abscond with or divert value that rightfully belongs to HCMLP and its creditors.

II. PARTIES

11. Plaintiff Marc S. Kirschner is the Litigation Trustee for the Trust established under HCMLP's Plan.

12. Defendant James D. Dondero is an individual who, upon information and belief, at all times relevant to this Amended Complaint was residing in Dallas, Texas. Dondero is the co-founder of HCMLP and, prior to his removal on January 9, 2020, was the Chief Executive Officer and President of HCMLP. From the time that HCMLP was founded through October

16, 2019, when it filed for bankruptcy (the "Petition Date"), Dondero controlled HCMLP through his position at HCMLP, his ownership of HCMLP's general partner, and his ownership of, or control over the owners of, HCMLP's limited partnership interests. As set forth below, Dondero also owns and/or directly or indirectly controls hundreds of Dondero Entities within the Highland web, including the dozens of Dondero Entities referenced herein.

13. Defendant Mark A. Okada is an individual who, upon information and belief, at all times relevant to this Amended Complaint was residing in Dallas, Texas. Okada is the co-founder of HCMLP and was its Chief Investment Officer until he stepped down in 2019, after which he assumed an advisory role through the end of that year. After Dondero, Okada was the next-largest owner of HCMLP or a beneficiary of the distributions it made to its limited partners. Like Dondero, Okada held his interest in HCMLP directly and through trusts.

14. Defendant Strand Advisors, Inc. ("Strand") is a Delaware corporation that is wholly-owned by Dondero. Since HCMLP's formation, Strand has been its general partner and owned limited partnership interests in HCMLP. At all times relevant to this Amended Complaint, Strand's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

15. Defendant NexPoint Advisors, L.P. ("NexPoint") is a Delaware limited partnership. NexPoint is 99.9% owned by the Dugaboy Investment Trust, its sole limited partner. NexPoint's general partner, NexPoint Advisors GP, LLC ("NexPoint GP"), owns the remaining 0.1%. NexPoint and NexPoint GP were both formed on March 20, 2012. NexPoint concedes that it is controlled by Dondero, who owns 100% of NexPoint GP and is NexPoint GP's sole member and president. At all times relevant to this Amended Complaint, NexPoint's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

16. Defendant Nancy Dondero is named in her capacity as Trustee of Defendant Dugaboy Investment Trust ("Dugaboy"). Dugaboy is a grantor trust established under the laws of the state of Delaware. Dugaboy was formed pursuant to an October 2010 Trust Agreement between Dana Scott Breault, as Settlor, and James D. Dondero and Commonwealth Trust Company, as Trustees. Dondero is Dugaboy's primary beneficiary. Under the Dugaboy trust agreement, Dondero has the power to remove trustees without cause, as well as the power to appoint successive trustees. Dugaboy's original Family Trustee was Dondero, and Defendant Grant James Scott III ("Scott") was its Independent Trustee. In 2015, Dondero appointed Scott as the Family Trustee, and shortly thereafter replaced Scott with his sister Nancy. Between 2016 through confirmation of the Plan, Dugaboy owned a 0.1866% economic interest and a 74.4426% voting interest in HCMLP's Class A partnership interests, and, as set forth above, owns a 99.9% economic interest in NexPoint. At all times relevant to this Amended Complaint, Dugaboy's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

17. Defendant Highland Capital Management Fund Advisors, L.P. ("HCMFA") is a Delaware limited partnership.[3] HCMFA is owned by Strand Advisors XVI, Inc.[4] (which is HCMFA's general partner and owns a 1% interest in HCMFA); Highland Capital Management Services, Inc. ("HCMS") (which owns limited partnership interests in HCMFA equal to a 89.6667% ownership interest); and the Okada Family Revocable Trust (which owns limited partnership interests in HCMFA equal to a 9.3333% ownership interest). Dondero controls,

[3] HCMFA was originally created by Dondero on February 9, 2009, as Highland Funds Asset Management, L.P. ("HFAM"). On January 9, 2012, HFAM was renamed Pyxis Capital, L.P. ("Pyxis"), and on February 8, 2013, Pyxis was renamed HCMFA.

[4] Strand Advisors XVI, Inc. purports to be managed by six individuals, all but one of whom were previously on HCMLP's payroll.

and is the sole stockholder and director of, Strand Advisors XVI, Inc. Additionally, Dondero and Okada own 75% and 25% of HCMS, respectively.[5] HCMFA has acknowledged that it is controlled by Dondero. At all times relevant to this Amended Complaint, HCMFA's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

18. Defendant Scott is an individual who currently resides in North Carolina. At all times relevant to this proceeding, Scott had various roles at numerous Dondero-controlled or affiliated entities: he was the trustee of Get Good Trust; a director of the Highland Dallas Foundation; the managing member of Charitable DAF GP, LLC; the sole director of Charitable DAF Holdco, Ltd.; the managing member of the Charitable DAF Fund; and the director of CLO Holdco, Ltd. Scott is Dondero's long-time friend, former college roommate, and was the best man at Dondero's wedding. Scott has testified under oath that Dondero is his "closest friend." Dondero personally selected Scott as his successor to run the Charitable DAF Fund. Dondero also caused Scott to serve on multiple boards on which Dondero also served, including the boards of the Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc. Scott is also the executor of Dondero's will. Dondero, HCMLP, and/or entities controlled by Dondero transferred tens of thousands of dollars' worth of "business gifts" to Scott in the five years prior to the Petition Date. Scott has no training in finance or compliance and no investment experience. Scott routinely rubber-stamped Dondero's and HCMLP's directives without asking questions or requesting additional information.

[5] Dondero is the Director and President of Highland Capital Management Services, Inc. Scott Ellington is its Secretary.

19. Defendant Scott Ellington ("Ellington") was HCMLP's Chief Legal Officer and General Counsel until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interest. At all times relevant to this Amended Complaint, Ellington was a Texas resident.

20. Defendant Isaac Leventon ("Leventon") was Assistant General Counsel at HCMLP from March 2011 until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interests. At all times relevant to this Amended Complaint, Leventon was a Texas resident.

21. Defendant Charitable DAF Fund, LP (the "DAF") is an exempted company incorporated in the Cayman Islands. Dondero was the initial managing member of the DAF's General Partner, Charitable DAF GP, LLC ("DAF GP"), but in January 2011 he transferred all membership interests to Scott, who held those interests until March 2021. At all times relevant to this proceeding, Scott served as managing member of DAF GP and director of the DAF. HCMLP acted as the formal or informal non-discretionary investment manager for the DAF from its inception through 2020, and provided advisory and back-office services to the DAF and its subsidiaries, including CLO Holdco, Ltd., from 2012 until HCMLP terminated that relationship in February 2021. According to the DAF, Dondero currently serves as its investment advisor (although without an advisory contract).

22. Defendant Charitable DAF Holdco, Ltd. ("DAF Holdco") is an exempted company incorporated in the Cayman Islands. At all times relevant to this proceeding, Scott served as DAF Holdco's managing member and sole director. DAF Holdco is the limited partner of the DAF and owns 100% of the partnership interests in the DAF.

23. Defendant CLO Holdco, Ltd. ("CLO Holdco") is an exempted company incorporated in the Cayman Islands that was formed on December 13, 2010. CLO Holdco is a wholly-owned subsidiary of the DAF. CLO Holdco filed a proof of claim in HCMLP's bankruptcy case, which was subsequently amended to reduce the claim amount to zero.[6] In January 2022, CLO Holdco attempted to further amend the proof of claim to reassert a positive claim amount. CLO Holdco has no employees or officers. According to CLO Holdco, Dondero currently serves as an investment advisor to CLO Holdco (although without an advisory contract). Until Dondero's departure from HCMLP in January 2020, HCMLP (through Dondero) effectively made all investment decisions for the DAF which allocated the investments to CLO Holdco, which would then be rubber-stamped by Scott. At all times relevant to this Amended Complaint, CLO Holdco's principal place of business was 300 Crescent Court, Suite 700, Dallas, Texas 75201.

24. As of December 31, 2020, CLO Holdco and the DAF collectively controlled approximately $260 million in assets. Dondero has testified under oath that he was unaware of a single investment decision that HCMLP ever recommended to Scott regarding the DAF that Scott rejected. Likewise, Dondero was unaware of any investment Scott made on behalf of the DAF that did not originate with HCMLP.

25. Defendant Highland Dallas Foundation ("Highland Dallas") is registered as a Delaware nonprofit, nonstock corporation. The directors of Highland Dallas at the time of the events relevant to this proceeding were Dondero, Scott, and Mary Jalonick. Dondero also acted

[6] This proof of claim was signed by Grant Scott in his capacity as CLO Holdco's sole director. Grant Scott served in that capacity at all times relevant to this proceeding.

as Highland Dallas's president, and Scott served as its treasurer. Highland Dallas's principal office address is 3963 Maple Avenue, Suite 390, Dallas, Texas, 75219.

26. Defendant Scott, in addition to being named above in his individual capacity, is named in his capacity as Trustee of Get Good Trust, a trust established under the laws of the State of Delaware. According to Get Good's July 9, 2021, disclosure to this Court, Get Good consists of three related trusts: Get Good Trust, Get Good Non Exempt Trust No. 1, and Get Good Non Exempt Trust No. 2, all of which are included in the term "Get Good." Dondero is the settlor of Get Good, its beneficiaries are his "living descendants," and Scott was Get Good's trustee at all times relevant to this Amended Complaint.

27. Defendant Hunter Mountain Investment Trust ("Hunter Mountain") is a statutory trust established under the laws of the state of Delaware. Hunter Mountain was formed on December 17, 2015, shortly before it purchased limited partnership interests in HCMLP from HCMLP's then-existing limited partners (*i.e.*, Dondero, Okada, and entities that they controlled) and HCMLP. Through a complex series of transactions that occurred on December 21, 2015, and December 24, 2015, Dondero caused Hunter Mountain to become the owner-in-name of 99.5% of the economic interests of HCMLP. Meanwhile, Dondero caused Hunter Mountain to issue a series of notes and cash, such that Dondero, Okada, and certain entities that they controlled (including Dugaboy, The Mark & Pamela Okada Family Trust – Exempt Trust #1, and The Mark & Pamela Okada Family Trust – Exempt Trust #2) continued to receive the economic benefit of limited partnership distributions made by HCMLP to Hunter Mountain even after they had purportedly sold their limited partnership interests to Hunter Mountain. One such note was a $63 million secured promissory note Hunter Mountain entered into with HCMLP on December 21, 2015 (the "Hunter Mountain Note").

28. Rand PE Fund I, LP, Series 1 ("Rand") is a Delaware series limited partnership. Rand is the indirect parent of Hunter Mountain and is a guarantor of the Hunter Mountain Note.

29. Defendant Lawrence Tonomura is named in his capacity as trustee of Defendant The Mark & Pamela Okada Family Trust – Exempt Trust #1 ("MAP #1"), a trust established under the laws of the state of Texas. Okada controls MAP #1, which he created for the benefit of his children.

30. Defendant Lawrence Tonomura is named in his capacity as trustee of Defendant The Mark & Pamela Okada Family Trust – Exempt Trust #2 ("MAP #2"), a trust established under the laws of the state of Texas. Okada controls MAP #2, which he created for the benefit of his siblings.

31. Defendant Massand Capital, Inc. ("Massand Inc.") is a New York corporation that was created in 2002. Defendant Massand Capital, LLC ("Massand LLC") is a Delaware limited liability company created in 2014, pursuant to a certificate of incorporation signed by Leventon. Massand Inc. received payments from HCMLP between February 4, 2014 and January 7, 2015. Massand LLC received payments from HCMLP between February 25, 2015, and August 1, 2019. Massand Inc. and Massand LLC are referred to collectively herein as "Massand Capital".

32. Defendant SAS Asset Recovery Ltd. ("SAS") is a Cayman Island entity created in 2012, whose principal place of business is Dallas, Texas. Upon information and belief, SAS is a litigation funding and management business created by Dondero and Ellington in 2012 and operated out of HCMLP's headquarters. SAS, along with its direct and indirect subsidiaries, is owned and controlled by Dondero and Ellington, who own 70% and 30% of the economic

interests in SAS, respectively. Upon information and belief, Ellington is the Chief Executive Officer of SAS.

III. JURISDICTION, VENUE & STANDING

33. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 because this is a civil proceeding arising under or relating to the bankruptcy petition filed by HCMLP under Chapter 11 of the United States Bankruptcy Code. *See In re Highland Capital Management, L.P.*, No. 19-34054-sgj11 (Bankr. N.D. Tex.). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

34. Venue is proper in this Court under 28 U.S.C. § 1409(a).

35. This Court has personal jurisdiction over the defendants because each of the Defendants: (i) is a Texas resident; (ii) was formed under the laws of Texas; (iii) is the alter ego of a Texas resident or an entity that was formed under the laws of Texas; (iv) has a business presence in Texas; (v) filed a proof of claim in HCMLP's bankruptcy case; and/or (vi) had minimum contacts with the state of Texas by either invoking the benefits and protections of the state of Texas or otherwise purposefully directing conduct toward a Texas resident.

36. The Plan created the Claimant Trust, which was vested with assets including substantially "all Causes of Action" and "any proceeds realized or received from such Assets." The Plan also created the Litigation Sub-Trust, as a "sub-trust established within the Claimant Trust or as a wholly-owned subsidiary of the Claimant Trust," for the purpose of "investigating, prosecuting, settling, or otherwise resolving the Estate Claims" transferred to it by the Claimant Trust pursuant to the Plan. The Plan defines Estate Claims to include "any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of [HCMLP], and each of the Related Entities, including any promissory notes held by any of the foregoing." Proceeds

from the Litigation Trust's pursuit of claims "shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries[.]"

37. On October 8, 2021, the Claimant Trust confirmed the assignment of certain Causes of Action (as defined in the Plan) to the Trust, including all claims set forth in this Amended Complaint. All of the claims asserted in this Amended Complaint belong to the Litigation Sub-Trust, not the Reorganized Debtor.

38. Under the Plan, the Claimant Trust Beneficiaries are (i) the Holders of Allowed General Unsecured Claims and (ii) the Holders of Allowed Subordinated Claims, whose Claims are junior to those distributed to Holders of Allowed General Unsecured Claims.[7] The Claimant Trust Beneficiaries' claims against the Reorganized Debtor's estate are substantial and exceed, in aggregate, $380 million. To date, neither the Holders of Allowed General Unsecured Claims nor the Holders of Allowed Subordinated Claims have been paid at all.

39. The Trustee has standing to avoid all transfers described herein pursuant to 11 U.S.C. § 544(b) and applicable law. On the date of the Debtor's bankruptcy filing, at least one or more unsecured creditors who held an allowable claim, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis (all as defined herein), could have sought under state law to avoid each of the transfers made on or after October 16, 2015. The Internal Revenue Service filed an amended Proof of Claim in the Debtor's bankruptcy case on October 6, 2021, which asserts unsecured claims including for the tax period of June 30, 2015. Under applicable state and federal law, the IRS was entitled to seek to avoid all transfers at issue herein

[7] Holders of certain Allowed Limited Partnership Interests may become Claimant Trust Beneficiaries but only if *all* Allowed General Unsecured Claims, Allowed Subordinated Claims, and costs and expenses are indefeasibly paid in full.

as a present or future creditor, including transfers that occurred on or before October 16, 2015, because the IRS's claim arose within a reasonable time of those transfers.

IV. FACTUAL ALLEGATIONS

A. Dondero Creates HCMLP

40. HCMLP was a global alternative investment manager and registered investment advisor that was founded in 1993 by Dondero and Okada. The funds managed by HCMLP originally focused on the leveraged loan market, and subsequently expanded into other asset classes such as high-yield credit, public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific industries.

41. By the mid-2000s, HCMLP employed over 100 employees, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. As of the Petition Date, HCMLP had three primary business lines: (i) investment management; (ii) the provision of middle- and back-office services ("shared services") to other registered investment advisors; and (iii) proprietary trading.

42. Dondero exercised complete control over HCMLP from its founding until January 9, 2020, when this Court entered an order implementing the settlement and term sheet entered into between HCMLP and the unsecured creditors' committee, pursuant to which three new independent directors (the "Independent Board") were appointed at Strand to oversee the management and reorganization of HCMLP. HCMLP's employees have bluntly acknowledged that, prior to the appointment of the Independent Board, Dondero was HCMLP's solitary decision-maker on all matters concerning the company's operation and management. Dondero

served as HCMLP's Chief Executive Officer and President from the time that HCMLP was founded until he resigned from those roles on January 9, 2020.

43. As of December 31, 2006, HCMLP provided investment advisory services pursuant to management agreements for: (i) 22 CLOs, (ii) 1 SLT; (iii) 11 RICs, (iv) 7 warehouse transactions, (v) 4 SMAs; (vi) one trust; and (vii) 10 hedge fund structures.[8] At that time, the value of HCMLP's assets under management ("AUM") was approximately $33.1 billion.[9]

B. HCMLP Narrowly Survives The Financial Crisis Of 2008, And Emerges Facing Hundreds Of Millions Of Dollars In Potential Litigation Damages

44. Around 2008, HCMLP's business began to falter, as the financial crisis began to set in. The funds that HCMLP managed faced large losses, followed by substantial redemptions. In January 2008, HCMLP experienced its worst performance to date, with the value of many of its managed funds deteriorating significantly.

45. At the same time that HCMLP was facing significant losses that threatened its existence, the company also became ensnared in litigation posing the threat of hundreds of millions of dollars in damages. In March 2008, HCMLP and its managed funds Highland CDO

[8] A collateralized loan obligation ("CLO") is a structure that acquires and manage a pool of debt or loans. The CLO issues multiple debt tranches as well as equity, and uses the proceeds of those issuances to obtain loans. A structured loan transaction ("SLT") is a transaction involving structured financial instruments such as collateralized loan obligations. A registered investment company ("RIC") is a corporation, partnership, or trust registered with the Securities and Exchange Commission under the Investment Company Act of 1940. A warehouse transaction is an intermediate transaction that involves purchasing loans or bonds that will undergo the warehousing period prior to serving as collateral for a CLO security. A separately-managed account ("SMA") is a managed investment vehicle that has only one investor. A trust is a fiduciary agreement in which one entity that holds property or assets as its owner for one or more beneficiaries. A hedge fund structure is an actively managed investment pool held by a limited partnership of investors that allows partners to "redeem" their investment, subject to certain limitations.

[9] At its high-water mark, HCMLP's AUM exceeded $40 billion.

Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC" and together with CDO Fund, the "Fund Counterparties")[10] had entered into a transaction with UBS to finance the purchase of various CLO tranches (*i.e.*, tranches of debt issued by existing CLOs) and other assets, including credit default swaps ("CDS"). The governing agreements required the Fund Counterparties to post collateral based on the mark-to-market value of certain collateralized debt obligations. The value of these assets dropped by more than $400 million in the fall of 2008, and in November 2008, the Fund Counterparties failed to meet UBS's margin demand. In December 2008, UBS terminated the agreements, and claimed that it was owed 100% of its losses—which UBS alleged was as much as $745 million—from HCMLP and the Fund Counterparties.

46. On February 24, 2009, UBS commenced an action against HCMLP and the Fund Counterparties in New York state court. As amended and consolidated, UBS asserted claims against HCMLP for actual and constructive fraudulent transfer and breach of the implied covenant of good faith and fair dealing. Among other things, UBS alleged that in March 2009, HCMLP had orchestrated transfers of approximately $233 million of assets from SOHC's parent entity HFP, which UBS alleged was the alter ego of SOHC or its subsidiaries (the "March 2009 Transfers"). UBS sought to disgorge those transfers, and also sought damages against

[10] The CDO Fund is an indirectly-controlled subsidiary of HCMLP. At all times relevant to this proceeding, the CDO Fund was controlled by HCMLP, either pursuant to an investment advisory agreement and/or through HCMLP's indirect ownership of CDO Fund's general partner. SOHC is a subsidiary of Highland Financial Partners, L.P. ("HFP"). At all times relevant to this proceeding, HFP was managed and controlled by Dondero in his capacity as an officer of HFP and its general partner and as a member of HFP's monitoring committee. HFP's general partner is a wholly-owned indirect subsidiary of HCMLP. After 2010, Dondero was the sole member of HFP's monitoring committee until his resignation in mid-2021. At all times relevant to this Complaint, Dondero managed and controlled SOHC through his control of HFP.

HCMLP, including punitive damages, attorneys' fees, and pre-judgment interest (calculated at 9% under New York law).

47. Meanwhile, in December 2008, CDO Fund ceased meeting margin calls issued by Citibank N.A., Citigroup Global Markets Limited, Citigroup Financial Products Inc., and Citigroup Global Markets Inc. (together, "Citi") in connection with CDS entered into by CDO Fund and Citi. Citi seized assets posted by CDO Fund to collateralize the CDS, and, by March 2009, conducted two auctions to sell the collateral. The proceeds of the collateral sales, however, were not sufficient to satisfy CDO Fund's obligations to Citi. On April 5, 2012, CDO Fund sued Citi, alleging various claims arising from the margin calls. On May 3, 2013, Citi answered and countersued CDO Fund, HCMLP, and Highland CDO Opportunity Fund GP, L.P. ("CDO Fund GP") to: (i) recover a deficit of more than $24 million, plus accrued interest, still owed under the agreements governing the CDS; (ii) recoup $3 million in liquidation proceeds mistakenly received from a third party; and (iii) seek indemnification for all losses and costs Citi incurred as a result of CDO Fund's breach.

48. In addition, on April 2, 2009, Barclays Bank PLC ("Barclays PLC") and its wholly-owned subsidiary HYMF, Inc. ("HYMF" and, together with Barclays PLC, "Barclays") commenced an action against HCMLP and certain of its managed funds (the "Fund Defendants") and related entities for breach of contract, breach of fiduciary duty, and equitable accounting (the "Barclays Action"). The Barclays Action focused on hedge contracts that HYMF had entered into with various HCMLP-managed funds, which provided that HYMF would be able to remove its investments in a preferential fashion via a "redemption" right, usually as quickly as one day. Barclays alleged that HYMF attempted to exercise that redemption right in mid-October 2008 but was rejected by HCMLP and its managed funds,

notwithstanding the clear terms of the HYMF contracts. This breach of the HYMF contracts was accompanied by Dondero personally stating he would withhold over $100 million for over a year unless HYMF performed certain unrelated financial services for the Fund Defendants. Barclays alleged that it had invested more than $700 million into the Fund Defendants, that Dondero personally held at least $100 million of that "hostage," and that "hundreds of millions of dollars" were still owed to HYMF.

49. Additionally, on June 3, 2011, HCMLP became aware that on November 1, 2010, the Securities and Exchange Commission (the "SEC") had commenced an investigation with respect to potential violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. While the SEC investigation was settled years later for a reduced amount, HCMLP's understanding in 2011 was that the SEC investigation could result in significant penalties, including substantial monetary penalties, for the company.

C. In A Scheme To Evade HCMLP's Creditors, Dondero Creates "Lifeboats" To Usurp HCMLP's Business

50. In 2012, Dondero explained HCMLP's precarious financial condition, testifying under oath that the 2008 financial crisis took HCMLP "to a state of insolvency and we've been juggling liquidity since that," and that "[t]he last three, four years have been negative to the tune of hundreds of millions of dollars[.]" Dondero testified further that the contingent liabilities resulting from the lawsuits filed against HCMLP were a primary driver of HCMLP's insolvency.

51. It was against this backdrop that in or about 2011, Dondero determined to create a series of new entities—referred to internally by some at HCMLP as "lifeboats"—to take over HCMLP's business, with the aim of placing the resulting profits beyond the reach of HCMLP's

creditors. Ultimately, the most successful of the lifeboats were NexPoint and HCMFA, which are described in greater detail below. However Dondero also created other lifeboats at or around this time, including:

- Tunstall Capital Management, LP—which was created to manage stressed and distressed investing in hedge funds, private equity funds, and retail funds;
- Falcon E&P Opportunities GP, LLC—which was created to manage oil and gas investments in private equity funds;
- Granite Bay Advisors, LP—which was created to manage long-short credit investing; and
- Highland Capital Healthcare Advisors, LP ("HCHA")—which was created to serve as a healthcare equity advisor.

1. NexPoint

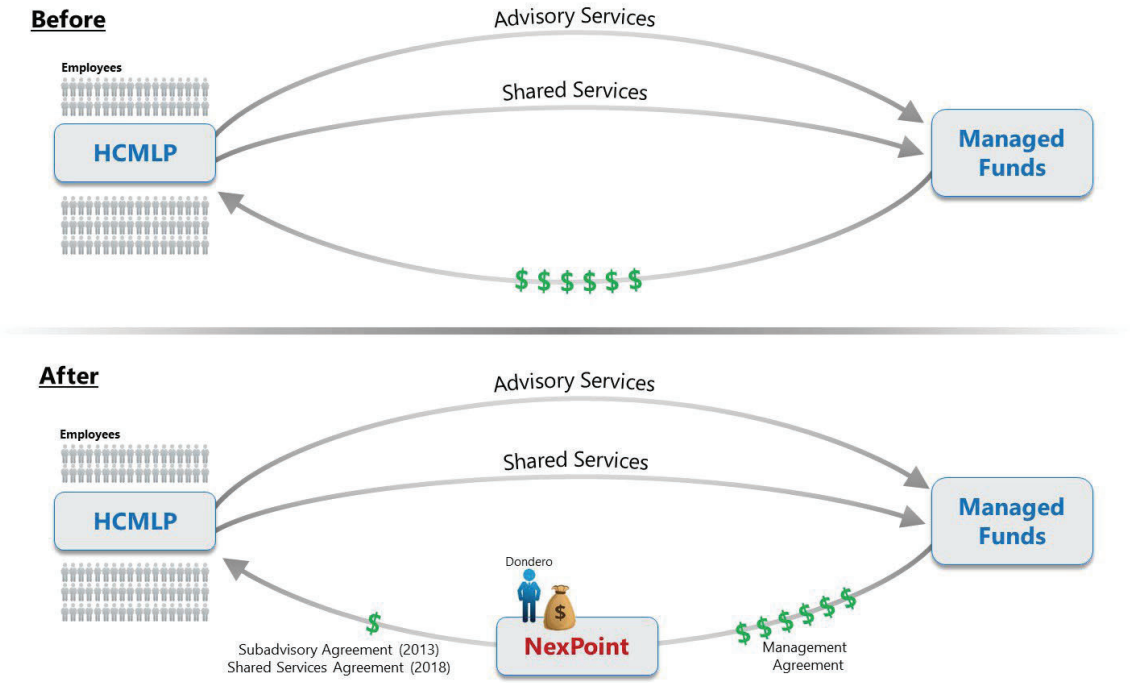
52. NexPoint was effectively a shell entity that Dondero created in March 2012 to siphon profits from HCMLP in order to evade HCMLP's creditors. Dondero's family trust Dugaboy, of which Dondero is the primary beneficiary, owns 99.9% of NexPoint.

53. Between 2012 and 2015, NexPoint had no employees of its own, and performed no business activities that were distinguishable from those performed by HCMLP. To the contrary, NexPoint used HCMLP's employees to perform the same investment management and advisory services—including investment advisory, compliance, accounting, tax, human resources, and information technology services—that were performed by HCMLP.

54. For over a year, HCMLP performed all services for NexPoint, without any sub-advisory or shared services agreements that even purported to compensate HCMLP for the use of its employees. In mid-2013, Dondero attempted to retroactively infuse this scheme with a patina of legitimacy, by causing NexPoint to enter into a shared services agreement with HCMLP that required NexPoint to pay fees to HCMLP based on a formula that resulted in low

fee payments. NexPoint continued to reap the vast majority of the generated fees, however. NexPoint's fees were based on a percentage of AUM, set at a level to yield fees far in excess of those NexPoint was paying HCMLP. The NexPoint scheme is illustrated in Figure 1, below.

Figure 1.



55. Adding insult to injury, HCMLP funded NexPoint's operations whenever needed, seeded large investments made by NexPoint, and funded a large portion of the distributions NexPoint made to its owner, Dugaboy (the beneficiary of which was Dondero). Indeed, in June 2012, at the time that Dondero was transferring HCMLP's advisory services business to NexPoint, Okada complained to Dondero that he was "using Highland's cash flow" to set up new entities controlled by Dondero and to "fund all their negative working capital."

56. Between 2012 and 2017, HCMLP loaned NexPoint approximately $30 million, and entered into a revolving line of credit to provide NexPoint with additional liquidity. Initially, the loans were in the form of demand notes and were unsecured, frequently below-

market, and had few to no covenants. NexPoint paid no principal or interest to HCMLP on the loans during the 2012-2017 period. At the same time, NexPoint made limited partner distributions of approximately $34 million—99.9% of which were made to Dugaboy for Dondero's benefit.

57. Dondero caused HCMLP to enter into multiple forbearance agreements with respect to the NexPoint loans, pursuant to which HCMLP agreed not to collect on the NexPoint loans for a period of one year from the time of the agreement. According to NexPoint's financial statements, these agreements were entered into to provide NexPoint "with the necessary financial support to fund [NexPoint's] obligations as they come due[.]" By May 2017, NexPoint owed HCMLP more than $30 million. Although all of these obligations were payable on demand, HCMLP again agreed not to demand repayment—this time through May 31, 2018—and also agreed to provide support to fund NexPoint's obligations through the same period. Meanwhile, HCMLP recorded the NexPoint loans at face amount on HCMLP's books.

58. Upon information and belief, on May 31, 2017, following discussions with NexPoint's auditors, Dondero restructured the NexPoint loans into a consolidated $30,746,812.33 note (the "NexPoint Loan") with an unusually long 30-year term maturity, a low coupon rate, no covenants, and no security. HCMLP received no consideration in exchange for its agreement to extend the NexPoint loans' maturity date from on-demand to 30 years.

59. Subsequent to Dondero's resignation from HCMLP, on December 31, 2020, NexPoint defaulted on the NexPoint Loan and the full outstanding amount of the loan was accelerated. On January 22, 2021, HCMLP filed an adversary proceeding in the Bankruptcy Court to collect on the NexPoint Loan. *See Highland Capital Management, L.P. v. NexPoint Advisors, L.P.*, Adv. Pro. 21-03005-sgj (Bankr. N.D. Tex. Jan. 22, 2021). NexPoint has raised

a series of frivolous defenses to HCMLP's claims, including that HCMLP—acting through the owner of a majority of its Class A interests, Dugaboy (which was acting through Dondero's sister, as Dugaboy's Family Trustee)—orally agreed to forgive the NexPoint Loan as part of Dondero's compensation. More than $23 million remains outstanding on the NexPoint Loan, and interest and fees continue to accrue. HCMLP has moved for summary judgment on this matter.

60. From the time that it was created in 2012 through 2019, NexPoint—which used HCMLP's employees to perform the same management and advisory services that are performed by HCMLP—earned over $150 million in revenues (including over $120 million in advisory and administrative fees) and approximately $50 million in operating income. Between 2012 and 2015, NexPoint's AUM increased 34%, from $700 million to $936 million, and revenues increased from $4.1 million to $16.2 million. Between 2015 and 2019, NexPoint's AUM increased by approximately 408%—from $936 million to $4.8 billion, and revenue increased from $16.2 million to $46.8 million. By contrast, over the same 2015 to 2019 period, HCMLP's AUM decreased from $9.5 billion to $2.3 billion.

2. HCMFA

61. Dondero utilized the same basic playbook for HCMFA, which is directly or indirectly owned by Dondero and Okada. HCMFA was created to replace HCMLP as the new investment manager for certain open-ended retail investment funds, but in a manner similarly designed to ensure that the profits generated by the business would not be available to HCMLP's litigation creditors in the event they achieved favorable judgments.

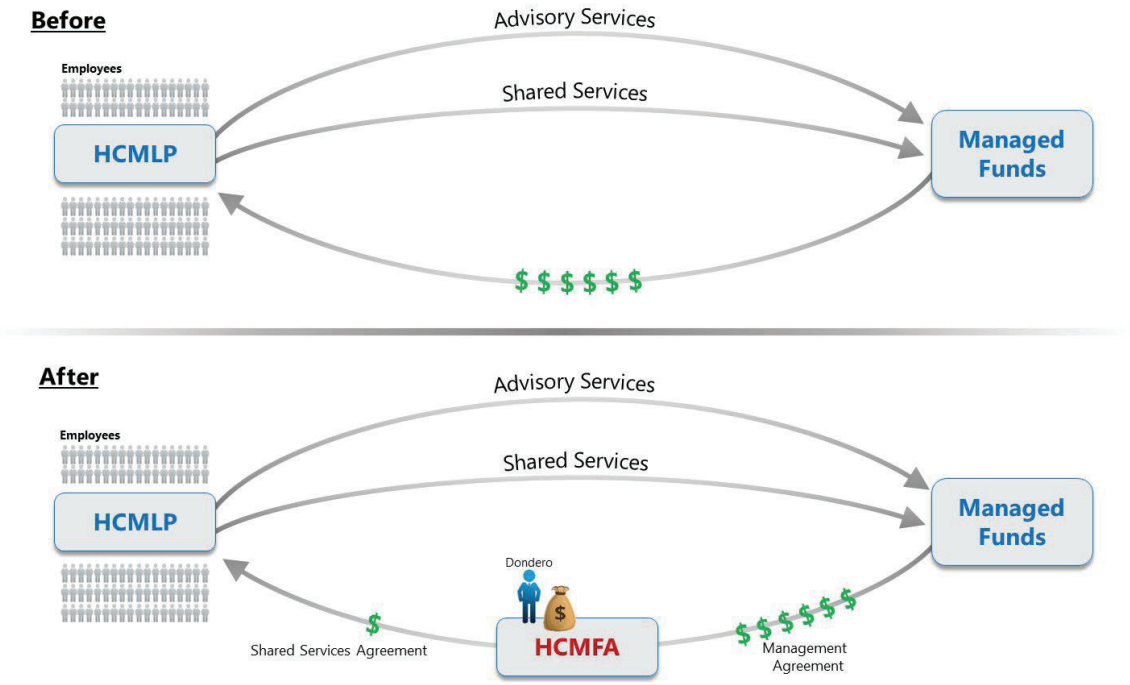
62. On December 15, 2011, Dondero caused HCMLP to transfer HCMLP's rights and obligations to provide investment advisory services for Highland Credit Strategies Fund,[11] Highland Floating Rate Opportunities Fund ("HFRO") (n/k/a Highland Income Fund), Highland Long/Short Equity Fund, Highland Long/Short Healthcare Fund, and Highland Special Situations Fund to HCMFA. HCMLP received no consideration for the transfer. Prior to the transfer, HCMLP received management and advisory fees under those agreements in return for the services it performed. Following the transfer, it was HCMFA rather than HCMLP that received those fees, notwithstanding that HCMFA used HCMLP's employees to perform most services. Thus, the effect of the transfer was to insert a new entity to reap the profits earned from the same HCMLP employees performing the same work that had been performed prior to the transfer.

63. HCMFA collected management fees from its managed funds based on a percentage of their net asset value ("NAV"). Meanwhile, HCMLP—whose employees performed most services required by HCMFA—received a low fee that was only a small fraction of the fees earned by HCMFA. And HCMLP received no fee with respect to the advisory services it provided to HCMFA, despite the fact that HCMLP's employees were named portfolio managers, and constituted entire teams of supporting investment analysts, for HCMFA-managed funds. Indeed, HCMFA did not execute a sub-advisory agreement with HCMLP, and it was only in May 2018 that HCMFA executed a payroll reimbursement agreement to partially compensate HCMLP for the services of certain HCMLP employees. If

[11] On June 13, 2012, the management agreements for Highland Credit Strategies Fund were purportedly "novated" to the newly-created NexPoint. Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as "NHF." The result of this transfer was simply to shift management fees relating to NHF—which had previously been diverted from HCMLP—from one lifeboat (Pyxis/HCMFA) to another (NexPoint).

HCMLP had managed the HCMFA-managed funds directly rather than doing so through an entity that was created to evade HCMLP's creditors, then HCMLP would have earned tens of millions of dollars (potentially over $100 million) in additional fees between 2012 and 2018. The HCMFA scheme is illustrated by Figure 2, below.

Figure 2.



64. Following Dondero's "lifeboat" playbook, HCMLP also provided financial support to HCMFA so that HCMFA was well-positioned to earn profits that bypassed HCMLP's creditors and flowed directly to Dondero and his affiliated entities, primarily through HCMFA's largest limited partner, HCMS (of which Dondero and Okada owned 75% and 25%, respectively). Between 2011 and 2019, HCMLP loaned HCMFA approximately $12 million. Those HCMFA loans were evidenced by demand notes, for which Dondero caused HCMLP to enter into multiple forbearances, ultimately preventing HCMLP from demanding payment until May 31, 2021. As of the Petition Date, $6.3 million was outstanding on the notes subject to the

forbearance agreement. In May 2019, HCMFA borrowed an additional $7.4 million from HCMLP pursuant to two additional demand notes.

65. Subsequent to Dondero's resignation from HCMLP, HCMFA defaulted on its debt to HCMLP. On January 22, 2021, HCMLP filed an adversary proceeding in the Bankruptcy Court to collect on the debt. HCMFA has raised a series of frivolous defenses to HCMLP's claims, including that the notes were executed in error. As of December 11, 2020, approximately $7.7 million in principal and interest was due and owing to HCMLP on the HCMFA notes dated May 2 and 3, 2019 and, as of June 4, 2021, approximately $3.1 million in principal and interest was due and owing to HCMLP on the HCMFA notes dated February 26, 2014, and February 26, 2016, and interest and fees continue to accrue. HCMLP has moved for summary judgment on this matter.

D. Dondero, Ellington, and Leventon Cause HCMLP To Engage In Misconduct That Exposes It To Additional Liability

66. As described more fully below, in addition to establishing the lifeboats to usurp HCMLP's business and evade its contingent creditors, Dondero, along with Scott Ellington, HCMLP's Chief Legal Officer and General Counsel, and Isaac Leventon, HCMLP's Assistant General Counsel, engaged in other actions that meaningfully harmed HCMLP. This included exposing HCMLP to significant liability by utilizing it to exact revenge on Dondero's perceived adversaries, and carrying out schemes that personally benefitted Dondero and, in certain instances, Ellington, but conferred no benefit on HCMLP. Ellington and Leventon were also financially rewarded by Dondero for faithfully serving Dondero's interest, rather than HCMLP's, even where doing was detrimental to HCMLP. As described below, these actions ultimately resulted in more than one billion dollars in litigation and arbitration claims against

HCMLP and millions of dollars in legal fees, necessitated HCMLP's bankruptcy filing, and ultimately forced HCMLP to enter into settlements for hundreds of millions of dollars.

1. Dondero Causes HCMLP To Engage In Misconduct Designed To Exact Revenge On Joshua Terry

67. In 2011, Dondero formed Acis Capital Management, L.P. ("Acis") and Acis Capital Management GP, LLC ("Acis GP"). Dondero was President both of Acis and Acis GP, and controlled their overall financial strategies and decisions. Upon information and belief, prior to its bankruptcy filing in 2018, Acis was indirectly owned by Dondero (through Dugaboy), Okada, and Joshua Terry ("Terry"), an HCMLP employee that Dondero tapped to manage Acis. Like HCMLP, Acis was a registered investment advisor whose purpose was to raise money from third-party investors to launch or invest in CLOs. HCMLP was the investment manager for Acis, and Acis performed almost all of its services through HCMLP employees. Dondero created Acis to act as another lifeboat—*i.e.*, to divert income away from HCMLP when HCMLP was facing the risk that all of its assets would be absorbed by its creditors. In 2013, HCMLP began what proved to be a short-lived turnaround, spurred by improving financial performance and settlement of the Barclays litigation. At this point, Dondero became more troubled by the dilution of his share of Acis's income, caused by Terry's ownership in Acis, than he was about evading HCMLP's liabilities. As a result, Dondero once again redirected the flow of money for his own benefit, this time by siphoning value from Acis back to HCMLP.

68. By 2016, tensions between Dondero and Terry hit a boiling point. Dondero sought to finance an acquisition by an HCMLP portfolio company through a loan from HCMLP-managed CLOs, and an extension of the maturity dates on the portfolio company's notes that were held by the CLOs. Terry was the investment manager for the CLOs, and

opposed the plan on the ground that agreeing to extend the notes' maturity dates would breach his fiduciary duties to the CLOs. Dondero responded to Terry's opposition by firing him from Acis and HCMLP, making up a pretextual claim of termination for "cause." Shortly thereafter, Dondero amended the Acis limited partnership agreement to terminate Terry's interests in Acis, and directed Acis to sue Terry in Texas state court. Terry counterclaimed and demanded arbitration.

69. On October 20, 2017, following a ten-day arbitration, the arbitration panel issued Terry an award of $7,949,749.15, plus interest, against Acis. The arbitration panel found, among other things, that (i) Terry's termination was "without cause," and Acis had "knowingly and willfully" invoked HCMLP's false pretext of "for cause" in order to deny Terry his contractual entitlement to the value of his Acis partnership interest, (ii) Acis had breached its limited partnership agreement, and breached the fiduciary duties it owed to Terry as Acis's limited partner, (iii) beginning in 2013, Dondero had caused Acis to pay HCMLP more than its contractual entitlement for shared expenses in order to reduce the amount of Terry's limited partnership distributions, and (iv) one month after Terry was terminated from Acis, Dondero significantly increased the amounts that Acis was paying HCMLP under their shared services and sub-advisory agreements, retroactive to January 1, 2016.

70. Beginning on October 24, 2017—four days after Terry's arbitration judgment was issued—Dondero, acting through HCMLP, and with the aid of Ellington and Leventon, entered into numerous transactions designed to take control of Acis's assets and business, and strip Acis of assets so that it would be unable to pay Terry's arbitration award. Ellington and Leventon aided Dondero by implementing Dondero's directives and taking the steps necessary to consummate these transactions, notwithstanding their knowledge that the transactions

benefitted only Dondero, and would ultimately harm HCMLP by exposing it to significant liability.

71. Ultimately, Dondero's elaborate schemes to render Acis judgment-proof led Terry to file involuntary petitions for protection under chapter 11 of the United States Bankruptcy Code against Acis and Acis GP on January 30, 2018. In response to the bankruptcy filings, Dondero caused HCMLP, which served as the sub-advisor to the Acis CLOs, to grossly mismanage the Acis CLOs, including by failing to purchase a single loan for the CLOs following the appointment of a chapter 11 trustee in the Acis bankruptcy case. This abrogation of duties caused the chapter 11 trustee to replace HCMLP with Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland"). Put another way, Dondero's use of HCMLP to cause damage to Acis actually harmed HCMLP itself, leading HCMLP to incur exorbitant legal fees attacking Acis, the loss of its investment management contracts and the income flowing from those contracts, and reputational harm that precluded HCMLP from launching any future CLOs and generating fee income therefrom.

72. Dondero also caused HCMLP to commence litigation against the Acis chapter 11 trustee, prompting a countersuit pursuant to which the chapter 11 trustee sought to recover fraudulent transfers Dondero had directed (through HCMLP) and to stop HCMLP from engaging in a course of conduct that was harmful to Acis and the Acis CLOs. This led to the entry of a temporary restraining order against HCMLP, which Dondero caused HCMLP to violate. Dondero also caused Highland CLO Funding, Ltd. ("HCLOF") to initiate an additional frivolous lawsuit against Terry in the Royal Court of Guernsey (the "Guernsey Suit"), which was ultimately dismissed, resulting in Terry arguing that HCMLP, as the owner of HCLOF's

advisor Highland HCF Advisors, Ltd. ("HHCFA"), was liable for Terry's attorneys' fees and expenses under Guernsey's "loser pays" regime.[12]

2. Dondero And Ellington Expose HCMLP To Liability By Fraudulently Inducing An Investment From HarbourVest

73. Dondero and Ellington also exposed HCMLP to substantial liability to third-party investors 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. (collectively, "HarbourVest"). At the same time that Dondero was surreptitiously transferring valuable rights associated with the Acis CLOs away from Acis in order to evade Terry's arbitration award, he and Ellington were using HCMLP to induce the HarbourVest Entities to purchase 49.9% of HCLOF—the owner of the equity tranche of the Acis CLOs—from CLO Holdco for approximately $75 million in cash, with a commitment to invest an additional $75 million in HCLOF.[13] In soliciting this investment, Dondero and Ellington failed to disclose material facts

[12] Dondero's litigation crusade against Terry and Acis continues to date. On May 14, 2021, NexPoint, acting under Dondero's direction, caused one of its managed retail funds, NSOF, to commence a lawsuit in the district court for the Southern District of New York against Acis, Terry, U.S. Bank, N.A., and Brigade, alleging that the Acis CLOs had been mismanaged. On May 20, 2021, NSOF then filed a motion in Acis's bankruptcy case, seeking a ruling that the complaint did not violate the injunction contained in Acis's plan of reorganization. On September 9, 2021, the bankruptcy court conducted a lengthy hearing, and on September 24, 2021, declined to issue the order requested by NSOF and held that NSOF must amend its complaint to comply with the plan injunction. On October 8, 2021, NSOF then filed a motion asking the Bankruptcy Court to reconsider its ruling, but withdrew the motion on December 1, 2021. NSOF filed an Amended Complaint in the SDNY action on November 23, 2021. Acis, U.S. Bank, N.A., Brigade, and HCLOF (as defendant intervenor) filed motions to dismiss, which were fully briefed in March 2022, and remain pending.

[13] CLO Holdco acquired Acis CLO equity tranches when the CLOs were launched and then transferred them to HCLOF in exchange for a 100% ownership interest in HCLOF after it was formed.

to HarbourVest regarding the Terry disputes and Acis frauds, thus exposing HCMLP to substantial and unnecessary liability.[14]

74. In inducing HarbourVest's investment, Dondero and Ellington, purportedly acting through HCMLP, made numerous misrepresentations and omissions, including: (1) failing to disclose that Dondero intended to cause Acis to evade Terry's $7.9 million arbitration award against it, including by causing Acis to consummate a series of fraudulent transfers; (2) misrepresenting the reasons that Dondero changed the name of the holding company for the Acis CLOs from Acis Loan Funding, Ltd. ("ALF") to HCLOF immediately prior to the HCLOF Investment; and (3) expressing confidence in HCLOF's ability to reset or redeem the CLOs under its control, when in actuality Dondero's actions to evade Terry's arbitration award against Acis resulted in Acis's bankruptcy, and rendered the resets impossible.

75. Moreover, unbeknownst to HarbourVest, Dondero intended for CLO Holdco to use the $75 million that it received from HarbourVest to make investments in other Dondero-owned entities, including entities managed by NexPoint and HCMFA. Thus, the HarbourVest investment benefitted Dondero personally, but left HCMLP exposed to hundreds of millions of dollars in potential damages to HarbourVest.

3. Dondero And His Accomplices, Including Ellington and Leventon, Cause HCMLP To Engage In Misconduct That Increases Its Liability To UBS

76. In March 2017, the New York state court presiding over UBS's claims against HCMLP and the Fund Counterparties ruled that UBS's claims against the Fund Counterparties,

[14] HCLOF has never paid a management fee to HHCFA, a wholly-owned subsidiary of HCMLP that is managed and controlled by HCMLP and operated using HCMLP employees. Consequently, HCMLP has indirectly provided free investment management services to HCLOF since its inception.

and its fraudulent transfer claims against HCMLP, could proceed to trial.[15] Shortly thereafter, Dondero, Ellington, and Leventon, along with HCMLP employees Jean Paul Sevilla, Katie (Irving) Lucas, and Matthew DiOrio, took steps to transfer the Fund Counterparties' remaining assets to Sentinel Reinsurance, Ltd. ("Sentinel"), a Cayman Islands entity indirectly owned and controlled by Dondero and Ellington,[16] in order to ensure that such assets would be out of UBS's reach in the event that a judgment was entered in its favor.[17] In or around August 2017, Dondero, Ellington, Leventon, Sevilla, Lucas, and DiOrio orchestrated the surreptitious transfer of substantially all of the Fund Counterparties' assets—with a face amount of $300 million and a fair market value of at least $100 million—to Sentinel.

77. The pretextual justification for these transfers was to satisfy a $25 million premium on an "after the event" insurance policy issued by Sentinel that purportedly insured the Fund Counterparties' first $100 million of liability to UBS. The real goal of the transfer, however, was to drain the Fund Counterparties' assets and render the Fund Counterparties judgment-proof, while keeping the assets within Dondero's and Ellington's control. There is no legitimate explanation as to why the Fund Counterparties transferred assets worth at least four times the premium payment to Sentinel. And given that Dondero and Ellington indirectly own and control Sentinel, they personally and improperly benefitted from this overpayment.

[15] UBS's claim against HCMLP for breach of the implied covenant of good faith and fair dealing was subsequently also permitted to proceed.

[16] Sentinel was created in 2012 and is 70%-owned by Dondero and 30%-owned by Ellington through intermediate holding companies. Sentinel has no employees or physical office space. HCMLP employees, including Leventon, performed work on behalf of Sentinel.

[17] In December 2017, Ellington caused Dilip Massand and DiOrio to be appointed as directors of Sentinel.

78. Moreover, Ellington and Leventon (along with Sevilla, Lucas, and DiOrio) actively concealed the transfer of assets and the existence of the purported insurance policy from the Independent Board, apparently in order to prevent the Fund Counterparties from making a claim under the policy. Indeed, Leventon, who was directly involved in the transfers to Sentinel, was tasked with educating the Independent Board about UBS's claim and the assets potentially available to satisfy it. In response, Leventon delivered an extensive—but intentionally misleading—presentation to the Independent Board that said nothing about the August 2017 asset transfer and the purported Sentinel insurance policy, and lied to HCMLP regarding the Fund Counterparties' assets. Additionally, around the same time that Ellington and Leventon were hiding this secret insurance policy from the Independent Board, (i) Ellington charged the policy for personal expenses in excess of $500,000 that bore no relation to the UBS litigation and provided no benefit whatsoever to the Fund Counterparties or HCMLP; and (ii) Ellington and Leventon, among others, entered into agreements whereby Sentinel agreed to pay attorneys' fees and expenses they incurred in connection with HCMLP's bankruptcy.

79. As a direct result of Ellington's and Leventon's fraudulent concealment of the transfers to Sentinel, HCMLP inadvertently made factually inaccurate statements to the Bankruptcy Court and incurred millions of dollars in additional fees litigating (rather than settling) with UBS. In March 2021, after the policy was uncovered through HCMLP's diligence (notwithstanding Ellington's and Leventon's cover-up), the CDO Fund made a claim on the policy. To date, Sentinel has refused to make any payments.

80. On February 10, 2020, the New York state court entered a judgment against the Fund Counterparties in connection with the phase one litigation, in the principal amount of $519,374,149, plus $523,016,882.79 in prejudgment interest, for an overall judgment of

$1,042,391,031.79. Trial on UBS's claims against HCMLP was still pending when HCMLP filed for bankruptcy on October 16, 2019 (as discussed *infra*).

4. Dondero Causes HCMLP To Engage In Misconduct That Results In Liability To HERA And Patrick Daugherty

81. HCMLP's poor performance during the 2008-09 financial crisis left it with insufficient available cash and assets to offer incentive-based compensation to key senior employees. After HCMLP defaulted on a credit facility with a group of unsecured banks, the lender group demanded a security interest in all HCMLP's assets, but permitted the creation of a retention program to stave off an exodus of employees. With the consent of the lenders, on June 23, 2009, HCMLP created Highland Employee Retention Assets LLC ("HERA"), an employee-owned (subject to a two-year vesting period) entity that served as a replacement for certain senior employees' deferred compensation, which had been previously-awarded but wiped out by the financial crisis. HCMLP contributed assets to HERA, which then distributed proceeds from time to time. Patrick Daugherty, a former senior HCMLP employee, was a director of HERA and its largest unitholder.

82. Dondero's relationship with Daugherty deteriorated, and Daugherty resigned from HCMLP in the fall of 2011. Instead of simply allowing HERA to pay Daugherty what he was owed, Dondero caused HCMLP to carry out his personal vendetta against Daugherty through years of spiteful, unnecessary litigation borne out of personal animosity. As a result of that litigation, HCMLP accrued (i) litigation expenses and pre- and post-judgment interest that exceeded the amounts that HERA owed Daugherty in the first place; and (ii) liability in connection with a jury verdict that HCMLP defamed Daugherty with malice and breached the implied covenant of good faith and fair dealing.

83. Moreover, Dondero, through HCMLP, engaged in an asset-stripping campaign designed to render HERA judgment-proof, further exposing HCMLP to liability and unnecessary legal costs. In furtherance of that scheme, Dondero caused: (i) HCMLP to buy out all HERA unitholders except for Daugherty; (ii) HERA's board to transfer its powers to Highland ERA Management, a newly formed entity for which Dondero served as president and sole member; and (iii) HERA to distribute substantially all of HERA's assets to HCMLP, while claiming that HCMLP would place Daugherty's interests in HERA into escrow.

84. When Daugherty demanded payment of his judgment from HERA, HERA claimed it had become insolvent, citing that it owed HCMLP more than $7.5 million for legal expenses—approximately $4.9 million of which HCMLP had written off because of "lack of collectability."

85. Daugherty then sued HCMLP, HERA, Highland ERA Management, and Dondero in the Delaware Chancery Court. A Vice Chancellor concluded that HCMLP, Dondero, and the other defendants (who were also controlled by Dondero) were "improperly withholding documents," that "there is a reasonable basis to believe" that they perpetrated a fraud—and solicited "the services of attorneys to aid in furtherance of that fraud"—as part of an effort to evade Daugherty's judgment during the pendency of his case. The Vice Chancellor concluded that "defendants, with [counsel's] advice and assistance, were never going to let the assets held in the escrow agreement to make their way to Daugherty."

86. In total, HCMLP suffered at least $10 million in harm as a result of Dondero's decision to launch a protracted and unnecessary war against Daugherty.

E. Dondero, Ellington, and Leventon Cause HCMLP To Engage In Conduct That Results In An Arbitration Award Against It Of Approximately $190 Million And Forces HCMLP Into Bankruptcy

87. Dondero, Ellington, and Leventon also engaged in misconduct relating to HCMLP managed funds Highland Offshore Partners L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Crusader Funds") that resulted in an arbitration award against HCMLP of approximately $190 million. HCMLP had placed the Crusader Funds into wind-down in October 2008. Investors in the funds subsequently commenced lawsuits alleging breach of fiduciary duty claims against HCMLP, based on allegations that Dondero had refused to make mandated distributions and honor redemption requests, and traded the funds' positions in a manner designed to render them illiquid in order to deter future redemptions, which led to multiple disputes among redeeming investors. Certain of these lawsuits were ultimately resolved in July 2011, when the parties entered into a Joint Plan of Distribution of the Crusader Fund and a Scheme of Arrangement for its creditors (together, the "Joint Plan and Scheme"). As part of the Joint Plan and Scheme, a committee referred to as the "Redeemer Committee" was elected from the Crusader Funds' investors to oversee HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors.

88. The peace would not last, however. On July 5, 2016, the Redeemer Committee (i) terminated HCMLP as investment manager; (ii) filed a complaint in Delaware Chancery Court against HCMLP seeking a limited status quo order, a declaration that the Redeemer Committee had "cause" to terminate HCMLP as manager, and a declaration that HCMLP had forfeited any right to indemnification as a result of its failure to distribute proceeds to investors of various funds; and (iii) commenced an arbitration proceeding (the "Redeemer Arbitration")

against HCMLP alleging that it had engaged in various forms of misconduct in its role as investment advisor. After two years of arbitration proceedings, the Redeemer Arbitration culminated in a nine-day evidentiary hearing in September 2018 that included testimony from eleven fact witnesses and four expert witnesses. On March 6, 2019, the arbitration panel issued an award in favor of the Redeemer Committee, which resulted in gross damages of $136.8 million and total damages (including interest) of $190.8 million. Ultimately, the panel awarded ten forms of damages: (1) the Deferred Fee Claim ($43,105,395); (2) the Distribution Fee Claim ($22,922,608); (3) the Taking of Plan Claims ($3,277,991); (4) the CLO Trades Claim ($685,195); (5) the Credit Suisse Claim ($3,660,130); (6) the UBS Claim ($2,600,968); (7) the Barclays Claim ($30,811,366); (8) the Legal Fees, Costs, and Expenses Claim ($11,351,850); (9) the Portfolio Company Award ($71,894,891); and (10) the Administrative Fees Award ($514, 164).

89. The claims that were asserted against HCMLP by the Redeemer Committee stemmed from the various breaches of fiduciary duty to the Crusader Funds that Dondero, Ellington, and Leventon caused HCMLP to commit. For example, the "Barclays Claim"—which gave rise to over $30 million in liability for HCMLP—arose out of Dondero, Ellington, and Leventon causing HCMLP to transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, after the Redeemer Committee had already refused to approve that transfer. In so doing, Dondero, Ellington, and Leventon caused HCMLP to violate the Joint Plan and Scheme and its fiduciary duties. Because of Dondero, Ellington, and Leventon's wrongful conduct, HCMLP was ordered to pay: (1) over $30 million on account of disgorged partnership interests; (2) additional sums for disgorgement

of distribution fees (that were included within the $22.9 million Distribution Fee Award); and (3) interest, fees, and expenses incurred in connection with the arbitration.

90. In addition, from December 2013 through January 2016, Dondero, Ellington, and Leventon caused HCMLP to purchase 28 Plan Claims from Crusader investors in violation of the Redeemer Committee's right of first refusal ("ROFR"). During this time, Leventon told multiple investors interested in possible transfers of their interests that Highland had a ROFR to purchase any Plan Claims, never mentioning the Committee's prior and superior ROFR. Leventon also made affirmative misrepresentations to the Redeemer Committee to disguise the fact that HCMLP had purchased the Plan Claims. Pursuant to the arbitration award, HCMLP was required to transfer the 28 Plan Claims to the Redeemer Committee, and to disgorge to the Committee whatever financial benefits Highland obtained from the 28 transactions, plus interest at the rate of 9%, from the date of each purchase.

91. Dondero's, Ellington's, and Leventon's conduct also resulted in HCMLP becoming liable to the Redeemer Committee for over $71 million (the "Portfolio Company Claim") in connection with claims arising from a portfolio company that was owned, directly and indirectly, by HCMLP (the "Portfolio Company"). Some of the Portfolio Company's stock was owned by the Crusader Funds. Dondero, Ellington, and Leventon caused HCMLP to covertly purchase shares in the Portfolio Company from another fund that Dondero controlled at below-market prices, and failed to liquidate the Crusader Funds' shares in the Portfolio Company as their fiduciary duties required. Pursuant to the arbitration award, HCMLP was required to purchase the Crusader Funds' shares in the Portfolio Company at a fixed price of $48,070,407, and to pay pre-judgment interest that brought the total claim to $71,894,891.

92. Additionally, the Joint Plan and Scheme required HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete. Dondero, Ellington, and Leventon caused HCMLP to violate that provision of the Joint Plan and Scheme by causing HCMLP to surreptitiously transfer approximately $32 million in Deferred Fees from the Crusader Funds' accounts on January 21 and April 6, 2016. The arbitration panel ruled that as a consequence of Dondero's, Ellington's, and Leventon's blatant breach of the payment requirements of the Joint Plan and Scheme, HCMLP forfeited its right to these fees entirely.

93. The Redeemer Committee set a hearing in Delaware Chancery Court for October 8, 2019 to obtain entry of a judgment with respect to the award. The hearing was subsequently continued to October 16, 2019. HCMLP filed for bankruptcy on the day of oral arguments for the Redeemer Committee's motion to enforce the Award in Delaware Chancery Court.

F. Dondero's Schemes Result In Hundreds Of Millions Of Dollars Of Liability For HCMLP

94. As noted, Dondero's schemes ultimately resulted in hundreds of millions of dollars of liability for HCMLP. As described below, the creditors that Dondero had sought to cheat and evade filed proofs of claim in HCMLP's bankruptcy proceeding, and HCMLP's management, burdened with Dondero's blatant misconduct (and that of Ellington, Leventon, and other of Dondero's loyalists), was forced to settle these claims for amounts that enabled HCMLP to escape the risk of even greater liability.

95. Additionally, HCMLP has incurred in excess of $40 million in professional fees in connection with the bankruptcy filing, which was necessitated solely as a result of Dondero's misconduct. HCMLP also incurred legal expenses for entities that HCMLP did not own, including several of the "lifeboats."

1. HCMLP Incurs $125 Million In Liability To UBS As A Result Of Dondero's, Leventon's, and Ellington's Misconduct

96. On June 26, 2020, UBS filed a proof of claim (the "UBS Claim") in HCMLP's bankruptcy proceeding for the full $1,039,957,799.44 of its judgment against the Fund Counterparties.[18] The UBS claim sought "damages arising from HCMLP's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP," and interest, punitive damages, and attorneys' fees.

97. In November 2020, the Court considered the value of the UBS Claim for purposes of plan voting. In connection therewith, the Court temporarily allowed the UBS Claim in the amount of $94,761,076. Of that amount, approximately $43 million related to transfers HCMLP caused to be made to one of HCMLP's managed funds, based on the Court's estimation that there was a 90% chance that UBS would prevail on that portion of its claim under either a fraudulent conveyance or breach of implied covenant theory.

98. Subsequently, HCMLP and UBS engaged in settlement discussions and mediation. Following mediation, the parties reached an initial settlement in principle, pursuant to which UBS would receive a $75 million unsecured claim, consisting of a $50 million Class 8 General Unsecured Claim and a $25 million Class 9 Subordinated General Unsecured Claim. That settlement was disclosed to the Court at the February 2, 2021 confirmation hearing. This settlement was in satisfaction of damages resulting from conduct that Dondero, Ellington, and Leventon perpetrated on behalf of HCMLP. But for that conduct, HCMLP would not have been liable to, or required to enter into the settlement with, UBS.

[18] The UBS Claim consists of two substantively identical claims: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG, London Branch.

99. While the preliminary settlement for the known misconduct of Dondero, Ellington, and Leventon was being finalized, the Independent Board learned that Dondero and Ellington had surreptitiously caused the Fund Counterparties to transfer their remaining assets to Sentinel, and had caused HCMLP to misrepresent to UBS that the Fund Counterparties had no assets prior to that transfer occurring. Purportedly acting on behalf of HCMLP, Dondero, Ellington, and Leventon had concealed this transfer from the Independent Board, while advising the Independent Board that the Fund Counterparties lacked any material assets. The Independent Board had communicated that information to UBS (and the Court) and negotiated with UBS on those bases.

100. When the Independent Board discovered that Dondero, Ellington, and Leventon engaged in a conspiracy to cover up the fraudulent Sentinel transfer, it disclosed the transfer to UBS. As a result, the parties reopened settlement discussions. Ultimately, in order to limit HCMLP's potential liability to UBS as a result of Dondero's, Leventon's, and Ellington's bad acts, HCMLP entered into a revised settlement with UBS that granted UBS a claim totaling $125 million, consisting of a $65 million Class 8 General Unsecured Claim and a $60 million Class 9 Subordinated Unsecured Claim. In addition to the increased settlement amount and litigation costs, HCMLP is required to expend up to $3 million (subject to reimbursement) pursuant to certain cooperation provisions contained in the settlement agreement with UBS as a result of the fraudulent Sentinel transfer. The Bankruptcy Court approved the UBS settlement on May 27, 2021.

2. HCMLP Incurs More Than $185 Million In Liability To The Redeemer Committee And Crusader Funds As A Result Of Dondero's Misconduct

101. On April 3, 2020, the Redeemer Committee filed a general unsecured claim in the amount of its $190,824,557.00 arbitration award, plus "post-petition interest, attorneys' fees, costs and other expenses that continue to accrue." Likewise, on April 3, 2020, the Crusader Funds filed a claim for $23.5 million, consisting of $8.2 million in management fees and $15.3 million in distribution fees. Faced with this potential liability, HCMLP entered into a settlement whereby, among other things: (i) the Redeemer Committee was granted an allowed general unsecured claim of $136,696,610.00; (ii) the Crusader Funds were granted an allowed general unsecured claim of $50,000.00; (iii) HCMLP and Eames each consented to the cancellation of interests they and the Charitable DAF held in the Crusader Funds that the arbitration panel had determined were wrongfully-acquired; (iv) HCMLP and Eames each acknowledged that they would not receive any portion of distributions reserved by the Crusader Funds, and HCMLP further acknowledged that it will not receive any future payments from the Crusader Funds in respect of any Deferred Fees, Distribution Fees, or Management Fees; and (v) HCMLP and the Redeemer Committee agreed to a form of amendment to the Portfolio Company's shareholders' agreement and to a process whereby HCMLP would use commercially reasonable efforts to monetize all Portfolio Company shares held by HCMLP, funds managed by HCMLP, and the Crusader Funds.[19] The Bankruptcy Court approved HCMLP's settlement with the Redeemer Committee and Crusader Funds on October 23, 2020.

[19] Because HCMLP did not have the money to purchase the shares, the Redeemer Committee and HCMLP agreed to treat the Portfolio Company's shares differently than the process required under the arbitration award. Rather than having HCMLP purchase the Crusader Funds' shares in the Portfolio Company for approximately $48 million, they agreed that the Crusader Funds would

3. HCMLP Incurs More Than $100 Million In Liability To Acis, Terry, And HarbourVest As A Result Of Dondero's Misconduct

102. Acis also filed proofs of claim against HCMLP, seeking, among other things, the amounts Dondero had caused HCMLP to overcharge Acis in order to diminish Terry's limited partner distributions from Acis, and damages arising from HCMLP's efforts to transfer assets out of Acis, in order to evade Terry's arbitration award and ensure that Dondero would benefit from the transferred assets. Terry and his wife also filed a proof of claim against HCMLP, alleging that HCMLP, acting through Dondero, had misappropriated assets in their retirement account. The Acis and Terry proofs of claim were settled in mediation after Dondero resigned from HCMLP. Pursuant to that settlement, Acis received a $23 million allowed claim against HCMLP, and HCMLP was required to pay (1) Terry and his wife $425,000 plus 10% interest to resolve the Terry's claim that HCMLP had misappropriated their retirement account;[20] (ii) Terry $355,000 in legal fees because of HCLOF's frivolous suit in Guernsey; and (iii) Acis an additional $97,000 for legal fees incurred defending another frivolous lawsuit initiated by Dondero.

103. On April 8, 2020, the HarbourVest entities filed proofs of claim against HCMLP (the "HarbourVest Proofs of Claim") alleging that HCMLP had fraudulently induced them into entering into the HCLOF Investment based on HCMLP's misrepresentations and omissions concerning certain material facts, including that HCMLP: (1) failed to disclose that Dondero intended to cause Acis to evade Terry's $7.9 million arbitration award; (2) failed to disclose that it orchestrated a series of fraudulent transfers to prevent Terry from collecting on his

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retain their shares in the Portfolio Company and that the total damages award would be reduced by approximately $30.5 million to account for the perceived fair market value of those shares.

[20] Because of the interest component, HCMLP ultimately paid the Terrys approximately $1 million to compensate them for Dondero's theft of their retirement account.

arbitration award, and misrepresented the reasons for changing the portfolio manager for HCLOF immediately prior to HarbourVest's HCLOF Investment; (3) indicated that the dispute with Terry would not impact HCLOF's investment activities; and (4) falsely expressed confidence in HCLOF's ability to reset or redeem the CLOs under its control.

104. HarbourVest sought to rescind its HCLOF Investment and alleged damages in excess of $300 million. Ultimately, following Dondero's departure from HCMLP, the parties reached a resolution whereby HarbourVest agreed to transfer its interests in HCLOF to a new entity designated by HCMLP in exchange for a $45 million general unsecured claim and a $35 million subordinated general unsecured allowed claim. The value of the HCLOF interests that HarbourVest transferred to the HCMLP-designated entity was tens of millions of dollars less than the allowed amount of HarbourVest's claim against HCMLP.

G. HCMLP Was Insolvent, Inadequately Capitalized, And/Or Intended To Incur Debts Beyond Its Ability To Pay Well Before The Redeemer Committee Arbitration Award Forced It Into Bankruptcy

105. The Redeemer Committee's $190 million arbitration award left HCMLP with no choice but to file for bankruptcy. But HCMLP was insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay well before the Redeemer Committee arbitration award was issued. As Dondero himself has acknowledged under oath, as a result of the economic recession of 2008 HCMLP "almost went under and . . . moved to a state of insolvency" from which HCMLP was still struggling to emerge in 2012.[21] Indeed, as shown below, a valuation of HCMLP's assets and liabilities shows that HCMLP was balance sheet insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay in

[21] Mar. 28, 2012 H'rg Tr. 62:06-10 (J. Dondero), *In the Matter of the Marriage of I.C. and Q.C.*, Cause No. 11-16417-Z (Tex. Dist. [256th Dist.]).

2011 and 2012, when Dondero created lifeboats NexPoint and HCMFA, and transferred certain of HCMLP's management contracts to HCMFA for no value. Contemporaneous valuations performed by the company itself corroborate this conclusion.

106. More specifically, these valuations show that when litigation liabilities resulting from claims by Barclays and UBS against HCMLP are taken into account, HCMLP was insolvent from no later than April 9, 2010 until no earlier than April 30, 2013.

	Apr. 9, 2010	Dec. 31, 2010	Dec. 31, 2011	Dec. 31, 2012	Apr. 30, 2013
Total Assets Less Financial Liabilities[22]	($32M)	($22)	$60M	$101M	$145M
Litigation Liabilities[23]	$365M	$365M	$365M	$145M	$145M
Net Value	($397M)	($387M)	($305M)	($44M)	($1M)

107. The creation of the lifeboats and subsequent transfer of management contracts (and business value) all but ensured HCMLP's demise. HCMLP's assets under management, operating income from its investment management business, and operating margins steadily declined, and almost no new third-party investor money came into the company. HCMLP continued to shoulder the burden of providing services to NexPoint and HCMFA without compensation. HCMLP's financial condition began to improve in late 2013, due largely to

[22] HCMLP's "Total Assets Less Financial Liabilities" is exclusive of litigation liabilities and is estimated as the sum of the enterprise value of the investment fund management business, the fair market value of HCMLP's investment portfolio, and the value of related parties notes receivable, less HCMLP's non-contingent financial liabilities. HCMLP's valuation is corroborated by valuations prepared by CBIZ, Inc. on behalf of HCMLP's general partner. Figures are rounded to the nearest million.

[23] Litigation liabilities are set at the values at which they were settled, or the values at which they were estimated by the Court in the course of the bankruptcy proceeding.

successful proprietary trading and overall improving market conditions, but those gains began to dissipate in 2015 due to Dondero's reckless trading.

108. By December 2016, the company was again firmly insolvent, inadequately capitalized, and/or unable to pay its debts as they came due, in large part because its CLOs were generating diminishing returns, and the company was earning only minimal fees for servicing other Dondero Entities rather than generating new business of its own, while continuing to bear significant employee expenses. HCMLP's financial condition deteriorated further between 2017 and 2019, as additional litigation claims were levied against the company, and it was forced to answer for the misconduct perpetrated in its name by Dondero and his loyalists.

109. Specifically, as shown below, when litigation liabilities resulting from claims by UBS, the Redeemer Committee, and Acis against HCMLP are taken into account in valuations prepared on HCMLP's behalf, HCMLP was insolvent from no later than December 31, 2016, until the date it filed for bankruptcy.

	Dec. 19, 2016	Dec. 31, 2017	Dec. 31, 2018	Oct. 16, 2019
Total Assets Less Financial Liabilities[24]	$183M	$260M	$184M	$101M
Litigation Liabilities[25]	$212M	$365M	$365M	$365M
Net Value	($29M)	($105M)	($181M)	($264M)

[24] HCMLP's "Total Assets Less Financial Liabilities" is exclusive of litigation liabilities and is estimated as the sum of the enterprise value of the investment fund management business, the fair market value of HCMLP's investment portfolio, and the value of related parties notes receivable, less HCMLP's non-contingent financial liabilities. HCMLP's valuation is corroborated by valuations prepared by CBIZ, Inc. on behalf of HCMLP's general partner. Figures are rounded to the nearest million.

[25] Litigation liabilities are set at the values at which they were settled, or the values at which they were estimated by the Court in the course of the bankruptcy proceeding.

H. At All Time Relevant To This Amended Complaint, Dondero Hopelessly Commingled And Exploited Entities Within His Enterprise For His Own Personal Benefit

110. At all times relevant to this Amended Complaint, Dondero exploited HCMLP, Strand, and the various entities he controlled within the Highland empire for his own personal benefit, both directly and through other HCMLP fiduciaries whose loyalties ran to Dondero rather than HCMLP, and who aided Dondero in his various schemes. Dondero treated the elaborate corporate web he had created as a single integrated entity that existed solely to further his own self-enriching schemes, rather than as individual entities with their own respective stakeholders and corporate governance.

1. Prior To Dondero's Resignation From Strand, Dondero Was The Alter Ego Of Strand

111. Dondero singularly dominated and controlled HCMLP and was its solitary decision-maker. Dondero made every material business, operational, management, and financial decision for HCMLP. Dondero exercised his complete control of HCMLP through HCMLP's general partner Strand, which Dondero similarly dominated and controlled. Dondero was Strand's 100% owner, sole director, and president between 1993 and 2020. For eight years he was also its secretary and only officer.

112. Strand did not even attempt to maintain the pretenses of observing corporate formalities. As an initial matter, Strand did not hold regular board meetings. Indeed, the Litigation Trustee, having reviewed HCMLP's books and records, has been unable to identify a single instance in which a Strand board meeting was held prior to the Petition Date. This is consistent with Dondero's own testimony in 2020 in an unrelated proceeding that he cannot recall ever attending a board meeting for Strand or seeing Strand board meeting minutes.

113. Although Strand's bylaws require annual meetings of stockholders, over the 26 years that Dondero controlled Strand, only six annual stockholder meetings were ever held, and no such meetings took place after 2005. The Litigation Trustee was able to identify only twelve instances of documented corporate action taken by the Strand board over the course of approximately 26 years, eight of which related to the appointment or removal of officers.

114. Dondero was the only officer of Strand between 1993 and 2001. Although Strand had certain elected officers between 2001 and 2019, they performed no duties in their capacities as officers of Strand and were appointed or fired from their roles based on their loyalty to, and standing with, Dondero. Indeed, when Dondero was asked under oath in 2020 about Strand's officers, he testified that he did not know if Strand even had officers, and stated that he was "not aware of [Strand] having any employees or active … governance." Moreover, he did not know whether Strand had a board of directors or if he was solely Strand's president.

2. Dondero Routinely Commingled Entities And Employees Throughout The Dondero Corporate Web And Abused The Corporate Form

115. As of the Petition Date, the Highland complex spanned more than 2,000 entities. For at least the last two decades, it has functioned largely as a single economic unit that was operated and controlled by Dondero, who abused his direct or indirect ownership stakes for his own personal benefit. Dondero directed the integrated enterprise himself, using friends, family members, and directors-for-hire that the Court has previously described as "nominal figureheads"[26] to carry out his will. As high-level HCMLP employees have testified under

[26] *See In re Acis Cap. Mgmt., L.P.*, No. 18-30264-SGJ-11, 2019 WL 417149, at *17 (Bankr. N.D. Tex. Jan. 31, 2019), *aff'd*, 604 B.R. 484 (N.D. Tex. 2019), *appeal dismissed as moot sub nom. Matter of Acis Cap. Mgmt. G.P., L.L.C.*, 850 F. App'x 300 (5th Cir. 2021), and *aff'd sub nom. Matter of Acis Cap. Mgmt., L.P.*, 850 F. App'x 302 (5th Cir. 2021).

oath, Dondero was the "ultimate decision-maker" for "every [] entity in the firm and for the firm as a whole."

116. Dondero managed the entities as a single integrated unit. Internal business plans and projections were prepared in the aggregate across entities, including entities that were not owned by HCMLP, but were instead otherwise directly or indirectly owned by Dondero. Internal financial forecasts even projected AUM growth in non-HCMLP entities that was predicated upon HCMLP acting as support and service provider, even though HCMLP itself was effectively a melting ice-cube when those projections were made. Indeed, as far back as 2011, company projections provided to the valuation advisor CBIZ Valuation Group projected negative operating income for HCMLP.

117. Dondero used his domination of his web of entities, operated as a single unit, to facilitate his pillaging of HCMLP, moving HCMLP's assets and revenue out of reach of its creditors while preserving those funds and assets for his own use or for the benefit of other entities he created or controlled. As described above, Dondero operated NexPoint and HCMFA for the purpose of siphoning off HCMLP's revenue and value; in addition, he used HCMLP as NexPoint's and HCMFA's direct piggy-bank, transferring not only HCMLP's business and agreements, but also its cash, which was used to seed new funds and investment vehicles, among other things.

118. Dondero's control of the various entities within the Highland web was so pervasive that his own co-founder Okada remarked at one point in 2012, "I am not cool with you coming up with ideas, using Highland's cash flow to set them up, fund all their negative working capital and then somehow think the split shouldn't be 75 25 without some sort of negotiation and true up [(i.e., making new entities that Dondero owned entirely on his own)]."

Indeed, a 2016 draft accounting memo concluded that HCMLP, HCMFA, and NexPoint (and all of their subsidiaries) "are considered to be under common control … James Dondero controls all 3 of the entities." This conclusion accords with statements NexPoint's and HCMFA's own funds have made in public filings,[27] as well as the Bankruptcy Court's finding that they are both "controlled by Dondero."[28]

119. Dondero also funneled his own personal expenses through HCMLP, routinely seeking expense reimbursements from HCMLP in excess of $1 million per year. At Dondero's direction, HCMLP employed certain employees whose only responsibilities and obligations were to manage Dondero's and Okada's personal affairs and private business interests. For example, Melissa Schroth was employed by HCMLP, but her only duties were to serve as Dondero's and Okada's personal bookkeeper. Her duties involved no work for HCMLP, but rather concerned Dondero's and Okada's personal investments and entities, including but not limited to Dugaboy and Get Good. Dondero also used HCMLP and its employees for the benefit of other entities he dominated without adequate compensation to HCMLP—including for the benefit of NexPoint and HCMFA as described above, as well as for the benefit of his personal trusts. For example, Dondero used his domination of HCMLP to make its employee resources available to Dugaboy and Get Good at his sole discretion. HCMLP employees were involved

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[27] *See*, *e.g.*, NexPoint Real Estate Strategies Fund, Prospectus (Form 497) (as filed Apr. 29, 2022) ("NexPoint Advisors, L.P. … is controlled by James Dondero by virtue of his control of its general partner, Nexpoint Advisors GP, LLC."); Highland Income Fund, Prospectus Supplement (To Prospectus dated July 1, 2019) (Form 497) (July 29, 2019) ("HCMFA is owned by Highland Capital Management Services, Inc. ("HCM Services") and its general partner, Strand Advisors XVI, Inc., of which James Dondero is the sole stockholder. HCM Services is controlled by Mr. Dondero and Mr. Mark Okada by virtue of their respective share ownership.").

[28] *See* Order Dismissing as Moot Debtor's Motion for a Mandatory Injunction, *Highland Capital Mgmt., L.P. v. Highland Capital Mgmt. Fund Advisors, L.P. (In re Highland Capital Mgmt., L.P.)*, Adv. Proc. No. 21-03010-sgj11 (Bankr. N.D. Tex. Feb. 24, 2021) (Docket No. 25).

in creating, managing, and providing accounting services to Dugaboy, and certain of those employees, including Melissa Schroth, performed work on behalf of Get Good in connection with Dondero's estate planning and transactions between Get Good and other Dondero Entities. Moreover, both Dugaboy and Get Good have acknowledged in the course of HCMLP's bankruptcy that HCMLP hosted their documents on its server. However, neither Dugaboy nor Get Good compensated HCMLP for the use of its employees or its resources.

120. This use of HCMLP's employees for Dondero's personal benefit continued even after the commencement of HCMLP's bankruptcy. For example, after the bankruptcy commenced, Schroth instructed Nancy Dondero to send a letter in her capacity as a trustee of Dugaboy instructing the Swiss entity Highland Capital Management AG ("HCM AG"), which is majority-owned by Dugaboy (which is ultimately owned and controlled by Dondero), to write off a liability that it owed to HCMLP for payments that HCMLP had made on its behalf. Schroth even ghost-wrote a letter for Nancy Dondero to send to HCM AG authorizing this theft. Likewise, Dondero frequently instructed HCMLP's employees to perform services in connection with Dondero's personal and business interests, which conferred no value on HCMLP.

121. Highland employees frequently did not know whether they or their colleagues were employees of HCMLP or another entity within the Dondero web. Employees shared the same office space in HCMLP's headquarters. Indeed, each of Strand, NexPoint, NexPoint GP, HCMFA, Dugaboy, CLO Holdco, the Highland Dallas Foundation, the Highland Santa Barbara Foundation, the Highland Kansas City Foundation, HFP, SAS, and Acis listed its business headquarters at this same address: 300 Crescent Court, Suite 700, Dallas, Texas 75201. Moreover, when employees of HCMLP performed services for other Dondero entities, they

sometimes did so pursuant to agreements that Dondero signed for both HCMLP, on the one hand, and the counterparty, on the other hand. In other instances, HCMLP's employees performed services for non-HCMLP entities without any formal agreements in place at all. For example, Leventon testified that he performed work for SAS "on and off" for approximately seven years (*e.g.*, in connection with whether to invest in a new litigation funding case), notwithstanding that he was never an employee of SAS and HCMLP did not have a shared services agreement with SAS.[29] Moreover, when shared services and advisory agreements were in place, HCMLP frequently charged Dondero's other entities below-market rates for use of HCMLP's employees and resources.

122. Additionally, Dondero delegated authority to his loyalists irrespective of their titles or roles. For example, Dondero delegated decision-making authority for Acis to Ellington, notwithstanding that he was not an officer, director, or employee of Acis. And Leventon testified that although he was an HCMLP employee, HCMLP could request that he perform legal services for any of the 2,000 entities in the Highland web.

123. Dondero would also use HCMLP as his own personal piggy-bank. For example, between January and August of 2018, Dondero borrowed $16,725,000 on four demand notes. Dondero remains obligated on three of the demand notes and maintains an outstanding principal

[29] Similarly, several HCMLP employees, including Ellington, Leventon, Katie Irving, and JP Sevilla, had SAS email addresses, and there were frequent meetings among HCMLP's legal department—including Ellington, Leventon, and Sevilla—and Dilip Massand in connection with SAS. SAS did not compensate any of these HCMLP employees for their work for SAS. Moreover, in 2014, when a telephone call was placed to the number listed on SAS's website, the call was routed to HCMLP's office in Dallas with a message that stated: "Thank you for calling SAS Asset Recovery. For reception press 0. For Scott [Ellington], press 1. For Dilip [Massand], press 2. For JP [Sevilla], press 3. For Tabor [Pittman, former HCMLP Associate GC], press 4. For Katie [Irving], press 5. For Isaac [Leventon], press 6. Thanks and have a good day."

balance of approximately $9 million. HCMLP has demanded payment on all of the outstanding demand notes, but to date, Dondero has failed to make any repayments on that debt.[30]

124. Dondero also effectively paid himself and Okada distributions from HCMLP through other Dondero Entities, including HCMS. Between 2013 and 2017, HCMS issued dozens of demand notes to HCMLP in return for tens of millions of dollars in cash, and between May 2017 through 2020, HCMS issued four additional promissory demand notes with an aggregate face amount of $900,000. Frequently, these notes functioned as disguised distributions to Dondero and Okada, by virtue of a "loan" from HCMLP to HCMS followed by a "loan" from HCMS to Dondero and Okada. As with other intercompany notes between HCMLP and other Dondero Entities, these notes had minimal covenants. Moreover, Dondero caused HCMLP to issue these loans to HCMS with minimal interest.

125. To take yet another example, Dondero exploited HCMLP's employees and capital in order to launch HCRE Partners, LLC ("HCRE"), another entity designed to evade HCMLP's creditors.[31] HCRE pursued financial and real estate investments, failing to pay

[30] In January 2021, HCMLP filed adversary proceedings against Dondero and four of his affiliated entities (HCMFA, NexPoint, HCRE, and HCMS) in the Bankruptcy Court to collect on these notes. *See*, *e.g.*, *Highland Capital Management, L.P. v. James Dondero*, Adv. Pro. 21-03003-sgj (Bankr. N.D. Tex. Jan. 22, 2021). Dondero and his affiliated entities have raised a series of frivolous defenses to repayment of the notes, including that Dugaboy—acting through Dondero's sister—agreed to forgive the notes as part of Dondero's compensation. As of December 2021, the defendants owed an aggregate of over $50 million in past-due principal and interest on the notes. In November 2021, HCMLP filed a second adversary proceeding against HCMFA to collect on additional notes. *See Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, Adv. Pro. 21-03082-sgj. In this second notes litigation, HCMFA has raised a similarly frivolous defense.

[31] HCRE is 70% owned by Dugaboy, 25% owned by Highland Capital Management Real Estate Holdings I, LLC ("HCMRE I") (owned by a former HCMLP managing director) and 5% owned by Highland Capital Management Real Estate Holdings II, LLC ("HCMRE II") (owned by Ellington).

HCMLP any consideration for advisory, administrative, and other services HCMLP provided. Moreover, Dondero (1) caused HCMLP to loan HCRE tens of millions of dollars on terms that were unfair to HCMLP; (2) used the proceeds of those loans to pay approximately $32 million in distributions (between 2016 and 2020) to Dugaboy, Ellington, and another former HCMLP employee; and (3) caused HCRE to default on its debt to HCMLP and assert frivolous defenses to HCMLP's right to repayment. As of January 8, 2021, approximately $6.1 million in principal and interest was due and owing to HCMLP on HCRE notes.

126. As explained above, Dondero also used HCMLP to support the growth of lifeboats like NexPoint and HCMFA. Additionally, in December 2010, certain preferred tranches of CLOs managed by HCMLP and held by Highland CDO Holding Company, a portion of which was indirectly owned by HCMLP, were sold to CLO Holdco, a Cayman Islands entity then owned and controlled by a Dondero trust. CLO Holdco purported to pay approximately $39 million in return, but $33 million of that amount consisted of a note that was never repaid. The value of these preferred securities predictably skyrocketed soon thereafter, and generated substantial income that was used to benefit Dondero's lifeboats. An analysis of CLO Holdco's cash flows over time demonstrates that income generated from these assets was used to seed a variety of NexPoint-managed funds and entities, HCMFA-managed funds and entities, and Acis-managed CLOs and other vehicles—all for Dondero's benefit—rather than accruing in favor of HCMLP or its subsidiaries.

127. Dondero used HCMLP's funds to support other entities in his web as well. In or around 2013, HCM AG entered into a joint venture with a Brazilian entity named Brasilinvest Investimentos e Participacoes Ltda ("Brasilinvest Investimentos") for a shared interest in a Brazilian entity named Highland Capital Brasilinvest Gestora de Recursos, Ltda (a.k.a Highland

Capital Brasil Gestora de Recursos). With Dondero's approval, HCM AG acquired Brasilinvest Investimentos's shares in this joint venture through a $230,000 cash payment in October 2016. However, at Dondero's direction, the $230,000 was paid by HCMLP rather than HCM AG or Dugaboy.

128. Dondero did not bother to distinguish between himself and HCMLP. After Dondero was removed as HCMLP's Chief Executive Officer and President in January 2020, he continued using his HCMLP email account and continued working out of HCMLP's headquarters until his forced resignation in October 2020 and removal from HCMLP's premises in December 2020. When the Court entered an order restraining Dondero from communicating with HCMLP employees, Dondero flouted the order, including by communicating with Ellington and instructing Melissa Schroth (an HCMLP employee at the time) to resist Dugaboy-related document production requests, even though those documents were always kept on HCMLP's computer system. Likewise, a temporary restraining order entered by this Court prohibited Dondero from participating in, or encouraging others to participate in, any action that undermined decisions made by HCMLP's Chief Restructuring Officer, James Seery ("Seery"), regarding the disposition of HCMLP assets. Nevertheless, Dondero did so multiple times, including by contacting various employees and instructing them to act in a manner that was inconsistent with Seery's directions.

129. Dondero evinced no respect for HCMLP as an entity separate and apart from himself. Thus, he disposed of a cell phone that belonged to HCMLP that contained relevant data, likely resulting in the spoliation of valuable evidence that HCMLP could have used to pursue claims benefitting HCMLP. In addition, Dondero interfered with document productions of HCMLP and trespassed on HCMLP's property.

I. Dondero And His Loyalists Also Engaged In Other Conduct That Harmed HCMLP

1. Dondero And His Loyalists Fraudulently Transferred Assets To Themselves And Their Affiliated Entities

130. Dondero and his loyalists also engaged in other transactions that siphoned value from HCMLP to themselves. As described in greater detail below, these included (i) transfers of liquid assets for illiquid notes that could not have been monetized for the same value as the assets for which they were exchanged, (ii) limited partner distributions, and (iii) payments for services provided to other Dondero Entities rather than HCMLP.

(a) The Fraudulent CLO Holdco Transaction

131. On December 28, 2016, shortly after the Redeemer Committee commenced its Delaware state court action and arbitration against HCMLP, and while UBS's action against HCMLP was pending, Dondero, acting with substantial assistance from Scott, undertook a scheme whereby HCMLP transferred assets valued by the company at approximately $24 million through a series of related assignments (the "Transferred CLO Holdco Assets") to CLO Holdco, in exchange for an assignment from Get Good of an existing Dugaboy obligation (the "Dugaboy Note"), which was worth significantly less than the transferred assets (the "CLO Holdco Transaction").

132. Upon information and belief, Dondero consummated the CLO Holdco Transaction in order to claim a charitable deduction on his tax returns, and to place value out of his ex-wife's reach. Specifically, Dondero wanted to transfer assets out of Get Good so that they would not be available to his ex-wife, and to do so through a charitable donation so that he would get the added benefit of a tax deduction. Get Good, however, did not own enough assets that qualified for a tax-deductible charitable donation. Accordingly, Dondero caused Get Good

to exchange the Dugaboy Note, which did not qualify for a tax-deductible donation, for HCMLP's Transferred CLO Holdco Assets, which did. Dondero, acting with Scott's assistance, then caused the Transferred CLO Holdco Assets to be immediately transferred from Get Good to Highland Dallas, to the Charitable DAF, to the DAF, and ultimately to CLO Holdco. The CLO Holdco Transaction thus furthered Dondero's personal interests, but harmed HCMLP and its creditors by replacing liquid and liquidating assets with an illiquid note of significantly less value.

133. The Transferred CLO Holdco Assets consisted of: (1) $2,032,183.24 or potentially more in Series A Interests in Highland Capital Loan Fund, L.P., an HCMLP-managed hedge fund investing primarily in liquid loans; (2) a participation interest worth $8,710,000 or potentially more in call options of publicly-traded American Airlines Group, Inc. (the "AA Interests"); and (3) a participation interest in certain Highland Crusader Fund L.P. and Highland Crusader Fund II, Ltd. shares, as well as a tracking interest in certain participation shares of Highland Crusader Fund II, Ltd., which at the time of the transfer HCMLP valued at $12,625,395.44 (the "Crusader Interests"). The transfer of the Transferred CLO Holdco Assets was initiated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good. Pursuant to that agreement, the Transferred CLO Holdco Assets were received by Get Good.

134. Dondero caused HCMLP to transfer the Transferred CLO Holdco Assets to Get Good in exchange for the Dugaboy Note. While the face amount of the Dugaboy Note was equal to the reported value of the Transferred CLO Holdco Assets, in actuality, the value of the Dugaboy Note did not come close to the value of the Transferred CLO Holdco Assets. The interest rate on the Dugaboy Note was a paltry 2.75%. There was no security interest provided

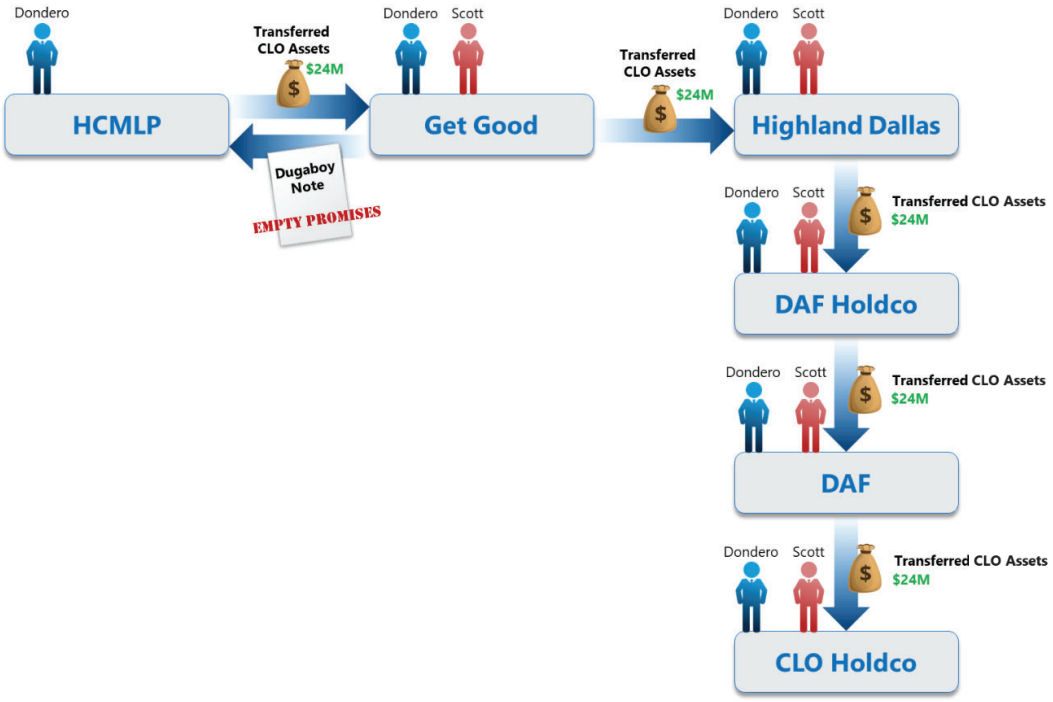
in respect of the Dugaboy Note or other material covenants or lender protections other than rights to cost of collections. No payments of principal or interest were required on the note until 2036. And because Dugaboy was a completely private and opaque counterparty, there was no third-party market for the sale of the Dugaboy Note. Lastly, from a counterparty risk perspective, Dondero's control over the repayment of a note clearly does not ensure timely repayment without litigation, as evidenced by the several entities controlled by Dondero that are currently seeking to evade their unambiguous payment obligations on other notes owed to HCMLP, on frivolous grounds such as mistake and subsequent alleged oral agreements between Dondero and his sister. In the end, Dondero caused HCMLP to exchange valuable liquid or otherwise near-term liquidating assets for a paper-thin promise 20 years into the future.

135. Following Get Good's receipt of the Transferred CLO Holdco Assets, Scott—at Dondero's direction—immediately caused Get Good to donate the assets to Highland Dallas Foundation in his capacity as trustee of Get Good. Dondero and Scott caused the Highland Dallas Fund to immediately contribute the Transferred CLO Holdco Assets to DAF Holdco by unanimous written consent executed by Dondero, Scott, and Jalonick, each in their capacity as the directors of Highland Dallas Foundation. Following that transfer, through an omnibus assignment agreement, Scott caused DAF Holdco to transfer the Transferred CLO Holdco Assets to the DAF, which itself immediately transferred them to CLO Holdco. The DAF GP issued a written resolution, as general partner of the DAF and as 100% owner of CLO Holdco, contributing the Transferred CLO Holdco Assets to CLO Holdco. Scott again executed this document as managing member of DAF GP. As purported consideration for these transfers, the Highland Dallas Foundation, DAF Holdco, the DAF, and CLO Holdco all agreed to be fully bound by apparently unrelated "Multi Strat Governing Documents." Scott executed the

requisite consent documents on behalf of each entity, in his capacities as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Upon information and belief, Scott consented to each step of the CLO Holdco Transaction on behalf of Get Good, DAF Holdco, the DAF, DAF GP, and CLO Holdco solely at Dondero's request, and without performing any independent analysis.

136. The structure of the CLO Holdco Transaction is set forth below in Figure 3.

Figure 3.



(b) Fraudulent Distributions

137. Notwithstanding HCMLP's limited liquidity and hundreds of millions of dollars in looming liabilities, Dondero caused HCMLP to make a series of equity distributions between 2010 and 2012, and 2015 and 2019, for Dondero's and Okada's ultimate benefit, and to the detriment of HCMLP's creditors. These distributions were made at a time when HCMLP was insolvent, inadequately capitalized, and/or intended to incur debts beyond its ability to pay, and

were intended to hinder, delay, and/or defraud creditors by siphoning value to limited partners that should have been preserved for creditors' benefit.

138. Although Dondero and Okada placed certain of their limited partnership interests in trusts that they ultimately owned or controlled, Dondero frequently disregarded corporate formalities, including with respect to limited partnership distributions. Until 2015, distributions were made to Dondero personally, notwithstanding that he owned HCMLP largely through certain trusts. Beginning in 2015, it appears that distributions were made directly to Strand and Dugaboy, *i.e.*, the Dondero Entities that actually held HCMLP limited partnership interests. As such, the distributions made to Dondero between April 9, 2010 and February 28, 2015 (identified below) were made for the benefit of Dondero, Dugaboy, and/or Strand. The distributions made after February 28, 2015, were, upon information and belief, made directly to the limited partnership interest holders, for the benefit of Dondero and Okada.

139. Likewise, until 2015, distributions were made to Okada individually, rather than HCMLP's limited partners MAP #1 and MAP #2. As such, the distributions made to Okada between April 9, 2010, and February 28, 2015, (identified below) were made for the benefit of Okada, MAP #1, and/or MAP #2. The distributions to Okada made after February 28, 2015, were broken out into three transfers in HCMLP's records, in amounts proportionate to the limited partnership interests of Okada, MAP #1, and MAP #2.

140. On or around April 9, 2010, HCMLP made distributions to Dondero and Okada, in the amounts of $1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87) and

$405,585.62 (two transfers of $375,000.00 and $30,585.62), respectively (the "April 9, 2010 Distributions").[32]

141. On or around April 13, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $649,318.45 and $216,439.49, respectively (the "April 13, 2011 Distributions").

142. On or around May 2, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $3,124,435.00 and $1,024,018.00, respectively (the "May 2, 2011 Distributions").

143. On or around September 13, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $5,351,316.00 and $1,705,813.00, respectively (the "September 13, 2011 Distributions").

144. On or around November 25, 2011, HCMLP made distributions to Dondero and Okada, in the amounts of $5,250,000.00 and $1,750,000.00, respectively (the "November 25, 2011 Distributions").

145. On or around February 22, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $3,000,000.00 and $1,000,000.00, respectively (the "February 22, 2012 Distributions").

146. On or around February 29, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $4,514,780.25 and $1,504,926.75, respectively (the "February 29, 2012 Distributions").

[32] Plaintiff's original Complaint referred to the distributions as being made on or around the dates reflected on HCMLP's general ledger. Plaintiffs have now located the bank transfer statements for each distribution, and use the bank transfer date instead. The distributions being challenged, however, have not changed.

147. On or around April 10, 2012, HCMLP made distributions to Dondero and Okada, in the amounts of $6,221,364.15 and $2,073,788.05, respectively (the "April 10, 2012 Distributions").

148. On or around April 9, 2013, HCMLP made distributions to Dondero and Okada, in the amounts of $25,375,083.16 and $8,440,148.31, respectively (the "April 9, 2013 Distributions").

149. On or around December 19, 2016, HCMLP made distributions to Hunter Mountain,[33] Dugaboy, and Strand, in the amounts of $4,769,570, $8,945, and $12,017, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $2,334, $470, and $201, respectively (the "December 19, 2016 Distributions").

150. On or around January 5, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $11,034,754, $20,694, and $27,803, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2,[34] in the amounts of $5,401, $1,087, and $466, respectively (the "January 5, 2017 Distributions").

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[33] In December 2015, Dondero orchestrated two sequential transactions, whereby Hunter Mountain purchased virtually all of HCMLP's limited partnership interests in exchange for cash and notes (collectively, the "Hunter Mountain Transaction"). The effect of the Hunter Mountain Transaction was to consolidate over 99% of all existing limited partners' interests in HCMLP into a single entity, Hunter Mountain. Hunter Mountain is owned through a series of intermediate shell companies, and ultimately all economic interests are held in a series of tax-favored life insurance accounts at Crown Global Life Insurance Ltd. ("Crown Global"). On information and belief, these accounts were created by Dondero and Okada, who were the direct or indirect owners of nearly all of the Debtor's limited partner interests prior to the Hunter Mountain Transaction. Dondero orchestrated the Hunter Mountain Transaction in order to avail himself of personal tax benefits.

[34] At the time of the December 19, 2016 distributions and thereafter, Okada and two trusts (MAP #1 and MAP #2) established for the benefit of Okada's children and siblings held economic interests in HCMLP. HCMLP's accounting records indicate that distributions allocated to Okada, MAP #1, and MAP #2 were all made to a single account in Okada's name. Thus, with respect to this and subsequent, applicable distributions, Plaintiff pleads that they were made to or for the benefit of Okada, MAP #1, and MAP #2.

151. On or around February 7, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $7,169,970.00, $13,446.40, and $18,065.44, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $3,509.32, $706.19, and $302.65, respectively (the "February 7, 2017 Distributions").

152. On or around June 15, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $79,600.00, $149.28, and $200.56, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $38.96, $7.84, and $3.36, respectively (the "June 15, 2017 Distributions").

153. On or around December 21, 2017, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $2,651,675.00, $4,972,89, and $6,681.16, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $1,297.86, $261.17, and $111.93, respectively (the "December 21, 2017 Distributions").

154. On or around March 9, 2018, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $84,575.00, $158.61, and $213.10, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $41.40, $8.33, and $3.57, respectively (the "March 9, 2018 Distributions").

155. On or around December 19, 2018, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $4,930,722.50, $9,246.96, and $12,423.44, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $2,413.33, $485.64, and $208.13, respectively (the "December 19, 2018 Distributions").

156. On or around March 28, 2019, HCMLP made distributions to Hunter Mountain, Dugaboy, and Strand, in the amounts of $3,711,456.47, $6,960.38, and $9,351.38, respectively, and to or for the benefit of Okada, MAP #1, and MAP #2, in the amounts of $1,816.56, $365.55,

and $156.66, respectively (the "March 28, 2019 Distributions," and together with the April 9, 2010 Distributions, April 13, 2011 Distributions, May 2, 2011 Distributions, September 13, 2011 Distributions, November 25, 2011 Distributions, February 22, 2012 Distributions, February 29, 2021 Distributions, April 10, 2012 Distributions, April 9, 2013 Distributions, December 19, 2016 Distributions, January 5, 2017 Distributions, February 7, 2017 Distributions, June 15, 2017 Distributions, December 21, 2017 Distributions, March 9, 2018 Distributions, December 19, 2018 Distributions, March 28, 2019 Distributions, the "HCMLP Distributions").

157. All of these distributions were made at a time when HCMLP was insolvent and as part of a scheme to transfer HCMLP's value to Dondero and Okada and divert value away from HCMLP's current and potential future creditors. The March 28, 2019 Distributions, which were made shortly after the arbitration panel awarded the Redeemer Committee over $190 million, were the final distributions made by HCMLP. The distributions ceased at that time—the end result of HCMLP's valuable businesses being usurped by the "lifeboats" and a years-long effort to transfer HCMLP's remaining cash to its limited partners via distributions.

(c) Fraudulent Transfers To Massand

158. HCMLP also made payments of at least $519,000 per year to Massand Capital from November 2014 through 2019. On January 1, 2014, HCMLP entered into a one-year consulting agreement with Massand Inc., pursuant to which HCMLP agreed to pay Massand Inc. $25,000 per month in fees, $7,500 per month in "accommodations," $750 per month in cell phone expenses, and other "reasonable" expenses. Then, on January 5, 2015, HCMLP entered into a consulting agreement (together, the "Massand Consulting Agreements") on the same terms with Massand LLC, pursuant to which HCMLP agreed to pay Massand LLC $35,000 per

month in fees, $7,500 per month in "accommodations," $750 per month in cell phone expenses, and other "reasonable" expenses. In exchange, the Massand Consulting Agreements provided that HCMLP's Chairman, Dondero, and its General Counsel, Ellington, would assign certain unspecified "tasks" to Massand Capital.

159. Massand Capital's monthly invoices to HCMLP were consecutively numbered, indicating that Massand Capital had no customers other than HCMLP. Moreover, Massand Capital's invoices contained no information about the services it purportedly rendered to HCMLP.

160. The Massand Consulting Agreements noted that Massand Capital would be responsible for advising HCMLP on its "Investment Recovery Strategies business in the Countries of the Gulf Cooperation Council"—specifically Bahrain, Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, and Oman. Based upon a review of information to date, it appears that Massand Capital provided no actual services to HCMLP, and that HCMLP did not have any "business" that was related to "investment recovery strategies."

161. Rather, Massand Capital appears to have provided services solely to SAS—a separate entity that was owned and controlled by Dondero and Ellington. The owner of Massand Capital, Dilip Massand, was assigned an SAS email address, was bestowed the title of "Managing Director" of SAS, and was involved in communications relating to SAS's claims purchase litigation financing business.[35] As set forth above, SAS was owned by Dondero and Ellington, not HCMLP.

[35] In a speaker profile in 2014, Dilip Massand was described as overseeing "the operations of SAS Asset Recovery in the Middle East."

162. Thus, based on the documents and information that Plaintiff has reviewed to date, Dondero caused HCMLP to pay millions of dollars in consulting fees to Massand Capital in exchange for no value to HCMLP, all solely to benefit other Dondero-controlled entities. HCMLP received no value for the payments that Dondero and Ellington directed to Massand Capital.

J. Dondero And Ellington Breach Their Fiduciary Duties To HCMLP By Misappropriating Its Funds

163. HCMLP owned a 97.5% interest in HE Capital 232 Phase I, LLC ("HE Capital 232"). In February 2018, HE Capital 232 and its wholly-owned subsidiary, HE Capital 232 Phase I Property, LLC ("HE Capital 232 Property"), sold real property in Arizona. Net of costs and expenses in connection with the transaction, HE Capital 232 was due $8,687,245.15. These proceeds were placed in an escrow account maintained by HCMLP's counsel, Wick Phillips Gould & Martin LLP ("Wick Phillips"), "pending distribution of the proceeds to the direct and indirect owners of interests in [HE Capital 232 Property]."

164. On March 2, 2018, Ellington directed Wick Phillips to disburse from the escrow account $4,510,000 to HCMLP and $1,200,000 to an HCMLP managed fund to pay down mezzanine debt. This left $2,977,245.15 in the escrow account that was due and owing to HCMLP. On information and belief, Dondero and Ellington directed Wick Phillips to keep these funds in the escrow account so that they could funnel the money to themselves. For three months, Wick Phillips requested disbursement instructions for the remaining funds from Ellington, but Ellington demurred while "waiting for answers from others so can tell you where to send." Upon information and belief, during this period, Ellington and Dondero were determining how to direct the funds to themselves.

165. On June 4, 2018, Ellington dropped HCMLP's Managing Director (Real Estate) from an email chain and directed Wick Phillips to disburse the remainder to an account in the name of MaplesFS—a fiduciary services company in the Cayman Islands acting as a payment agent—for further credit to Grey Royale Ltd., a Cayman Islands shell company owned and controlled by Dondero and Ellington. MaplesFS subsequently transferred the full amount to Grey Royale Ltd. A Wick Phillips employee commented that the payment to Grey Royale Ltd. was "pretty suspicious."

166. In September 2019, in connection with the preparation of HE Capital 232's tax return, HCMLP's Tax Director inquired about the missing funds owed to HCMLP as a result of the Arizona property sale. Ellington responded that the "facts as I know them" were that the approximately $3 million in missing HCMLP funds were "additional cost[s] of sale, reducing the gain," and "used to pay various legal expenses and other closing costs." Ellington did not disclose that he had directed that the funds be paid to a Cayman Islands shell company owned by Dondero and Ellington, which had no role in the real estate transaction and was not owed any legal expenses or closing costs.

167. Neither Dondero, Ellington, nor Grey Royale Ltd. were parties to the escrow agreement or had any legal claim to the proceeds of the real estate sale held by the escrow agent.

K. Dondero Loyalists Receive Their Deferred Compensation By Engaging In The Tall Pine Transaction

168. HCMLP employees other than Dondero also engaged in, and improperly benefited from, self-interested transactions and schemes involving HCMLP.

169. In early 2020, only months after the Petition Date, Ellington and Leventon formed a group of entities that have received millions of dollars of payments from four Dondero Entities pursuant to a services agreement dated March 13, 2020, among Tall Pine, NexBank,

DAF Holdco, NexPoint, and HCMFA (the "Tall Pine Services Agreement"). The Tall Pine scheme was an elaborate arrangement pursuant to which Dondero would be able to keep certain key employees, including Ellington and Leventon, loyal to Dondero during the bankruptcy. Through the Tall Pine scheme, Ellington and Leventon ensured that they would profit off their wrongdoing, and that Dondero would compensate them no matter what happened to HCMLP.

170. Pursuant to the Tall Pine Services Agreement, HCMLP employees, including Ellington and Leventon, would receive approximately $17 million through pass-through entities that they created and owned over the course of two years. When Tall Pine would receive a payment from any of the counterparties to the Tall Pine Services Agreement, Tall Pine contemporaneously transferred funds to Leventon's pass-through entity, Clairmont Holdings, LLC ("Clairmont"). Ellington, who owned Tall Pine, profited from the amounts that remained in Tall Pine after it had distributed sums to Clairmont and other pass-through entities controlled by HCMLP employees.

171. After the Petition Date, Dondero surreptitiously approved wire transfers from accounts held by NexPoint, NexBank, and the DAF to Tall Pine for the benefit of himself, Ellington, and Leventon. These payments were made to compensate Ellington and Leventon for the amounts that would have been paid to them in 2020 but for the Committee's objection. Ellington and Leventon did not disclose these payments to the Independent Board.

V. CAUSES OF ACTION

COUNT I
Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain)

172. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

173. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

174. As set forth below, HCMLP made the following HCMLP Distributions to or for the benefit of Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain.

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
April 9, 2010 Distributions	$1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87)	N/A	N/A	$405,585.62 (two transfers of $375,000.00 and $30,585.62)			N/A
April 13, 2011 Distributions	$649,318.45	N/A	N/A	$216,439.49			N/A
May 2, 2011 Distributions	$3,124,435.00	N/A	N/A	$1,024,018.00			N/A
September 13, 2011 Distributions	$5,351,316.00	N/A	N/A	$1,705,813.00			N/A
November 25, 2011 Distributions	$5,250,000.00	N/A	N/A	$1,750,000.00			N/A
February 22, 2012 Distributions	$3,000,000.00	N/A	N/A	$1,000,000.00			N/A
February 29, 2012 Distributions	$4,514,780.25	N/A	N/A	$1,504,926.75			N/A
April 10, 2012 Distributions	$6,221,364.15	N/A	N/A	$2,073,788.05			N/A
April 9, 2013 Distributions	$25,375,083.16	N/A	N/A	$8,440,148.31			N/A
December 19, 2016 Distributions	N/A	$4,769,570.00	$8,945.00	$2,334.00	$470.00	$201.00	$12,017.00

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
January 5, 2017 Distributions	N/A	$11,034,754.00	$20,694.00	$5,401.00	$1,087.00	$466.00	$27,803.00
February 7, 2017 Distributions	N/A	$7,169,970.00	$13,446.40	$3,509.32	$706.19	$302.65	$18,065.44
June 15, 2017 Distributions	N/A	$79,600.00	$149.28	$38.96	$7.84	$3.36	$200.56
December 21, 2017 Distributions	N/A	$2,651,675.00	$4,972.89	$1,297.86	$261.17	$111.93	$6,681.16
March 9, 2018 Distributions	N/A	$84,575.00	$158.61	$41.40	$8.33	$3.57	$213.10
December 19, 2018 Distributions	N/A	$4,930,722.50	$9,246.96	$2,413.33	$485.64	$208.13	$12,423.44
March 28, 2019 Distributions	N/A	$3,711,456.47	$6,960.38	$1,816.56	$365.55	$156.66	$9,351.38
Total	$54,703,053.88	$34,432,322.97	$64,573.52	$18,142,416.67			$86,755.08
Grand Total	$107,429,122.12						

175. At the time of each HCMLP Distribution, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

176. HCMLP received less than reasonably equivalent value in exchange for each of HCMLP Distributions set forth above. Indeed, HCMLP received no value for HCMLP the Distributions, each of which was a gratuitous transfer from HCMLP, either to one of its limited partners or for the benefit of one of its limited partners and/or Dondero.

177. Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain did not receive HCMLP Distributions in good faith. To the contrary, at the times that Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain received each of HCMLP Distributions, they knew that HCMLP was balance sheet insolvent (or would be rendered balance sheet insolvent), inadequately capitalized, and/or unable to pay its debts as they came due. Each of these defendants was aware that Dondero had siphoned HCMLP's valuable assets and business opportunities after HCMLP had incurred substantial contingent liabilities. Moreover, each of these defendants was aware that HCMLP Distributions were yet another effort to siphon value from HCMLP to Dondero, Okada, and their affiliated entities at a time when HCMLP was insolvent, inadequately capitalized, and unable to pay its debts as they came due.

178. Dondero, Dugaboy, Okada, MAP #1, and MAP #2 were the beneficiaries of distributions made to Hunter Mountain, given that Hunter Mountain transferred proceeds of such distributions to them.

179. Each HCMLP Distribution is voidable as a constructively fraudulent transfer. Accordingly, each HCMLP Distribution should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT II
Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain)

180. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

181. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

182. As set forth below, HCMLP made the following HCMLP Distributions to or for the benefit of Dondero, Dugaboy, Okada, MAP #1, MAP #2, Strand, and Hunter Mountain.

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
April 9, 2010 Distributions	$1,216,756.87 (two transfers of $1,125,000.00 and $91,756.87)	N/A	N/A	$405,585.62 (two transfers of $375,000.00 and $30,585.62)			N/A
April 13, 2011 Distributions	$649,318.45	N/A	N/A	$216,439.49			N/A
May 2, 2011 Distributions	$3,124,435.00	N/A	N/A	$1,024,018.00			N/A
September 13, 2011 Distributions	$5,351,316.00	N/A	N/A	$1,705,813.00			N/A
November 25, 2011 Distributions	$5,250,000.00	N/A	N/A	$1,750,000.00			N/A
February 22, 2012 Distributions	$3,000,000.00	N/A	N/A	$1,000,000.00			N/A
February 29, 2012 Distributions	$4,514,780.25	N/A	N/A	$1,504,926.75			N/A
April 10, 2012 Distributions	$6,221,364.15	N/A	N/A	$2,073,788.05			N/A
April 9, 2013 Distributions	$25,375,083.16	N/A	N/A	$8,440,148.31			N/A
December 19, 2016 Distributions	N/A	$4,769,570.00	$8,945.00	$2,334.00	$470.00	$201.00	$12,017.00

	Dondero (for the benefit of Dondero, Strand, and/or Dugaboy)	**Hunter Mountain**	**Dugaboy**	**Okada (for the benefit of Okada)**	**Okada (for the benefit of MAP #1)**	**Okada (for the benefit of MAP #2)**	**Strand**
January 5, 2017 Distributions	N/A	$11,034,754.00	$20,694.00	$5,401.00	$1,087.00	$466.00	$27,803.00
February 7, 2017 Distributions	N/A	$7,169,970.00	$13,446.40	$3,509.32	$706.19	$302.65	$18,065.44
June 15, 2017 Distributions	N/A	$79,600.00	$149.28	$38.96	$7.84	$3.36	$200.56
December 21, 2017 Distributions	N/A	$2,651,675.00	$4,972.89	$1,297.86	$261.17	$111.93	$6,681.16
March 9, 2018 Distributions	N/A	$84,575.00	$158.61	$41.40	$8.33	$3.57	$213.10
December 19, 2018 Distributions	N/A	$4,930,722.50	$9,246.96	$2,413.33	$485.64	$208.13	$12,423.44
March 28, 2019 Distributions	N/A	$3,711,456.47	$6,960.38	$1,816.56	$365.55	$156.66	$9,351.38
Total	$54,703,053.88	$34,432,322.97	$64,573.52	$18,142,416.67			$86,755.08
Grand Total	$107,429,122.12						

183. Dondero was HCMLP's Chief Executive Officer, President, Co-Chief Investment Officer, and Co-Founder. Okada was HCMLP's Co-Chief Investment Officer and Co-Founder. Together, Dondero and Okada directly or indirectly owned substantially all of the equity interests in HCMLP, or were the beneficiaries of all distributions HCMLP made to its limited partners. Dondero exercised complete control over HCMLP, and Okada acquiesced to and profited from schemes orchestrated by Dondero to enrich HCMLP's direct and indirect owners.

184. To that end, Dondero caused HCMLP to make the HCMLP Distributions set forth above with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero and Okada were insiders of HCMLP;

(b) before HCMLP Distributions were made, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved both siphoning HCMLP's valuable business opportunities through newly-created "lifeboat" entities and siphoning HCMLP's value through HCMLP Distributions (among other means);

(d) HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the HCMLP Distributions;

(e) at the time of each HCMLP Distribution, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(f) The initial recipients of the HCMLP Distributions were Dondero, Dugaboy, Okada, Strand, and Hunter Mountain, each of which was owned and/or controlled by Dondero and Okada;

(g) Dondero and Okada personally received certain HCMLP Distributions instead of HCMLP's limited partners Dugaboy, Strand, MAP #1, and MAP #2; and

(h) Dondero made HCMLP Distributions during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming

contingent liabilities, and effected the transfers in order to siphon value so that such value would not be available to satisfy HCMLP's creditors.

185. Dondero, Dugaboy, Okada, MAP #1, and MAP #2 were the beneficiaries of distributions made to Hunter Mountain, given that Hunter Mountain transferred proceeds of such distributions to them.

186. Each HCMLP Distribution is voidable as an intentionally fraudulent transfer. Accordingly, each of the HCMLP Distributions should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT III
Illegal Distributions Under Delaware Revised Uniform Limited Partnership Act
(Against Dondero, Dugaboy, Strand, and Hunter Mountain)

187. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

188. The Delaware Revised Uniform Limited Partnership Act ("DRULPA") § 17-607(a) prohibits distributions "to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership … exceed the fair value of the assets of the limited partnership[.]"

189. Under 17-607(b), "[a] limited partner who receives a distribution in violation of subsection (a) … and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited partnership for the amount of the distribution."

190. As set forth below, between December 31, 2016 and the Petition Date, HCMLP made the following distributions to Hunter Mountain, Dugaboy, and Strand (the "Illegal Distributions").

	Hunter Mountain	**Dugaboy**	**Strand**
December 31, 2016 Distributions	$4,769,570.00	$8,945.00	$12,017.00
January 31, 2017 Distributions	$11,034,754.00	$20,694.00	$27,803.00
February 28, 2017 Distributions	$7,169,970.00	$13,446.40	$18,065.44
June 30, 2017 Distributions	$79,600.00	$149.28	$200.56
December 31, 2017 Distributions	$2,651,675.00	$4,972.89	$6,681.16
March 31, 2018 Distributions	$84,575.00	$158.61	$213.10
December 31, 2018 Distributions	$4,930,722.50	$9,246.96	$12,423.44
March 31, 2019 Distributions	$3,711,456.47	$6,960.38	$9,351.38
Total	$34,432,322.97	$64,573.52	$86,755.08
Grand Total	$34,583,651.57		

191. Hunter Mountain, Dugaboy, and Strand knew that HCMLP made the Illegal Distributions at a time that its liabilities exceeded the fair value of its assets. As set forth herein and in the counts below, each of Hunter Mountain, Dugaboy, and Strand were the alter egos of Dondero. Even if Hunter Mountain, Dugaboy, or Strand were not the alter egos of Dondero, they would be imputed with Dondero's knowledge. Dondero was the sole owner of Strand. Likewise, Dondero created Hunter Mountain as a shell entity whose sole purpose was to purchase the majority of HCMLP's limited partnership interests from himself and his Dugaboy trust (among others). Through Hunter Mountain, Dondero continued to receive the economic

benefit of HCMLP's limited partnership distributions through distributions on notes that would be triggered by those Illegal Distributions made to Hunter Mountain.

192. Hunter Mountain, Dugaboy, and Strand are liable to HCMLP and its creditors for the full amount of the Illegal Distributions, plus interest.

COUNT IV
Breach of Fiduciary Duty Arising Out Of Dondero's Lifeboat Scheme
(Against Dondero and Strand)

193. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

194. During all periods relevant to the allegations set forth herein, Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner. Likewise, during all periods relevant to the allegations set forth herein, Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP and as an officer of HCMLP.

195. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero or Strand set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given Strand's and Dondero's fiduciary obligations, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit. Dondero and Strand transferred HCMLP's valuable business to the lifeboat entities, including but not limited to NexPoint and HCMFA. Pursuant to the scheme, the lifeboats utilized HCMLP's employees to

perform management and advisory services that HCMLP had provided directly, and should have continued to provide directly. As a result of this scheme, HCMLP would perform the same services via the same employees, but would now either receive only a small fraction of the profits that were generated or, in some instances, provide these services at a loss because the service agreements between HCMLP and the lifeboats would not even cover HCMLP's costs of providing the services. The majority of profits were paid to the lifeboats, which were owned by Dondero and/or entities that he controlled, placing those profits beyond the reach of HCMLP's creditors.

196. Dondero and Strand willfully and wantonly orchestrated this scheme in bad faith in order to evade HCMLP's present and future creditors.

197. Strand was dominated and controlled by its sole owner, Dondero. Dondero also owned substantial economic interests in each of the lifeboats either directly or through entities that he owned and/or controlled. As such, Dondero appeared on both sides of the agreements and transactions entered into between HCMLP, on one hand, and NexPoint, HCMFA, Acis, and the other lifeboats, on the other hand.

198. The wrongful acts that Dondero and Strand committed in connection with the lifeboat scheme—including but not limited to funneling new business to the lifeboat entities and undercompensating HCMLP for the use of its employees—continued through the Petition Date. Likewise, injury to HCMLP—in the form of lost profits and misappropriation of its employees and resources—continued through the Petition Date.

199. HCMLP suffered tens or hundreds of millions of dollars of harm, as the result of Dondero's and Strand's breaches, in the form of lost management and advisory fee revenue that far exceeded the amounts that the lifeboats paid to HCMLP under their respective shared

services and other agreements. Between the date of its formation and the Petition Date, NexPoint earned approximately $120 million in advisory and administrative fees and approximately $50 million in profits. Between the date of its formation and the Petition Date, HCMFA earned approximately $150 million in advisory and administrative fees.

200. Strand and Dondero profited from their breaches of fiduciary duties in connection with their lifeboat scheme in violation of Delaware law. Strand and Dondero are liable to HCMLP for their breaches of fiduciary duty in connection with the lifeboat scheme in an amount to be proven at trial.

COUNT V
Breach of Fiduciary Duty Arising Out Of Conduct That Resulted in HCMLP Liabilities To Third Parties
(Against Dondero, Strand, Ellington, and Leventon)

201. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

202. During all periods relevant to the allegations set forth herein: (1) Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner; (2) Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP, and as an officer of HCMLP; (3) Ellington owed fiduciary duties to HCMLP in his capacity as HCMLP's Chief Legal Officer and General Counsel; and (4) Leventon owed fiduciary duties to HCMLP in his capacity as HCMLP's Assistant General Counsel.

203. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero, Strand, Ellington, or Leventon set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed by all these parties to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into

the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

204. Dondero (and in turn, Strand), Ellington, and Leventon each breached their fiduciary duties to HCMLP by engaging in willful and wanton misconduct that foreseeably resulted in liability to HCMLP. In total, these breaches resulted in more than $350 million in allowed claims against HCMLP. But for their breaches of fiduciary duty, either HCMLP never would have incurred these claims, or HCMLP would have resolved these claims for substantially lower amounts. These breaches resulted in millions of dollars to Dondero, Ellington, and Leventon, either directly, through transfers from HCMLP to entities owned in whole or in part by Dondero and Ellington, or indirectly, through compensation paid to Ellington and Leventon in exchange for their loyalty to Dondero in perpetrating schemes that breached their duties to HCMLP.

205. **Liabilities to UBS.** Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to incur substantial liability to UBS. Dondero exposed HCMLP and its subsidiaries to litigation against UBS that resulted in an adverse judgment that exceeded $1 billion. Among other things, acting through HCMLP, Dondero caused the Fund Counterparties to refuse to meet their obligations to UBS, and orchestrated transfers of more than $233 million of assets from HFP, exposing HCMLP to claims for fraudulent transfer, breach of the implied covenant of good faith and fair dealing, and extensive prejudgment interest and legal fees.

206. Then, in 2017, after a New York state court ruled that UBS's fraudulent transfer claims against HCMLP and claims against the Fund Counterparties could proceed to trial,

Dondero, Ellington, Leventon, Sevilla, Lucas, and DiOrio caused HCMLP, in its capacity as investment manager for the Fund Counterparties, to orchestrate the surreptitious transfer of assets worth at least $100 million to Sentinel, an entity located in the Cayman Islands that was indirectly owned and controlled by Dondero and Ellington. Neither HCMLP nor the Fund Counterparties received legitimate value in exchange for this transfer.

207. After the Petition Date, Dondero, Ellington, and Leventon actively concealed this transfer from the Independent Board, UBS, and the Bankruptcy Court. Ellington even went so far as to state in August 2020 that "[Leventon] and myself have spent in excess of 100 hours trying to piece together everything we can [about the Fund Counterparties' assets] to create a true and accurate document based record of what happened with these target entities['s assets]." Ellington made this statement knowing that the Fund Counterparties' assets had been transferred to an offshore entity he owned and controlled. When this transfer was uncovered, HCMLP was forced to increase the amount of its settlement with UBS from a total of $75 million in allowed claims to $125 million in allowed claims.

208. **Liabilities to Acis.** Dondero willfully and wantonly caused HCMLP to incur over $23 million in liability to Acis and Terry. As with NexPoint and HCMFA, Acis was originally created to perform management and advisory services that were previously provided by HCMLP. When Dondero's relationship with Terry deteriorated, Dondero set in motion a series of contentious litigation with Terry, which resulted in Terry obtaining a $7.95 million arbitration award against Acis.

209. Dondero then embarked on a crusade to ensure Terry would not collect from Acis. In connection therewith, Dondero acted through HCMLP to, among other things: (1) siphon assets from Acis, causing Terry to commence an involuntary bankruptcy against Acis

and causing HCMLP to lose its advisory and shared services contracts with Acis; (2) enter into costly, frivolous litigation with Terry in Guernsey, a "loser pays" jurisdiction; (3) convert the retirement accounts owned by Terry and his wife, leading to additional legal fees incurred in litigation in Texas state court; (4) violate injunctive provisions set forth in Acis's plan of reorganization, exposing HCMLP to additional liability; (5) enter into costly litigation with Acis's chapter 11 trustee in connection with Acis's bankruptcy case; and (6) mismanage Acis CLOs, exposing HCMLP to substantial liability in its capacity as advisor and fiduciary to Acis. As a result of these actions and the reputational harm they caused, it became impossible for HCMLP to launch another CLO either directly or indirectly.

210. In connection with his vendetta against Terry, Dondero willfully and wantonly subjected HCMLP to substantial liability to Acis and Terry, including by giving testimony at trial which, along with Leventon's testimony, was found "to be of questionable reliability" and structured "to convey plausible deniability." Ultimately, in order to avoid further liability to Terry and Acis, HCMLP settled those claims for more than $23 million pursuant to a settlement approved by this Court.

211. Beginning on October 24, 2017, four days after Terry's arbitration judgment was issued, Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to enter into numerous transactions to take control of Acis's business and strip it of assets so it could not pay the arbitration award. Ellington and Leventon implemented Dondero's directives and took the steps necessary to consummate the transactions.

212. Leventon willfully and wantonly helped to transfer value away from Acis in an attempt to make it judgment-proof. Among other things, Leventon assisted in the drafting and execution of the agreement that transferred Acis's interest in a note receivable from HCMLP,

which had a balance owing of over $9.5 million, to Cayman Island entity Highland CLO Management Ltd. just ten days after Terry obtained his arbitration award. The agreement recites that (1) HCMLP is no longer willing to continue providing support services to Acis; (2) Acis, therefore, can no longer fulfill its duties as a collateral manager; and (3) Highland CLO Management Ltd. agrees to step in to the collateral manager role. Given the timing of the assignment—just days after Terry's arbitration award—Leventon knew that it was part of a scheme to strip Acis of its assets, which ultimately resulted in millions of dollars of damage to HCMLP.

213. **Liabilities to HarbourVest.** Dondero and Ellington also willfully and wantonly caused harm to HCMLP by exposing it to substantial liability to HarbourVest. Dondero and Ellington, acting through HCMLP, fraudulently induced HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash, with a commitment for an additional $75 million in the future, while concealing that Dondero was actively engaged in a campaign against Terry that would significantly impair the value of HarbourVest's investment. In addition, Dondero did not intend to use the $75 million that CLO Holdco received from HarbourVest to satisfy capital calls at HCLOF, and instead intended for CLO Holdco to use those funds as part of a scheme to infuse other Dondero Entities (including entities that benefitted the NexPoint and HCMFA lifeboats) with additional cash. Ultimately, HCMLP was forced to settle with HarbourVest by providing it with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to a new entity designated by HCMLP. But for Dondero's and Ellington's conduct, HCMLP would not have incurred the foregoing liabilities. As a result of their conduct, those interests in HCLOF were then worth tens of millions of dollars less than the $75 million HarbourVest paid to acquire them.

214. **Liabilities to Crusader Funds.** Dondero, Ellington, and Leventon willfully and wantonly caused HCMLP to incur substantial liability to the Redeemer Committee due to their conduct in connection with HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors. Among other things, Dondero, Ellington, and Leventon caused HCMLP to: (1) transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, Ltd., after the Redeemer Committee had refused to approve that transfer, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (2) purchase 28 Plan Claims for the benefit of HCMLP without the approval of the Redeemer Committee, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (3) covertly purchase the stock of the Portfolio Company and fail to liquidate the Crusader Funds' shares in the Portfolio Company, in violation of HCMLP's fiduciary duties; and (4) violate the provision of the Joint Plan and Scheme requiring HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete, causing HCMLP to forfeit its rights to those fees entirely. Both Ellington and Leventon provided false narratives and misrepresentations in furtherance of Dondero's harm to the Crusader Funds. The Redeemer Arbitration panel found, for example, that Leventon "was significantly involved in providing direction" to keep the Redeemer Committee in the dark and "was the principal instrument through which [certain] misrepresentation[s] and omission[s] were communicated." As a result of Dondero's, Ellington's, and Leventon's conduct, the Redeemer Committee received an arbitration award against HCMLP in excess of $190 million, and in HCMLP's bankruptcy, HCMLP agreed to pay over $136 million in connection therewith.

215. Beyond the direct losses identified in the preceding paragraphs, HCMLP suffered additional harm from the breaches of fiduciary duty committed by Dondero, Ellington,

Leventon and Strand. For example, the $190 million Redeemer arbitration award—which was itself caused by Dondero's, Ellington's, Leventon's and Strand's breaches of their fiduciary duty to HCMLP—caused HCMLP to file for bankruptcy. As of October 15, 2021, HCMLP had incurred in excess of $40 million in professional fees in connection with the bankruptcy. But for Dondero's, Ellington's, Leventon's, and Strand's willful and wanton misconduct, HCMLP would not have been obligated to pay any of these fees.

216. In light of the foregoing, Dondero, Strand, Ellington, and Leventon are liable for breaches of their fiduciary duties to HCMLP in an amount to be determined at trial.

COUNT VI
Declaratory Judgment That Strand Is Liable For HCMLP's Debts In Its Capacity As HCMLP's General Partner
(Against Strand)

217. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

218. Under DRULPA § 17-403(b), "a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law … to persons other than the partnership and the other partners." Moreover, "[e]xcept as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law … to the partnership and to the other partners." *Id.*

219. Under Delaware Uniform Partnership Law ("DUPL") § 15-306(a), partners of a partnership "are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law."

220. During all periods relevant to the allegations set forth herein, Strand was the general partner of HCMLP. Moreover, Strand has not been relieved of its obligation to satisfy HCMLP's obligations by agreement or law.

221. Accordingly, under the operative partnership agreements and applicable law, Strand is liable to HCMLP and "to persons other than [HCMLP]" for the full amount of HCMLP's liabilities.

COUNT VII
Declaratory Judgment That Dondero Is Liable For Strand's Debts As Strand's Alter Ego
(Against Dondero)

222. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

223. Between the formation of Strand and the Petition Date, Dondero, Strand's sole equity owner, dominated and controlled Strand such that Dondero and Strand operated as a single economic entity. Although Strand was the general partner of HCMLP, Strand—as opposed to Dondero himself—rarely took any official corporate action. Between its formation and the Petition Date, Strand documented only 12 instances in which it took corporate action, eight of which related to the appointment or removal of officers.

224. Dondero was the only officer of Strand between 1993 and 2001. Although Strand elected certain officers between 2001 and the Petition Date, they performed no duties in their capacities as officers of Strand and were appointed or fired from their roles based on their loyalty to, and their current relationship with, Dondero. Dondero testified that he did not know whether Strand even had any officers, stating that he was "not aware of [Strand] ever having any employees or active … governance." Likewise, Dondero did not know whether Strand had a board of directors and whether he sat on Strand's board.

225. Strand did not observe corporate formalities. Based on a review of HCMLP's books and records, between the formation of Strand and the Petition Date, Strand never held a board meeting. Indeed, Dondero testified that he is not aware of attending a board meeting for Strand and does not recall ever seeing board minutes for Strand.

226. Strand did not comply with its own bylaws, which require annual meetings of stockholders.

227. Strand was a sham entity whose sole purpose was to serve as a vehicle through which Dondero could dominate and control HCMLP. Dondero used this abuse of the corporate form to facilitate his scheme to make HCMLP act contrary to its own interests and in favor of Dondero's interests by insulating assets from HCMLP's creditors, including those whose liabilities were the direct result of Dondero's own wrongdoing. As such, Dondero is Strand's alter ego, and the Court should pierce the corporate veil to hold Dondero liable for Strand's debts.

COUNT VIII
Declaratory Judgment That Dondero and Strand Are Liable For HCMLP's Debts In Their Capacities As HCMLP's Alter Ego
(Against Dondero and Strand)

228. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

229. Dondero, using his alter ego Strand, dominated and exercised total control over HCMLP through the Petition Date, such that Dondero, Strand, and HCMLP operated as a single economic entity. Dondero had total decision-making authority and governed HCMLP by decree—using the lack of an independent Strand to render HCMLP a mere instrumentality of Dondero. HCMLP had no independence and could not exercise any business discretion separate

and apart from Dondero, in service of his personal interests and the interests of his integrated web of entities.

230. Strand, like innumerable entities within Dondero's empire—including NexPoint GP, HCMFA, Dugaboy, CLO Holdco, Highland Dallas, Highland Santa Barbara, Highland Kansas City, HFP, and Acis—listed HCMLP's headquarters as its business address.

231. Dondero failed to observe corporate formalities with regard to HCMLP. Indeed, he did not distinguish between HCMLP and his personal interests and businesses. Dondero used HCMLP employees to service his own interests that were unrelated to HCMLP. For example, Dondero caused HCMLP to employ individuals to carry out roles serving Dondero personally. Such employees included Dondero's accountant, security guard, and landscaper. Dondero also frequently instructed HCMLP's legal department to perform legal services in connection with his own personal and business interests, which conferred no value on HCMLP.

232. Dondero used his domination and control over HCMLP to perpetrate numerous injustices, abuses, and frauds.

233. Dondero siphoned value from HCMLP to other entities he owned and controlled by causing HCMLP's employees and resources to be used for his lifeboat businesses. In connection with this fraudulent scheme to move assets out of the reach of HCMLP's creditors, Dondero exploited HCMLP by using its employees and resources for the benefit of other lifeboat entities, either at no cost to the lifeboats, at a loss to HCMLP, or at substantially below-market rates. In fact, HCMLP should have received all of the profits generated from the services performed by the lifeboats, which in fact were performed by HCMLP's employees. The purpose and effect of this scheme was to cause HCMLP to provide the employees and

infrastructure that were needed by Dondero's profitable business ventures, while also ensuring that HCMLP would remain cash poor and lack the funds to satisfy its own obligations.

234. Dondero caused HCMLP to enter into agreements, including the Massand Consulting Agreement, the object and purpose of which were to cause HCMLP to incur obligations for services that conferred benefits on Dondero, through benefits conferred to entities he owned other than HCMLP.

235. Dondero used his abusive domination and control to cause HCMLP's assets to be commingled with those of his other businesses, without observing corporate formalities. By commingling entities and using HCMLP's employees and resources to further his own personal goals, Dondero exposed HCMLP to hundreds of millions of dollars in liability to numerous parties, including UBS, Acis, Terry, HarbourVest, the Redeemer Committee, and the Crusader Funds.

236. By virtue of his complete control over HCMLP, Dondero caused HCMLP to willfully and wantonly breach contractual obligations and take measures to render HCMLP "judgment-proof." Ultimately, this brazen disregard for HCMLP as an independent entity with its own obligations rendered HCMLP insolvent, including by resulting in multiple adverse awards such as the $190 million arbitration award that caused HCMLP to file for bankruptcy.

237. Dondero further abused the corporate form to siphon assets from HCMLP by orchestrating intercompany transfers that were designed to siphon assets from HCMLP. For example, Dondero orchestrated the CLO Holdco Transaction, through which he caused HCMLP to transfer assets valued by the company at approximately $24 million through a series of entities he controlled in exchange for consideration that was worth a small fraction of the value of the transferred assets.

238. Because Dondero operated Strand and HCMLP as a single economic entity and used that domination to defraud HCMLP's creditors, Dondero and Strand are the alter egos of HCMLP and should be held liable for the full amount of HCMLP's obligations.

COUNT IX
Declaratory Judgment That Dugaboy Is Liable For The Debts Of Dondero and HCMLP In Its Capacity As Dondero's Alter Ego
(Against Dugaboy)

239. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

240. Dondero operated Dugaboy—Dondero's personal trust—as an extension of himself and his alter ego HCMLP. Dondero treated himself, Dugaboy, and HCMLP as a single economic entity. Dondero dominated and controlled Dugaboy. Under the terms of Dugaboy's trust agreement, Dondero has the power to remove trustees without cause—leverage that allowed him to control Dugaboy. Dondero appointed Scott, his longtime personal friend, as the trustee of Dugaboy, for the purpose of serving as a rubber stamp of approval for all transactions that Dondero (or HCMLP employees acting at Dondero's direction) presented to Scott.

241. Dondero treated Dugaboy as a vehicle for his own interests. For example, Dondero caused Dugaboy to falsely assert in HCMLP's notes litigation that Dugaboy, acting through Dondero's sister, Nancy Dondero, allegedly caused HCMLP to enter into an agreement whereby the notes owed to HCMLP by various Dondero Entities would be forgiven as compensation to Dondero upon satisfaction of certain conditions subsequent. Dondero also caused Dugaboy to help facilitate HCMLP's transfer of the Transferred CLO Holdco Assets to Get Good, by agreeing to provide the Dugaboy Note, purportedly but not actually equal to the value of the Transferred CLO Holdco Assets and with a paltry 2.75% interest rate and no security, covenants, lender protections provided to Dugaboy, or payments due until 2036.

242. Dondero disregarded corporate formalities between Dugaboy and HCMLP. Dondero used HCMLP employees, on HCMLP's payroll, to transact business on behalf of Dugaboy, without any compensation to HCMLP. Dondero used HCMLP employees for Dondero's personal estate planning and caused HCMLP to comingle Dugaboy's electronically stored information with HCMLP's data. Dugaboy shared its principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities.

243. With Dondero as the primary beneficiary of Dugaboy, there are no other innocent shareholders whose expectations could be impaired by holding Dugaboy liable for Dondero or HCMLP's debts. There are no innocent third-party creditors of Dugaboy who would be harmed by holding Dugaboy liable for Dondero's or HCMLP's debts.

244. Dugaboy is the alter ego of Dondero, and the Court should hold Dugaboy liable for Dondero's debts. Because Dondero is also HCMLP's alter ego, and because Dugaboy knowingly participated in Dondero's scheme to abuse the corporate form to defraud creditors, Dugaboy is also the alter ego of HCMLP and the Court should hold Dugaboy liable for the debts of HCMLP.

COUNT X
Declaratory Judgment That NexPoint Is Liable
For The Debts Of Dondero and HCMLP As Their Alter Egos
(Against NexPoint)

245. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

246. Dondero dominated and controlled NexPoint such that Dondero, NexPoint, and Dondero's alter ego HCMLP operated as a single economic entity. NexPoint is owned and controlled by Dondero through Dugaboy and NexPoint GP.

247. NexPoint knowingly participated in—and played a core role in accomplishing—Dondero's scheme to move HCMLP's assets out of reach of its creditors by operating NexPoint as a facade of HCMLP, in order to siphon profits away from HCMLP and to Dondero and other entities he controlled. Dondero and NexPoint acted together to place the profits that were generated from HCMLP's business and services beyond the reach of HCMLP's then present and future creditors.

248. Dondero disregarded the corporate formalities and the distinctions between himself, NexPoint, and HCMLP. Between 2012 and 2015, NexPoint had no employees of its own, and performed no business activities that were distinguishable from those performed by HCMLP. NexPoint shared its principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities. NexPoint was a facade of HCMLP that used HCMLP's employees to perform the same investment management and advisory services that HCMLP routinely performed. Dondero caused internal business plans and projections to be prepared as if these entities were part of a single economic unit.

249. For over one year, HCMLP performed all services for NexPoint without any sub-advisory or shared services agreements that even purported to compensate HCMLP for the use of its employees. Even after Dondero attempted to infuse this scheme with a patina of legitimacy by causing NexPoint to enter into agreements with HCMLP, they were structured to ensure that NexPoint retained the vast majority of profits for the work performed by HCMLP and its employees.

250. Dondero used NexPoint as a part of his scheme to extract value from HCMLP. Dondero caused HCMLP to fund NexPoint's operations, seed its investments, and provide a substantial amount of the capital that ultimately funded distributions NexPoint made to its

owner, Dugaboy. Transferring funds from HCMLP to NexPoint funded distributions by NexPoint to Dondero's alter ego Dugaboy, draining HCMLP's value to Dondero with NexPoint's knowledge and participation. Between 2012 and 2017, HCMLP loaned NexPoint approximately $30 million, and during that same period, NexPoint made limited partner distributions of approximately $34 million—99.9% of which were paid to Dugaboy. Distributions to Dugaboy were made at the direction of, and for the benefit of, Dondero.

251. Dondero and NexPoint worked together to further extract value from HCMLP by causing HCMLP to lend to NexPoint on terms entirely determined by Dondero. Dondero further caused HCMLP to enter into multiple agreements with NexPoint providing for forbearance and other relief. As of the Petition Date, NexPoint owed HCMLP approximately $23 million, and HCMLP is currently embroiled in litigation with Dondero and NexPoint following a payment default that occurred January 2021.

252. There are no other innocent shareholders whose expectations could be impaired by holding NexPoint liable for Dondero or HCMLP's debts. Similarly, there are no innocent third-party creditors of NexPoint who would be harmed by holding NexPoint liable for Dondero or HCMLP's debts.

253. NexPoint is the alter ego of Dondero and the Court should hold NexPoint liable for the debts of its ultimate shareholder Dondero. Because Dondero is also HCMLP's alter ego, and because NexPoint knowingly participated in Dondero's scheme to abuse the corporate form to defraud creditors, NexPoint is also alter ego of HCMLP and the Court should hold NexPoint liable for the debts of HCMLP.

COUNT XI
Declaratory Judgment That HCMFA Is Liable
For The Debts Of Dondero and HCMLP As Their Alter Ego
(Against HCMFA)

254. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

255. Dondero dominated and controlled HCMFA such that Dondero, HCMFA, and Dondero's alter ego HCMLP operated as a single economic entity. HCMFA is controlled by Dondero through its general partner, Strand Advisors XVI, Inc., which owns a 1% interest in HCMFA and is wholly-owned by Dondero. Dondero and Okada are the ultimate owners of the remaining stakes in HCMFA: HCMS owns an 89.6667% ownership interest in HCMFA, and is itself owned 75% by Dondero and 25% by Okada; the Okada Family Revocable Trust owns the remaining 9.3333% ownership interest in HCMFA. Dondero caused internal business plans and projections to be prepared as if these entities were part of a single economic unit.

256. HCMFA knowingly participated in—and played a key role in accomplishing—Dondero's scheme to move HCMLP's assets out of reach of its creditors by operating HCMFA as a facade of HCMLP, in order to siphon profits away from HCMLP and to Dondero directly or indirectly through other entities he controlled. Dondero and HCMFA acted together to place the profits that were generated from HCMLP's business and services beyond the reach of HCMLP's then present and future creditors.

257. Dondero disregarded the corporate formalities and the distinctions between HCMFA and HCMLP. HCMFA was a facade of HCMLP that used HCMLP's employees to perform the same investment management and advisory services that HCMLP routinely performed. Strand Advisors XVI, Inc., HCMFA's general partner, purports to be managed by six individuals, all but one of whom were previously on HCMLP's payroll. HCMFA shared its

principal place of business, 300 Crescent Court, Suite 700, Dallas, Texas 75201, with HCMFA and other Dondero Entities.

258. HCMFA was effectively a shell entity created to replace HCMLP as the new investment manager for open-ended retail investment funds. Agreements between HCMLP and HCMFA were structured to ensure that HCMFA retained the vast majority of profits for the work performed by HCMLP and its employees. To the extent that sub-advisory and shared services agreements existed between HCMLP and HCMFA, they existed to lend credibility to Dondero's fraudulent scheme to divert HCMLP's profits to himself and Okada through HCMFA.

259. Dondero used HCMFA as a part of his scheme to extract value from HCMLP. Dondero caused HCMLP to use its resources to support HCMFA. Between 2011 and 2019, HCMLP loaned HCMFA approximately $12 million; Dondero caused HCMLP to enter into multiple forbearances on HCMFA's debts. In May 2019, HCMLP loaned HCMFA an additional $7.4 million, and HCMFA again failed to repay. Dondero exerted his control and dominance of these entities to direct both sides of those agreements, with the knowing participation of HCMFA, to accomplish his own ultimate goal of siphoning value from HCMLP to insulate it from creditors.

260. There are no other innocent shareholders whose expectations could be impaired by holding HCMFA liable for Dondero or HCMLP's debts. Similarly, there are no innocent third-party creditors of HCMFA who would be harmed by holding NexPoint liable for Dondero or HCMLP's debts.

261. HCMFA is the alter ego of Dondero and the Court should hold HCMFA liable for Dondero's debts. Because Dondero is also HCMLP's alter ego, and because HCMFA

knowingly participated in Dondero's scheme to abuse of the corporate form to defraud creditors, HCMFA is also the alter ego of HCMLP and the Court should hold HCMFA liable for the debts of HCMLP.

COUNT XII
Avoidance of Transfer of Management Agreements As Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against HCMFA and NexPoint)

262. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

263. On the date of the Debtor's bankruptcy filing, the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

264. On December 15, 2011, HCMLP entered into a novation agreement, pursuant to which HCMFA became the investment advisor for Highland Credit Strategies Fund, Highland Floating Rate Opportunities Fund, the Highland Long/Short Equity Fund, the Highland Long/Short Healthcare Fund, and the Highland Special Situations Fund (collectively, the "Transferred Funds"). Dondero caused HCMLP to transfer these agreements to HCMFA as part of his scheme to evade HCMLP's creditors.

265. HCMLP received less than reasonably equivalent value in connection with the novation agreement. Prior to the transfer, HCMLP received management and advisory fees in return for the services that its employees performed for the Transferred Funds. After the transfer, HCMLP's employees provided the same services for the Transferred Funds, except that the vast majority of the profits were diverted to HCMFA following the extinguishment of HCMLP's credit facility.

266. At the time of the transfer, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

267. On June 13, 2012, Dondero caused HCMFA to transfer the Highland Credit Strategies Fund to the newly-created NexPoint, after which Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as NHF. The result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another.

268. The transfer of HCMLP's valuable management and advisory contracts with the Transferred Funds (the fair market value of which likely exceeded $25 million at the time of transfer) is voidable as constructively fraudulent against HCMFA and its subsequent transferee, NexPoint. Accordingly, these transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIII
Avoidance of Transfer of Management Agreements As Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Other Applicable Law
(Against HCMFA and NexPoint)

269. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

270. On the date of the Debtor's bankruptcy filing, the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count. On December 15, 2011, HCMLP entered into

a novation agreement, pursuant to which HCMFA became the investment advisor for the Transferred Funds. Dondero caused HCMLP to transfer these agreements to HCMFA as part of his scheme to evade HCMLP's creditors.

271. Dondero caused HCMLP to make the transfer with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP and HCMFA;

(b) before the transfer, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, causing HCMLP to transfer its valuable management contracts and business opportunities to newly-created "lifeboat" entities;

(d) at the time of the transfer, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) Dondero caused HCMLP to make the transfer during a period when he believed the value of HCMLP may ultimately be distributed to its creditors, as a result of its looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's present and future creditors; and

(f) HCMLP did not receive reasonably equivalent value in return for transferring its valuable management and advisory contracts with the Transferred Funds to HCMFA.

272. On June 13, 2012, Dondero caused HCMFA to transfer the Highland Credit Strategies Fund to the newly-created NexPoint, after which Highland Credit Strategies Fund's name was changed to NexPoint Credit Strategies Fund, referred to herein as NHF. The result of this transfer was simply to shift the management fees relating to NHF from one lifeboat entity to another.

273. The transfer of HCMLP's valuable management and advisory contracts with the Transferred Funds is voidable as intentionally fraudulent against HCMFA and its subsequent transferee, NexPoint. Accordingly, these transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIV
Breach of Fiduciary Duty In Connection With Fraudulent Transfers And Schemes
(Against Dondero, Strand, Ellington, and Okada)

274. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

275. During all periods relevant to the allegations set forth herein: (1) Strand owed fiduciary duties to HCMLP in its capacity as HCMLP's general partner; (2) Dondero owed fiduciary duties to HCMLP by virtue of his control over Strand and HCMLP, and as an officer of HCMLP; (3) Ellington owed fiduciary duties to HCMLP in his capacity as HCMLP'S Chief Legal Officer and General Counsel; and (4) Okada owed fiduciary duties to HCMLP in his capacity as Chief Investment Officer.

276. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Dondero, Strand, Ellington, or Okada set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed by all these parties to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By their nature, the breaches alleged herein were inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

277. Dondero and Ellington caused HCMLP to enter into the Massand Consulting Agreements, with the intent to have Massand Capital perform services for SAS, an entity that they surreptitiously created and owned. Likewise, Dondero and Ellington oversaw and approved the Massand Transfers. The payment obligations Dondero and Ellington caused HCMLP to incur, and the payments that Dondero and Ellington caused HCMLP to make, conferred no benefit on HCMLP. In addition, Dondero and Ellington caused HCMLP employees to perform work for SAS—at least seven HCMLP employees received SAS email addresses—without compensating HCMLP.

278. Likewise, Dondero orchestrated the fraudulent CLO Holdco Transaction, pursuant to which he (acting through Strand) siphoned valuable assets from HCMLP in return for illusory consideration, in the form of a note from Dugaboy, an entity that he controlled. Dondero siphoned these assets from HCMLP in order to benefit other entities that he owned and controlled, including CLO Holdco, NexPoint, and HCMFA.

279. Moreover, as part of his scheme to evade HCMLP's creditors, Dondero, acting through Strand, approved hundreds of millions of dollars of distributions from HCMLP at a time that Dondero believed HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

280. As Dondero's co-founder and HCMLP's Chief Investment Officer, Okada knew or willfully blinded himself to the fact that the HCMLP Distributions—including, but not limited to, the distributions made to Okada, MAP #1, and MAP #2—were made at times that HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

281. By willfully and wantonly not returning the distributions made to Okada, MAP #1, and MAP #2 that were made at times that Okada knew that HCMLP was insolvent, and knowingly permitting unlawful distributions to Dondero and his controlled entities, Okada breached his fiduciary duties to HCMLP.

282. Dondero and Okada further breached their fiduciary duties by using HCMLP employees for their own personal affairs and private business interests, on HCMLP's time and payroll.

283. Dondero and Ellington breached their fiduciary duties by diverting approximately $3 million that was held in escrow for HCMLP to an entity that they owned in the Cayman Islands.

284. By willfully and wantonly orchestrating these fraudulent transfers, Dondero, Strand, and Ellington breached their fiduciary duties to HCMLP.

COUNT XV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law
(Against NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, Highland Dallas)

285. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

286. NexPoint and HCMFA aided and abetted the breaches of fiduciary duty committed by Dondero and Strand. NexPoint and HCMFA were each dominated and controlled by Dondero. As such, each of NexPoint and HCMFA knowingly participated in their breaches of their fiduciary duties to HCMLP. NexPoint and HCMFA knowingly participated in Dondero's scheme to divert HCMLP's valuable business into new "lifeboat" entities that he owned and controlled. The breaches of fiduciary duty that were aided and abetted by NexPoint and HCMFA caused tens of million (and potentially over one hundred million) of dollars in damage to HCMLP.

287. SAS, which was owned and controlled by Dondero and Ellington, knowingly participated in Dondero's and Ellington's breaches of their fiduciary duties in connection with the Massand Consulting Agreement and Massand Transfers. SAS was aware of the fiduciary duties that Dondero and Ellington owed to HCMLP as high ranking officers. SAS received the benefit of the services performed by Massand Capital, which Dondero and Ellington surreptitiously charged to HCMLP. The breaches of fiduciary duty that were aided and abetted by SAS caused millions of dollars of damage to HCMLP.

288. Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas aided and abetted Dondero's breach of fiduciary duties relating to the CLO Holdco Transaction. Scott—and in turn, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas—

knowingly participated in the scheme to transfer assets valued by the company at approximately $24 million to CLO Holdco in exchange for a note worth significantly less than the transferred assets. Scott either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP by orchestrating the CLO Holdco Transaction, as evidenced by, among other things, the low interest rate on the Dugaboy Note; the lack of security, material covenants; or other protections; the unfair repayment terms; and the fact that Dondero stood on both sides of the transaction. Moreover, Scott dutifully executed the necessary documentation in order to cause the Transferred CLO Holdco Assets to be transferred to Get Good, DAF Holdco, DAF, CLO Holdco, and Highland Dallas.

289. Neither the Litigation Trustee nor the Estate could have discovered the conduct set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

COUNT XVI
Civil Conspiracy to Breach Fiduciary Duties Under Texas Law
(Against Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, Highland Dallas)

290. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

291. Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas conspired with Dondero to breach his fiduciary duties to HCMLP by intentionally siphoning assets away from HCMLP to evade HCMLP's creditors. To effectuate the conspiracy, Dondero, Ellington, and Leventon acted outside the scope of their HCMLP employments, as agents of the non-HCMLP entities they owned and controlled, and for their personal benefits.

292. Neither the Litigation Trustee nor the Estate could have discovered the conduct set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the breaches set out herein prior to Dondero's removal. By its nature, the conspiracy alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

293. Dondero, Ellington, and Leventon orchestrated myriad transactions to divert funds from HCMLP to Dondero and the entities that he owned and controlled, as well as to Ellington, Leventon, and the entities they owned and controlled. NexPoint and HCMFA took over valuable HCMLP management agreements and used HCMLP's employees to usurp HCMLP's business in return for little or no consideration to HCMLP. SAS—which is owned and controlled by Dondero and Ellington, who own 70% and 30% of the economic interests in SAS, respectively—received valuable services from Massand while HCMLP bore the expense. Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas participated in the

fraudulent CLO Holdco Transaction that siphoned valuable assets from HCMLP in return for patently insufficient consideration.

294. Ellington and Leventon understood that their conduct was directed at enriching themselves and Dondero at the expense of HCMLP, and each of them were compensated in excess of their HCMLP salaries by Dondero (sometimes via minority ownership in an entity, like Ellington's stake in SAS, and sometimes via complex, circuitous schemes like the Tall Pine arrangement) for their participation. NexPoint, HCMFA, and SAS—each of which was controlled by Dondero—likewise understood that their role in the conspiracy was to obtain value for Dondero at HCMLP's expense. Scott, too, understood that he was appointed to be a rubber-stamp for Dondero's self-interested schemes to siphon value from HCMLP and distribute it throughout the vast web of Dondero Entities. Scott acted on the basis of his longstanding loyalty to his "closest friend" Dondero and was compensated with "business gifts" for his service in furtherance of the conspiracy.

295. In furtherance of the conspiracy, Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, CLO Holdco, DAF Holdco, the DAF, Get Good, and Highland Dallas undertook, *inter alia*, the following schemes and overt acts:

(a) Dondero, NexPoint, and HCMFA conspired to perpetrate the lifeboat scheme in order to place valuable assets outside the reach of HCMLP's creditors, in violation of Dondero's fiduciary duties. NexPoint and HCMFA were each dominated and controlled by Dondero and, as such, they each consciously acted in furtherance of the conspiracy, including by transferring existing business to NexPoint and HCMFA, generating new business through NexPoint and HCMFA, and failing to compensate

HCMLP for the use of its employees and resources. NexPoint and HCMFA were aware that the lifeboat scheme caused substantial damages to HCMLP.

(b) Dondero, Ellington, and SAS caused HCMLP to enter into the fraudulent Massand Consulting Agreements, pursuant to which HCMLP paid Massand millions of dollars in return for services that were rendered for SAS, which Dondero and Ellington owned and controlled. Likewise, SAS acted in furtherance of the conspiracy by surreptitiously receiving the benefits from the Massand Consulting Agreements while HCMLP incurred the costs under those agreements. Each of Dondero, Ellington, and SAS were aware that causing HCMLP to pay SAS's expenses—for the benefit of SAS and its owners Dondero and Ellington—harmed HCMLP.

(c) Dondero, Scott, CLO Holdco, DAF Holdco, the DAF, Get Good, and Highland Dallas conspired to cause HCMLP to transfer valuable assets to CLO Holdco for less than reasonably equivalent value. Scott—and in turn, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas—consciously participated in the scheme to transfer assets valued by the company at approximately $24 million to CLO Holdco in exchange for a note worth significantly less than the transferred assets, including by executing the necessary documentation to cause the Transferred CLO Holdco Assets to be transferred to Get Good, DAF Holdco, DAF, CLO Holdco, and Highland Dallas. Each of Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas were aware that the CLO Holdco Transaction breached fiduciary duties to HCMLP, constituted a

fraudulent transfer, and harmed HCMLP by diverting valuable assets in exchange for the far less valuable Dugaboy Note.

(d) Ellington and Dondero conspired to disburse to a Cayman Islands shell company they owned and controlled nearly $3 million of escrowed proceeds rightfully owing to HCMLP.

(e) In furtherance of the conspiracy and to maintain loyalty to Dondero, Ellington and Leventon accepted benefits like minority ownership in entities (like Ellington's stake in SAS) and additional compensation via complex, circuitous schemes like the Tall Pine arrangement.

296. Each of Dondero, Ellington, Leventon, NexPoint, HCMFA, SAS, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas understood that his or its conduct was causing damage to HCMLP and that Dondero was breaching his fiduciary duties to HCMLP by orchestrating and participating in these transactions. The participants specifically intended to benefit themselves and Dondero at the expense of HCMLP, and agreed with Dondero to undertake acts in furtherance of the conspiracy notwithstanding the harm to HCMLP.

COUNT XVII
Tortious Interference with Prospective Business Relations
(Against Dondero, NexPoint, and HCMFA)

297. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

298. Dondero siphoned business away from HCMLP and its creditors through the creation of "lifeboats" owned and controlled by Dondero. The "lifeboats," which included

NexPoint and HCMFA, were companies set up to provide management services that HCMLP had previously been providing.

299. But for the actions of Dondero, NexPoint, and HCMFA, HCMLP would have continued to pursue the business opportunities that Dondero diverted to NexPoint and HCMFA. Indeed, NexPoint and HCMFA used HCMLP's employees, operated out of HCMLP's office, and performed the same advisory and administrative services for its managed funds that HCMLP had previously performed.

300. By using NexPoint and HCMFA as part of his lifeboat scheme, Dondero breached his fiduciary duties to HCMLP. In addition, Dondero breached his fiduciary duties to HCMLP by causing HCMLP to fraudulently transfer certain of its existing management contracts to NexPoint and HCMFA. NexPoint and HCMFA conspired with, and aided and abetted, Dondero's breaches of his fiduciary duties and HCMLP's fraudulent transfers.

301. Dondero, NexPoint, and HCMFA acted with a conscious desire to prevent HCMLP from continuing to directly manage the funds that were subsequently managed by NexPoint and HCMFA. Moreover, Dondero, NexPoint, and HCMFA knew that their interference in HCMLP's business relationships was certain to occur as a result of their conduct.

302. HCMLP suffered, at minimum, tens of millions of dollars in damage from Dondero's, NexPoint's, and HCMFA's tortious interference with its prospective business relations.

COUNT XVIII
Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550 and Applicable State Law
(Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas Foundation)

303. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

304. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

305. On December 28, 2016, HCMLP transferred to Get Good the Transferred CLO Holdco Assets, which were valued by the company at approximately $24 million. The transfer of the Transferred CLO Holdco Assets was effectuated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good.

306. As purported consideration for the Transferred CLO Holdco Assets, HCMLP received the Dugaboy Note, which was worth substantially less than the Transferred CLO Holdco Assets. The Dugaboy Note replaced HCMLP's liquid or liquidating assets with an illiquid, private loan on below market terms.

307. Immediately after HCMLP transferred the Transferred CLO Holdco Assets to Get Good, Dondero caused Get Good to transfer the Transferred CLO Holdco Assets to Highland Dallas by an exercise of discretion executed by Scott in his capacity as trustee of Get Good.

308. Immediately after the Transferred CLO Holdco Assets were transferred to Highland Dallas by Get Good, Dondero caused Highland Dallas to transfer the Transferred CLO Holdco Assets to DAF Holdco by unanimous written consent executed by Dondero, Scott, and Jalonick in their capacities as the sole directors of Highland Dallas.

309. Immediately after the Transferred CLO Holdco Assets were transferred to DAF Holdco by Highland Dallas, Dondero caused DAF Holdco, DAF, and CLO Holdco to enter into an omnibus assignment agreement, pursuant to which DAF Holdco transferred the Transferred CLO Holdco Assets to DAF, and DAF transferred the Transferred CLO Holdco Assets to CLO Holdco. Scott signed on behalf of each entity, as director of DAF Holdco, managing member of the DAF, and director of CLO Holdco. Scott also executed a written resolution by DAF GP, in his capacity as the managing member of the general partner of the DAF, effectuating the transfer of the Transferred CLO Holdco Assets to CLO Holdco (which was wholly-owned by the DAF).

310. Dondero directly or indirectly controlled each entity in the chain of transfers that together constitute the CLO Holdco Transaction. Dondero controlled each of Get Good, Highland Dallas, DAF Holdco, DAF, and CLO Holdco either along with or through Scott, who was Dondero's longtime friend, former roommate, loyalist, and fellow board member on multiple boards of directors.

311. At the time of the CLO Holdco Transaction, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

312. None of Get Good, DAF Holdco, the DAF, or CLO Holdco paid reasonably equivalent value for the Transferred CLO Holdco Assets, or received the Transferred CLO Holdco Assets in good faith.

313. At all relevant times, each of Get Good, DAF Holdco, the DAF, and CLO Holdco was aware that, pursuant to the CLO Holdco Transaction, HCMLP transferred its assets to CLO Holdco for less than reasonably equivalent value.

314. The CLO Holdco Transaction is voidable as constructively fraudulent transfers. Accordingly, the CLO Holdco Transaction should be set aside and avoided and Transferred CLO Holdco Assets should be recovered under 11 U.S.C. §§ 544 and 550 and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XIX
Avoidance of CLO Holdco Transfer and Recovery of Transferred CLO Holdco Assets as Intentionally Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550 and Applicable State Law
(Against Dondero, Scott, CLO Holdco, DAF Holdco, DAF, Get Good, and Highland Dallas Foundation)

315. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

316. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

317. On December 28, 2016, HCMLP transferred to Get Good the Transferred CLO Holdco Assets, which the company valued at approximately $24 million. The transfer of the Transferred CLO Holdco Assets was effectuated pursuant to a Purchase and Sale Agreement executed by Dondero, on behalf of HCMLP, and Scott, on behalf of Get Good.

318. As purported consideration for the Transferred CLO Holdco Assets, HCMLP received the Dugaboy Note, which was worth substantially less than the Transferred CLO Holdco Assets. The Dugaboy Note replaced HCMLP's liquid or liquidating assets with an illiquid, private loan that was worth significantly less than the value of the transferred assets.

319. After HCMLP transferred the Transferred CLO Holdco Assets to Get Good, Dondero caused the assets to be transferred to Get Good, Highland Dallas, DAF Holdco, DAF, and CLO Holdco. Dondero effected each transfer through his direct or indirect control of each of these entities.

320. Dondero caused HCMLP to enter into the CLO Holdco Transaction with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP;

(b) Dondero controlled Get Good, the initial transferee, and each of the subsequent transferees, Highland Dallas, DAF Holdco, DAF, and CLO Holdco, through Scott;

(c) before the CLO Holdco Transaction, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(d) at the time of the CLO Holdco Transaction, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were

unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) The CLO Holdco Transaction siphoned value away from HCMLP, so that such value would not be available to satisfy HCMLP's creditors; and

(f) The purported consideration for the Transferred CLO Holdco Assets, the Dugaboy Note, was worth less than the reasonably equivalent value of the Transferred CLO Holdco Assets, and replaced HCMLP's liquid or liquidating assets with an illiquid, private loan on below-market terms, the repayment of which was subject to Dondero's control.

321. None of Get Good, DAF Holdco, the DAF, or CLO Holdco paid reasonably equivalent value for the Transferred CLO Holdco Assets, or received the Transferred CLO Holdco Assets in good faith.

322. At all relevant times, each of Get Good, DAF Holdco, the DAF, and CLO Holdco was aware that the CLO Holdco Transaction transferred HCMLP's assets to CLO Holdco for less than reasonably equivalent value.

323. The CLO Holdco Transaction is voidable as an intentionally fraudulent transfer. Accordingly, the CLO Holdco Transaction should be set aside and avoided, and the Transferred CLO Holdco Assets should be recovered under 11 U.S.C. §§ 544 and 550 and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XX
Avoidance of Obligations Under Massand Consulting Agreement as Constructively Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand LLC)

324. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

325. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

326. On January 5, 2015, HCMLP entered into a consulting agreement with Massand LLC. Pursuant to each agreement, HCMLP agreed to pay Massand Capital tens of thousands of dollars per month.

327. HCMLP received less than reasonably equivalent value in exchange for the payment obligations that it incurred under the Massand Consulting Agreements (and in fact, received zero value). Dondero and Ellington caused HCMLP to hire Massand Capital in order for Massand Capital to provide services to SAS, which conferred no benefit to HCMLP.

328. At the time it entered into the Massand Consulting Agreements, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

329. HCMLP's obligations incurred under the Massand Consulting Agreements are voidable as constructively fraudulent.

COUNT XXI
Avoidance of Obligations Under Massand Consulting Agreement as Intentionally Fraudulent Under 11 U.S.C. § 544, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital)

330. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

331. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

332. On January 1, 2014, HCMLP entered into a consulting agreement with Massand Inc. On January 5, 2015, HCMLP entered into a consulting agreement with Massand LLC. Pursuant to each agreement, HCMLP agreed to pay them tens of thousands of dollars per month.

333. Dondero caused HCMLP to enter into the Massand Consulting Agreements with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP;

(b) Dondero was an insider of SAS;

(c) Dondero benefitted from HCMLP's payments to Massand Capital because they conferred value on SAS, an entity that Dondero owned and controlled;

(d) before HCMLP entered into the Massand Consulting Agreements, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(e) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved, among other things, causing HCMLP to incur obligations of other entities owned or controlled by Dondero, including SAS;

(f) at the time HCMLP entered into the consulting agreement with Massand LLC, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due; and

(g) Dondero caused HCMLP to enter into the Massand Consulting Agreements during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's creditors.

334. HCMLP's obligations incurred under the Massand Consulting Agreements are voidable as intentionally fraudulent.

COUNT XXII
Avoidance and Recovery of Certain Massand Transfers as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital, SAS, Dondero, and Ellington)

335. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

336. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and

Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

337. HCMLP entered into the fraudulent Massand Consulting Agreements, pursuant to which HCMLP agreed to pay Massand Capital tens of thousands of dollars per month. The transfers from HCMLP to Massand Capital (the "Massand Transfers") are set forth below:

Date	Amount	Date	Amount
January 3, 2017	$49,644	May 1, 2018	$55,852
February 1, 2017	$55,691	June 1, 2018	$55,093
March 3, 2017	$47,929	July 2, 2018	$64,516
April 3, 2017	$57,563	August 1, 2018	$56,539
May 1, 2017	$57,861	September 4, 2018	$53,749
June 1, 2017	$60,814	October 1, 2018	$52,537
July 3, 2017	$51,974	November 1, 2018	$53,278
August 1, 2017	$58,074	December 3, 2018	$52,219
September 5, 2017	$50,371	January 2, 2019	$47,812
October 2, 2017	$53,016	February 1, 2019	$51,437
November 1, 2017	$59,971	March 1, 2019	$51,156
December 1, 2017	$56,031	April 2, 2019	$54,063
January 2, 2018	$52,894	May 1, 2019	$55,359
February 1, 2018	$51,378	June 3, 2019	$56,470
March 1, 2018	$54,396	July 1, 2019	$54,878
April 3, 2018	$54,538	August 1, 2019	$54,979
		Total	$1,742,082

338. HCMLP did not receive any consideration in exchange for its payments to Massand Capital. The consulting agreement between Massand Capital and HCMLP provided that Massand would be responsible for advising HCMLP on its "investment recovery strategies" business in certain countries where HCMLP did not have any business.

339. Rather, upon information and belief, Massand Capital provided services to SAS, a separate entity owned and controlled by Dondero. As such, HCMLP's transfers to Massand Capital were made for the benefit of SAS and Dondero.

340. Massand Capital's monthly invoices to HCMLP were consecutively numbered, indicating that Massand Capital had no customers other than HCMLP, and Massand Capital's invoices contained no information about the services it purportedly rendered to HCMLP.

341. At the time of each of the Massand Transfers, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

342. The Massand Transfers are voidable as constructively fraudulent transfers. Accordingly, the Massand Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXIII
Avoidance and Recovery of Massand Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and Applicable State Law
(Against Massand Capital, SAS, Dondero, and Ellington)

343. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

344. On the date of the Debtor's bankruptcy filing, (i) at least one or more unsecured creditors, including but not limited to UBS, the Redeemer Committee, Patrick Daugherty, and Acis, held an allowable claim other than one allowable under § 502(e), and could have sought under state law to avoid the transfers made on or after October 16, 2015, and (ii) the Internal Revenue Service held an allowable unsecured claim other than one allowable under § 502(e) and could have sought to avoid the transfers challenged in this Count.

345. On January 5, 2015, HCMLP entered into a fraudulent consulting agreement, pursuant to which HCMLP agreed to pay Massand Capital tens of thousands of dollars per month. The transfers from HCMLP to Massand Capital (the "Massand Transfers") are set forth below:

Date	Amount	Date	Amount
January 3, 2017	$49,644	May 1, 2018	$55,852
February 1, 2017	$55,691	June 1, 2018	$55,093
March 3, 2017	$47,929	July 2, 2018	$64,516
April 3, 2017	$57,563	August 1, 2018	$56,539
May 1, 2017	$57,861	September 4, 2018	$53,749
June 1, 2017	$60,814	October 1, 2018	$52,537
July 3, 2017	$51,974	November 1, 2018	$53,278
August 1, 2017	$58,074	December 3, 2018	$52,219
September 5, 2017	$50,371	January 2, 2019	$47,812
October 2, 2017	$53,016	February 1, 2019	$51,437
November 1, 2017	$59,971	March 1, 2019	$51,156
December 1, 2017	$56,031	April 2, 2019	$54,063
January 2, 2018	$52,894	May 1, 2019	$55,359
February 1, 2018	$51,378	June 3, 2019	$56,470
March 1, 2018	$54,396	July 1, 2019	$54,878

Date	Amount	Date	Amount
April 3, 2018	$54,538	August 1, 2019	$54,979
		Total	$1,742,082

346. Dondero caused HCMLP to make the Massand Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero was an insider of HCMLP and Massand Capital;

(b) before the Massand Transfers, HCMLP had been sued and Dondero believed HCMLP's legal exposure rendered it insolvent;

(c) HCMLP, through Dondero, was engaged in a multi-faceted scheme to defraud HCMLP's creditors, which involved, among other things, causing HCMLP to become an obligor on certain contracts, including the Massand Consulting Agreements, that did not confer value on HCMLP;

(d) at the time of the transfers to Massand LLC, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(e) Dondero caused HCMLP to make the Massand Transfers during a period when he believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to siphon value so that it would not be available to satisfy HCMLP's creditors; and

(f) The Massand Transfers were made for no consideration to HCMLP, and the services provided by Massand were made for the benefit of SAS, an entity that was not owned by HCMLP.

347. The Massand Transfers are voidable as intentionally fraudulent transfers. Accordingly, the Massand Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544 and 550, 26 U.S.C. § 6502, and applicable state law, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXIV
Breach of Contract Arising Out of Hunter Mountain Note
(Against Hunter Mountain and Rand)

348. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

349. On December 21, 2015, HCMLP and Hunter Mountain entered into the Hunter Mountain Note, pursuant to which Hunter Mountain agreed to pay HCMLP $63 million at an interest rate of 2.61% per annum.

350. Rand is a guarantor on the Hunter Mountain Note.

351. Pursuant to the Hunter Mountain Note, accrued interest and principal is due and payable in accordance with an amortization schedule attached to the note.

352. Hunter Mountain breached the Hunter Mountain Note by failing to make the payments due under the note on December 21, 2019 and December 21, 2020.

353. On May 3, 2021, HCMLP sent a demand letter to Hunter Mountain stating that the Hunter Mountain Note was in default and therefore, pursuant to the "Remedies" section of the note, all principal, interest, and any other amounts due and owing on the Hunter Mountain

Note are immediately due and payable. As of May 5, 2021, that amount was more than $72 million, with interest continuing to accrue.

354. The Hunter Mountain Note is currently in default. Pursuant to the Hunter Mountain Note, HCMLP is entitled to damages from Hunter Mountain and Rand in an amount equal to all unpaid principal and interest, in addition to HCMLP's cost of collection, including attorneys' fees.

COUNT XXV
Conversion
(Against Dondero and Ellington)

355. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

356. In February 2018, HE Capital 232 and its wholly-owned subsidiary, HE Capital 232 Property obtained the HE Capital 232 Proceeds and placed them in an escrow account maintained by HCMLP's counsel, Wick Phillips, "pending distribution of the proceeds to the direct and indirect interest owners in [HE Capital 232 Property]."

357. On March 2, 2018, Wick Phillips disbursed a portion of those funds from the escrow account. The Remaining HE Capital 232 Proceeds, worth approximately $2.98 million, were never disbursed to HCMLP.

358. HCMLP owned, had possession of (through its counsel Wick Phillips), or had entitlement to possession of the Remaining HE Capital 232 Proceeds.

359. The Remaining HE Capital 232 Proceeds had been held for safekeeping, were intended to be kept segregated, specific and identifiable money, in the form they were received, and not subject to a claim by anyone other than HCMLP.

360. Upon information and belief, Dondero and Ellington directed Wick Phillips to withhold the Remaining HE Capital 232 Proceeds in a scheme to funnel the money to themselves through shell companies that they owned in the Cayman Islands. Indeed, on June 4, 2018, at Ellington's direction, Wick Phillips disbursed the remainder of the proceeds to MapleFS, a fiduciary services company in the Cayman Islands, which subsequently transferred the full amount to Grey Royale Ltd., a Cayman Islands shell company owned and controlled by Dondero and Ellington.

361. Dondero's and Ellington's acts manifest a clear repudiation of HCMLP's rights in the Remaining HE Capital 232 Proceeds.

COUNT XXVI
Unjust Enrichment or Money Had and Received
(Against Dondero)

362. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

363. As set forth above, Dondero caused HCMLP to enter into numerous intercompany note transactions with other Dondero Entities in order to, among other things: (i) fund distributions to himself and his loyalists; (ii) inject funds into other entities he owns; and (iii) obtain personal tax benefits. Now, Dondero is actively spearheading an expensive, frivolous litigation campaign against HCMLP, through these same Dondero Entities, in order to avoid or delay their repayment obligations.

364. Dondero exploited HCMLP by using it to pursue goals that did not benefit HCMLP. Dondero orchestrated countless transactions and schemes designed to benefit himself and other Dondero Entities at the expense of HCMLP, including but not limited to: (i) the lifeboat scheme; (ii) distributions from HCMLP to himself and certain trusts he owned and

controlled during periods when HCMLP was insolvent; and (iii) intercompany transactions involving various Dondero Entities that distributed cash throughout his vast web of entities. Dondero unjustly profited from these schemes, either by directly transferring value to himself (*e.g.*, through distributions) or by using HCMLP's money to seed business activities and investments that would inure to his own personal benefit. Dondero diverted millions or tens of millions of dollars to himself, at HCMLP's expense.

365. Likewise, Dondero was willing to harm HCMLP even when it would seem economically irrational for him to do so, such as when he caused HCMLP to incur more in legal fees pursuing a vendetta against Daugherty than the total funds Daugherty was owed.

366. Dondero, together with Ellington, caused HCMLP's counsel to improperly divert approximately $3 million of HCMLP's cash being held in an escrow account to an entity that they owned and controlled in the Cayman Islands.

367. Dondero obtained personal services from individuals who were employed and paid by HCMLP, including with respect to private business ventures.

368. There was no valid express contract governing the subject matter of this dispute.

369. As a result of fraud, duress, or taking undue advantage of his own position of authority within HCMLP, Dondero holds or has held money that in equity and good conscience belongs to HCMLP, which unjustly enriched him and would be unconscionable to retain.

370. Plaintiff seeks restitution from Dondero and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by him as a result of the unjust conduct set forth above.

COUNT XXVII
Unjust Enrichment or Money Had and Received
(Against Ellington and Leventon)

371. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

372. Ellington and Leventon were employees of HCMLP who received millions of dollars in compensation. However, each of them understood and performed their duties as functionaries for Dondero. As such, both Ellington and Leventon subordinated the interests of HCMLP to the interests of Dondero, and actively participated in and implemented his schemes to divert value from HCMLP. Portions of Ellington's and Leventon's compensation, paid for by HCMLP, was consideration for their willingness to elevate Dondero's interests over those of HCMLP.

373. Together with Dondero, Ellington caused HCMLP's counsel to improperly divert approximately $3 million of HCMLP's cash being held in an escrow account to an entity that they owned and controlled in the Cayman Islands.

374. Ellington and Leventon engaged in willful and wanton misconduct that gave rise to more than $350 million in allowed claims against HCMLP. Among other things, Ellington and Leventon participated in the scheme to evade UBS collection efforts by fraudulently transferring assets to Sentinel.

375. There was no valid express contract governing the subject matter of this dispute.

376. As a result of fraud, duress, or taking undue advantage of their own positions of authority within HCMLP, Ellington and Leventon hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

377. Plaintiff seeks restitution from Ellington and Leventon and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXVIII
Unjust Enrichment or Money Had and Received
(Against NexPoint and HCMFA)

378. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

379. The lifeboat scheme was perpetrated primarily through NexPoint and HCMFA. NexPoint and HCMFA utilized HCMLP's employees to perform management and advisory services that HCMLP had directly provided, and should have continued to provide directly. Neither NexPoint nor HCMFA fairly compensated HCMLP for the use of its employees or resources.

380. HCMLP provided substantial financial support for NexPoint and HCMFA, including in the form of below-market note agreements. Both NexPoint and HCMFA have defaulted on their debts to HCMLP and are currently pursuing expensive, frivolous litigation against HCMLP in an effort to evade their payment obligations.

381. NexPoint and HCMFA were effectively HCMLP in disguise, conducting HCMLP's business, with HCMLP's employees, operating out of HCMLP's office, beginning with HCMLP's contracts.

382. Through their exploitation of HCMLP, NexPoint and HCMFA received tens or hundreds of millions of dollars of profits.

383. There was no valid express contract governing the subject matter of this dispute.

384. As a result of fraud, duress, or taking undue advantage of HCMLP, NexPoint and HCMFA hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

385. Plaintiff seeks restitution from NexPoint and HCMFA and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXIX
Unjust Enrichment or Money Had and Received
(Against Massand Capital and SAS)

386. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

387. Massand Capital received millions of dollars in payments from HCMLP under the Massand Consulting Agreements. Nevertheless, Massand Capital was aware that it would not and never intended to perform any services on behalf of HCMLP. Rather, Massand Capital was performing services on behalf of SAS, with HCMLP footing the bill. HCMLP received no benefit under the Massand Consulting Agreements.

388. Further, the value of the services provided to SAS were far less than HCMLP's payments, resulting in Massand receiving unearned profits to the tune of millions of dollars.

389. HCMLP employees performed work for SAS. Indeed, at least four HCMLP employees even received SAS email addresses. SAS did not compensate HCMLP for these services.

390. SAS has profited from the services performed by Massand Capital and from the use of HCMLP's employees and resources.

391. There was no valid express contract governing the subject matter of this dispute.

392. As a result of fraud, duress, or taking undue advantage of HCMLP, Massand and SAS hold or have held money that in equity and good conscience belongs to HCMLP, which unjustly enriched them and would be unconscionable to retain.

393. Plaintiff seeks restitution from Massand Capital and SAS and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by them as a result of the unjust conduct set forth above.

COUNT XXX
Unjust Enrichment or Money Had and Received
(Against CLO Holdco)

394. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

395. Dondero, acting through HCMLP, fraudulently induced HarbourVest to purchase 49% of HCLOF for approximately $75 million, with a commitment to fund an additional $75 million. CLO Holdco was the beneficiary of the funds invested by HarbourVest. HCMLP received no benefit from the HarbourVest investment. Nevertheless, HarbourVest filed a proof of claim against HCMLP for fraudulently inducing the HarbourVest investment, and HCMLP was ultimately forced to settle with HarbourVest by providing them with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to a new entity designated by HCMLP. As a result of Dondero's conduct, however, the HCLOF interests were then worth significantly less than the face amount of HarbourVest's allowed claim. HCMLP bore the consequences for Dondero and CLO Holdco in a scheme that deposited $75 million into the coffers of CLO Holdco.

396. CLO Holdco was aware that HarbourVest was fraudulently induced by Dondero to make the $75 million investment. Nonetheless, CLO Holdco said nothing to HarbourVest

and received their money, all while leaving HCMLP on the hook when HarbourVest ultimately filed their proof of claim.

397. There was no valid express contract governing the subject matter of this dispute.

398. As a result of fraud, duress, or taking undue advantage of HCMLP, CLO Holdco holds or has held money that in equity and good conscience belongs to HCMLP, which unjustly enriched it and would be unconscionable to retain

399. Plaintiff seeks restitution from CLO Holdco and an order from this Court disgorging all payments, transfers, profits, fees, benefits, incentives, and other things of value obtained by it as a result of its unjust receipt and use of the proceeds of the HarbourVest investment.

COUNT XXXI
Avoidance and Recovery of the One-Year Transfers as Preferential Transfers under 11 U.S.C. §§ 547 and 550
(Against Dondero and Ellington)

400. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

401. Dondero and Ellington are insiders of HCMLP.

402. As set forth below, within one year of the Petition Date, HCMLP made payments to Dondero of $4,753,911 and payments to Ellington of $318,893 (the "Alleged Expense Transfers" and the "March 28, 2019 Repayment Transfer," as set forth below, and collectively the "One-Year Transfers"):

March 28, 2019 Repayment Transfer		
Date	Transferee	Amount
March 28, 2019	Dondero	$3,750,000
Alleged Expense Transfers		
Date	Transferee	Amount
October 31, 2018	Dondero	$8,986

November 15, 2018	Dondero	$65,078
December 14, 2018	Dondero	$115,481
January 15, 2019	Dondero	$96,786
January 31, 2019	Dondero	$38,628
February 15, 2019	Dondero	$42,435
February 28, 2019	Dondero	$19,063
March 15, 2019	Dondero	$50,771
March 29, 2019	Dondero	$21,935
April 15, 2019	Dondero	$60,191
April 30, 2019	Dondero	$7,164
May 15, 2019	Dondero	$89,257
May 31, 2019	Dondero	$38,804
June 14, 2019	Dondero	$82,710
June 28, 2019	Dondero	$7,605
July 15, 2019	Dondero	$47,006
August 15, 2019	Dondero	$85,059
August 30, 2019	Dondero	$12,714
August 30, 2019	Ellington	$205,788
September 13, 2019	Dondero	$56,763
September 30, 2019	Dondero	$24,498
October 15, 2019	Dondero	$32,977
October 15, 2019	Ellington	$113,105
Total	Dondero	$4,753,911
Total	Ellington	$318,893
Grant Total		$5,072,804

403. The One-Year Transfers were made on account of antecedent debt.

404. HCMLP was insolvent when each One-Year Transfer was made.

405. Each One-Year Transfer enabled Dondero and Ellington to receive more than they would have if (i) the One-Year Transfers had not been made; and (ii) Dondero and Ellington received payment on account of the debt paid by the One-Year Transfers to the extent provided by the Bankruptcy Code.

406. Each One-Year Transfer constitutes an avoidable preference pursuant to Section 547(b) of the Bankruptcy Code.

407. Plaintiff is entitled to an order and judgment under 11 U.S.C. §§ 547 and 550 that each of the One-Year Transfers is avoided and recoverable.

COUNT XXXII
Avoidance and Recovery of the Alleged Expense Transfers as Constructive Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, and Other Applicable Law
(Against Dondero and Ellington)

408. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

409. To the extent the Alleged Expense Transfers do not constitute reimbursement for valid expenses, they constitute constructive fraudulent transfers that were made to or for the benefit of Dondero and Ellington.

410. At the time of each Alleged Expense Transfer, HCMLP was insolvent, was engaged or was about to engage in business or a transaction for which the remaining assets of HCMLP were unreasonably small in relation to the business or transaction, and/or believed or reasonably should have believed that HCMLP would incur debts beyond HCMLP's ability to pay as they became due.

411. HCMLP received less than reasonably equivalent value in exchange for each of the Alleged Expense Transfers. Indeed, HCMLP received no value for the Alleged Expense Transfers, each of which was a gratuitous transfer from HCMLP to or for the benefit of Dondero and Ellington.

412. Each Alleged Expense Transfer is voidable as a constructively fraudulent transfer. Accordingly, each Alleged Expense Transfer should be set aside, avoided, and recovered under 11 U.S.C. §§ 544, 548, and 550, and Delaware and Texas law, as applicable,

against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXXIII
Avoidance and Recovery of the Alleged Expense Transfers as Intentional Fraudulent Transfers Under 11 U.S.C. §§ 544, 548, and 550, and Other Applicable Law
(Against Dondero and Ellington)

413. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

414. To the extent the Alleged Expense Transfers do not constitute reimbursement for valid expenses, they constitute intentional fraudulent transfers that were made to or for the benefit of Dondero and Ellington.

415. Dondero was HCMLP's Chief Executive Officer, President, Co-Chief Investment Officer, and Co-Founder. Ellington was HCMLP's Chief Legal Officer and General Counsel until he was terminated for cause in January 2021 for acting in a manner adverse to HCMLP's interest. Dondero exercised complete control over HCMLP, and Ellington acquiesced to and profited from schemes orchestrated by Dondero to enrich Dondero, Ellington, and HCMLP's direct and indirect owners.

416. To that end, Dondero and Ellington caused HCMLP to make the Alleged Expense Transfers with actual intent to hinder, delay, and defraud HCMLP's creditors, which intent is demonstrated by, among other things, the following badges and direct indications of fraud:

(a) Dondero and Ellington were insiders of HCMLP;

(b) although Dondero and Ellington assert that the Alleged Expense Transfers constitute reimbursement for valid expenses, on information and belief, there is no factual basis for that assertion;

(c) before the Alleged Expense Transfers were made, HCMLP had been sued and Dondero and Ellington believed HCMLP's legal exposure rendered it insolvent;

(d) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved both siphoning HCMLP's valuable business opportunities through newly-created "lifeboat" entities and siphoning HCMLP's value through HCMLP Distributions (among other means);

(e) HCMLP, through Dondero, was engaged in a multi-faceted scheme to remove assets from HCMLP and conceal them from HCMLP's creditors, which involved siphoning HCMLP's value through the Alleged Expense Transfers (among other means);

(f) HCMLP received less than reasonably equivalent value (and in fact, received zero consideration) in exchange for the Alleged Expense Transfers;

(g) at the time of each Alleged Expense Transfer, HCMLP (i) was insolvent, (ii) was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or (iii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due;

(h) Dondero and Ellington made the Alleged Expense Transfers during a period when they believed HCMLP would be forced to file for bankruptcy as a result of looming contingent liabilities, and effected the transfers in order to

siphon value so that such value would not be available to satisfy HCMLP's creditors.

417. Each Alleged Expense Transfer is voidable as an intentionally fraudulent transfer. Accordingly, each of the Alleged Expense Transfers should be set aside, avoided, and recovered under 11 U.S.C. §§ 544, 548, and 550, and Delaware and Texas law, as applicable, against all initial and subsequent transferees and/or entities for whose benefit the transfers were made.

COUNT XXXIV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law Out Of Conduct That Resulted in HCMLP Liabilities
(Against Ellington and Leventon)

418. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

419. Ellington and Leventon aided and abetted the breaches of fiduciary duty committed by Dondero and Strand that foreseeably resulted in liability to HCMLP. Ellington and Leventon knowingly participated in Dondero's schemes that foreseeably resulted in liability to HCMLP. In total, these breaches that were aided and abetted by Ellington and Leventon resulted in more than $350 million in allowed claims against HCMLP.

420. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Ellington and Leventon set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the conduct set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of

the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

421. **Liabilities to UBS.** Ellington and Leventon aided and abetted Dondero in causing HCMLP to incur substantial liability to UBS. In 2017, after a New York state court ruled that UBS's fraudulent transfer claims against HCMLP and claims against the Fund Counterparties could proceed to trial, Ellington and Leventon aided Dondero in causing HCMLP, in its capacity as investment manager for the Fund Counterparties, to orchestrate a surreptitious transfer of more than $300 million in face amount of assets from the Fund Counterparties to Sentinel, an entity located in the Cayman Islands that was indirectly owned and controlled by Dondero and Ellington, ostensibly to pay a premium on the Sentinel insurance policy that was only $25 million. Ellington and Leventon knew or willfully blinded themselves to the fact that Dondero breached his fiduciary duties to HCMLP by orchestrating the transfer to Sentinel

422. After the Petition Date, Dondero, Ellington, and Leventon actively concealed this transfer from the Independent Board, UBS, and the Bankruptcy Court. When this transfer was uncovered, HCMLP was forced to increase the amount of its settlement with UBS from a total of $75 million in allowed claims to $125 million in allowed claims.

423. **Liabilities to Acis.** After the Terry arbitration award issued, Ellington and Leventon aided and abetted Dondero in causing HCMLP to enter into numerous transactions to take control of Acis's business and strip it of assets so it could not pay the arbitration award. Ellington and Leventon implemented Dondero's directives and took necessary steps to

consummate the transactions, knowingly or willfully blinding themselves to the fact that Dondero breached his fiduciary duties to HCMLP by stripping Acis of assets.

424. Leventon knowingly participated in the scheme to transfer value away from Acis in an attempt to make it judgment-proof. Among other things, Leventon assisted in the drafting and execution of the agreement, approved by Dondero in a breach of his fiduciary duty, that transferred Acis's interest in a note receivable from HCMLP, which had a balance owing of over $9.5 million, to Cayman Island entity Highland CLO Management Ltd. just ten days after Terry obtained his arbitration award. The agreement recites that (1) HCMLP is no longer willing to continue providing support services to Acis; (2) Acis, therefore, can no longer fulfill its duties as a collateral manager; and (3) Highland CLO Management Ltd. agrees to step in to the collateral manager role. Given the timing of the assignment—just days after Terry's arbitration award—Leventon knew that it was part of a scheme to strip Acis of its assets and a breach of Dondero's fiduciary duty, which ultimately resulted in millions of dollars of damage to HCMLP.

425. **Liabilities to HarbourVest.** Ellington also aided and abetted Dondero in causing harm to HCMLP by exposing it to substantial liability to HarbourVest. Ellington aided Dondero, acting through HCMLP, in fraudulently inducing HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash, with a commitment for an additional $75 million in the future, while concealing that Dondero was actively engaged in a campaign against Terry that would significantly impair the value of HarbourVest's investment. In addition, Dondero did not intend to use the $75 million that CLO Holdco received from HarbourVest to satisfy capital calls at HCLOF, and instead intended for CLO Holdco to use those funds as part of a scheme to infuse other Dondero Entities (including entities that

benefitted the NexPoint and HCMFA lifeboats) with additional cash. Ultimately, HCMLP was forced to settle with HarbourVest by providing it with $80 million in allowed claims, in exchange for a transfer of HarbourVest's interests in HCLOF to an affiliate of HCMLP. As a result of Dondero's and Ellington's conduct, those interests in HCLOF were then worth tens of millions of dollars less than the $75 million HarbourVest paid to acquire them. Ellington either knew or willfully blinded himself to the fact that Dondero breach his fiduciary duties to HCMLP by fraudulently inducing HarbourVest to purchase 49% of HCLOF from CLO Holdco for approximately $75 million in cash.

426. **Liabilities to Crusader Funds.** Ellington and Leventon aided and abetted Dondero in causing HCMLP to incur substantial liability to the Redeemer Committee due to his conduct in connection with HCMLP's wind-down of the Crusader Funds and distribution of proceeds to investors. Among other things, Dondero, Ellington, and Leventon caused HCMLP to: (1) transfer Barclays' limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, Ltd., after the Redeemer Committee had refused to approve that transfer, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (2) purchase 28 Plan Claims for the benefit of HCMLP without the approval of the Redeemer Committee, in violation of the Joint Plan and Scheme and HCMLP's fiduciary duties; (3) covertly purchase the stock of the Portfolio Company and fail to liquidate the Crusader Funds' shares in the Portfolio Company, in violation of HCMLP's fiduciary duties; and (4) violate the provision of the Joint Plan and Scheme requiring HCMLP to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was complete, causing HCMLP to forfeit its rights to those fees entirely. Additionally, both Ellington and Leventon were active participants in Dondero's scheme; they both provided false narratives or misrepresentations in furtherance

of Dondero's harm to the Crusader Funds. The Redeemer Arbitration panel found, for example, that Leventon "was significantly involved in providing direction" to keep the Redeemer Committee in the dark and "was the principal instrument through which [certain] misrepresentation[s] and omission[s] were communicated." As a result of Dondero's, Ellington's, and Leventon's conduct, the Redeemer Committee received an arbitration award against HCMLP in excess of $190 million, and in HCMLP's bankruptcy, HCMLP agreed to pay over $136 million in connection therewith. Ellington and Leventon either knew or willfully blinded themselves to the fact that Dondero breached his duties to HCMLP through the foregoing acts.

427. Beyond the direct losses identified in the preceding paragraphs, HCMLP suffered additional harm from Ellington's and Leventon's aiding and abetting the breaches of fiduciary duty committed by Dondero and Strand. For example, the $190 million Redeemer arbitration award—which was itself caused by the Dondero's and Strand's breaches of their fiduciary duty to HCMLP and Ellington's and Leventon's aiding and abetting of those breaches—caused HCMLP to file for bankruptcy. As of October 15, 2021, HCMLP had incurred in excess of $40 million in professional fees in connection with the bankruptcy. Ellington and Leventon either knew or willfully blinded themselves to the fact that Dondero and Strand breached their fiduciary duties to HCMLP through their actions that led to the $190 million Redeemer arbitration award.

428. In light of the foregoing, Ellington and Leventon are liable for aiding and abetting Dondero's breaches of fiduciary duties to HCMLP in an amount to be determined at trial.

COUNT XXXV
Aiding and Abetting Breach of Fiduciary Duty Under Delaware Law or Knowing Participation in Breach of Fiduciary Duty under Texas Law In Connection With Fraudulent Transfers And Schemes
(Against Ellington and Okada)

429. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

430. Neither the Litigation Trustee nor the Estate could have discovered the conduct by Ellington and Okada set out herein with reasonable diligence prior to Dondero's removal as Chief Executive Officer and President of HCMLP on January 9, 2020. Moreover, given the fiduciary obligations owed to HCMLP, neither the Estate nor the Litigation Trustee was able to inquire or was aware of the need to inquire into the conduct set out herein prior to Dondero's removal. By its nature, the conduct alleged herein was inherently undiscoverable because of the complete domination and control that Dondero exercised over HCMLP and the Dondero Entities, including but not limited to the complexity and opacity of the corporate structure he created and wielded for his own benefit.

431. Ellington aided and abetted Dondero in causing HCMLP to enter into the Massand Consulting Agreements. Likewise, Ellington aided and abetted Dondero in overseeing and approving the Massand Transfers. The payment obligations Dondero and Ellington caused HCMLP to incur, and the payments that Dondero and Ellington caused HCMLP to make, conferred no benefit on HCMLP. In addition, Ellington aided and abetted Dondero in causing HCMLP employees to perform work for SAS—at least seven HCMLP employees received SAS email addresses—without compensating HCMLP. Ellington either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP through the foregoing actions.

432. Moreover, as part of his scheme to evade HCMLP's creditors, Dondero, acting through Strand, approved hundreds of millions of dollars of distributions from HCMLP at a time that Dondero believed HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors.

433. As Dondero's co-founder and HCMLP's Chief Investment Officer, Okada knew or willfully blinded himself to the fact that the HCMLP Distributions—including the distributions made to Okada, MAP #1, and MAP #2—were made at times that HCMLP was insolvent and would not be able to satisfy its obligations to its present and future creditors. Okada either knew or willfully blinded himself to the fact that Dondero breached his fiduciary duties to HCMLP by approving hundreds of millions of dollars of distributions from HCMLP at a time HCMLP was insolvent.

COUNT XXXVI
Disallowance or Subordination of Claims Under Section 502 and 510 of the Bankruptcy Code
(Against CLO Holdco)

434. Plaintiff repeats and realleges the allegations in all prior paragraphs as if fully set forth herein.

435. On April 8, 2020, CLO Holdco filed Claim No. 133 seeking approximately $11 million (the "CLO Holdco Claim"). The basis of the CLO Holdco Claim was that CLO Holdco purchased a participation interest in certain interests that HCMLP held in the Crusader Fund.

436. HCMLP acquired the interests in the Crusader Fund that are the subject of the CLO Holdco Claim in violation of the Joint Plan and Scheme. HCMLP released its claim on those interests in connection with HCMLP's settlement with the Redeemer Committee. Accordingly, CLO Holdco is not entitled to any value on account of the CLO Holdco Claim. In recognition of this fact, on October 21, 2020, CLO Holdco amended its claim to seek $0.

437. Additionally, CLO Holdco subsequently agreed to withdraw the CLO Holdco Claim. Nevertheless, CLO Holdco has failed to date to actually withdraw the claim, notwithstanding the Reorganized Debtor's request. Accordingly, out of an abundance of caution, and to the extent that CLO Holdco attempts to pursue the CLO Holdco Claim, the Litigation Trustee objects to the CLO Holdco Claim, and the CLO Holdco Claim should be disallowed in its entirety or subordinated.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendants as follows:

A. awarding Plaintiff damages against, and disgorgement and restitution from each Defendant in an amount to be determined at trial;

B. setting aside, avoiding, and granting recovery of the HCMLP Distributions;

C. setting aside, avoiding, and granting recovery of the CLO Holdco Transfer;

D. setting aside and avoiding the payment obligations under the Massand Consulting Agreement;

E. setting aside, avoiding, and granting recovery of the Massand Transfers;

F. setting aside and avoiding the transfers of management and advisory agreements to HCMFA and NexPoint;

G. setting aside, avoiding, and granting recovery of the One-Year Transfers;

H. disallowing or subordinating, to the extent applicable, the CLO Holdco Claim;

I. awarding Plaintiff pre- and post-judgment interest at the maximum rate permitted by law;

J. awarding Plaintiff his attorneys' fees, costs, and other expenses incurred in this action; and

K. awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: May 19, 2022
Dallas, Texas

Respectfully submitted,

SIDLEY AUSTIN LLP
/s/ *Paige Holden Montgomery*
Paige Holden Montgomery
Juliana L. Hoffman
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400

-and-

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Susheel Kirpalani (admitted *pro hac vice*)
Deborah J. Newman (admitted *pro hac vice*)
Robert S. Loigman (admitted *pro hac vice*)
Benjamin I. Finestone (admitted *pro hac vice*)
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51 Madison Avenue
Floor 22
New York, NY 10010
Telephone: (212) 849-7000

Counsel for the Litigation Trustee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail via the Court's ECF system to parties authorized to receive electronic notice in this case on May 19, 2022.

/s/ Paige Holden Montgomery
Paige Holden Montgomery

Expert Report of T.J. Liles-Tims

Highland Capital Management, LP v. Patrick Hagaman Daugherty; AdvAdv. Proc. 2525-03055-bwobwo

Prepared By: T.J. Liles-Tims and Gary McIntosh
February 13, 2026

weaver
Assurance • Tax • Advisory

DEFENDANT'S EXHIBIT
82
25-03055

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I. Introduction

1. I am a Partner with Weaver and Tidwell, L.L.P. ("Weaver"). Weaver is a professional services firm devoted to Assurance, Tax and Advisory. The partners have been serving the corporate, legal and professional communities for over seventy years and regularly assist clients in pending litigation and disputes by providing valuation, consulting and expert witness services.

2. I have been retained by Gray Reed, L.L.P., as counsel for Patrick Hagaman Daugherty, to provide consulting and litigation support services in relation to matter styled *Highland Capital Management, LP v. Patrick Hagaman Daugherty*, Adv. Proc. 25-03055-bwo.

3. Certain aspects of our review are ongoing. The opinions expressed in this report are subject to amendment or supplementation as a result of developments prior to or at the time of trial including further discovery, findings of facts, additional analyses, or the testimony of other witnesses in deposition or at trial. This report is intended to be used solely in this litigation and should not be relied upon for any other purpose.

II. Qualifications

4. Our background, experience, and qualifications, including a list of all authored publications and previous testimony, are outlined in our Curriculum Vitae attached to this Report as **Appendix A**.

III. Compensation

5. Weaver is billing time for professional services in this matter at the rate of $595 per hour. Weaver will be compensated at the same hourly rate if I am asked to testify in deposition or during the final hearing. In addition, other professionals at our firm acting under our direct supervision have assisted on this matter. Our firm's fee is not contingent upon the outcome of this litigation or upon us reaching any particular conclusions or opinions.

IV. Documents And Information Relied Upon

6. In preparing this report, I have relied upon information from a variety of sources, each of which is of a type reasonably relied upon by experts in our field. The opinions and

conclusions contained in this report are based on our independent and objective review of documents and other information produced thus far by the parties, pleadings generated as part of this case, as well as independent research I have conducted. In developing this report, I have considered the documents and information listed in **Appendix B.** I may review additional information as it becomes available and reserve the right to supplement or amend this report based on this information as necessary. I have also relied upon our own professional judgment and expertise gathered in almost twenty years of consulting with businesses and individuals including the preparation and evaluation of damages claims in litigation matters.

V. Background

A. Parties

a. Highland Capital Management, L.P.

7. Highland Capital Management, L.P. ("Highland") is the reorganized debtor in a Chapter 11 bankruptcy case and the plaintiff in the related adversary proceeding, where it seeks relief concerning the allowance and treatment of a filed claim.

b. Patrick Hagaman Daugherty

8. Patrick Hagaman Daugherty ("Mr. Daugherty") is a former senior employee and profits-interest partner (via a profits interest holder) of Highland, who filed a claim asserting, among other things, a contingent and unliquidated obligation related to potential IRS action concerning a prior tax refund.

B. Timeline of Events

9. On or around February 27, 2009, Highland provided Mr. Daugherty with the Comprehensive Compensation and Benefits Statement for calendar year 2008 (the "2009 Statement"), which included an estimated 2008 tax refund of $1,475,816.[1]

10. On or around October 31, 2011, Mr. Daugherty terminated his employment with Highland.[2]

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[1] PDADV_010520.

[2] Based on conversations with Mr. Daugherty.

11. On or around December 8, 2017, Internal Revenue Service ("IRS") field examiners concluded an audit of Highland's 2008 partnership tax return (the "IRS Audit") and issued a summary report proposing adjustments ("IRS Proposed Adjustments").[3]

12. On or around February 3, 2018, Highland sent Mr. Daugherty a letter enclosing IRS Forms 886-Z and 870-PT, confirming the audit's completion and scheduling a March 2, 2018 closing conference.[4]

13. On or around July 3, 2018, Highland notified Mr. Daugherty that a 60-Day Letter had been issued and that Highland would timely appeal the proposed adjustments to the IRS Independent Office of Appeals ("IRS Office of Appeals").[5]

14. On or around October 16, 2019, Highland filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing its bankruptcy case.[6]

15. On or around December 9, 2019, Highland informed Mr. Daugherty that the matter had been transferred from the Tax Equity and Fiscal Responsibility Act ("TEFRA") unit to the IRS Office of Appeals, which had no stated timeline for review.[7]

16. On or around April 1, 2020, Mr. Daugherty filed Proof of Claim No. 67.[8]

17. On or around April 6, 2020, Mr. Daugherty filed Proof of Claim No. 77, superseding Claim No. 67 in its entirety.[9]

18. On or around November 17, 2020, during bankruptcy proceedings, it was noted that the IRS Audit remained ongoing and could result in a clawback.[10]

19. On or around December 23, 2020, Mr. Daugherty filed Proof of Claim No. 205, superseding Claim No. 77 in its entirety.[11]

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3 PDADV_004856.

4 Daugherty ROGs00003740.

5 PDADV_004687.

6 PDADV_010182.

7 PDADV_004856.

8 PDADV_010185.

9 PDADV_010185.

10 2020.11.18 – Hearing Transcript (hearing of November 17, 2020).

11 PDADV_010186.

20. On or around February 22, 2021, the Court entered an order confirming Highland's Fifth Amended Plan of Reorganization.[12]

21. On or around July 13, 2021, Strand Advisors, Inc, the Tax Matters Partner for Highland Capital Management, L.P. at the time, notified Mr. Daugherty that After the IRS issued its audit report in May 2018, Highland protested and appealed each of the IRS's proposed adjustments to the IRS Appeals Office. It further informed Mr. Daugherty that after delays in IRS Exam's processing of the appeal and further delays because of COVID-19 and scheduling conflicts, the IRS Appeals Office had scheduled an Appeals hearing for September 14-16, 2021, 10:00 AM CDT.[13]

22. On or around November 21, 2021, Highland and Mr. Daughtery executed a Settlement Agreement (the "Settlement Agreement").[14]

23. On or around March 8, 2022, the Court entered the Settlement Agreement, resolving all of Claim No. 205 except Mr. Daugherty's remaining claim relating to the IRS Audit.[15]

24. On or around May 31, 2024, Highland's Tax Matters Partner submitted a counteroffer to IRS Office of Appeals as part of mediation procedures, confirming continued active dispute of the IRS Audit.[16]

25. On or around June 26, 2024, Highland's Tax Matters Partner met with the IRS Office of Appeals team to further discuss settlement positions and narrow outstanding issues.[17]

26. On or around February 28, 2025, Highland's Tax Matter Partner's counsel submitted a revised settlement counteroffer to IRS Office of Appeals and renewed its request for post-Appeals mediation, confirming that no final IRS determination had yet been made.[18]

27. On or around May 2, 2025, Highland filed the present Adversary Complaint seeking (1) disallowance of the remainder of Claim No. 205, (2) estimation of any portion of the

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12 PDADV_010182.

13 PDADV_004971.

14 Settlement Agreement, by and between Highland Capital Management, L.P. and Patrick Hagaman Daugherty, dated November 21, 2021

15 Highland Capital Management, LP Complaint, filed May 2, 2025.

16 HUNTON_001107.

17 HUNTON_001107.

18 HUNTON_001105–HUNTON_001108

remainder of Claim No. 205, or (3) subordination of any allowed portion of the remainder of Claim No. 205.[19]

VI. Opinions and Findings

A. Opinion No. 1

28. Courts and professional standards require economic damage analysis must be presented with reasonable certainty. As such, an analysis must rely on verifiable data and established facts, ensuring that the testimony meets accepted standards for reliability.

a. Basis for Opinion No. 1

29. An expert witness calculating economic damages must base any opinion on sufficient, reliable, and verifiable inputs. This requirement is grounded in Federal Rule of Evidence ("FRE") 702, which mandates expert testimony be "based on sufficient facts or data" and reflect a "reliable application of the principles and methods to the facts of the case."[20] Courts have excluded expert opinions when the underlying assumptions or data are incomplete, untested, speculative, or otherwise unreliable.[21]

30. Authoritative guidance reinforces the same principle. Damages must be proven with reasonable certainty, meaning the calculation must have a "*sufficient foundation exists to support a rational conclusion.*"[22],[23] Courts emphasize that, "*damages calculation must be 'capable of measurement based upon reliable factors without undue speculation'*[24]."[25]

31. To further illustrate the necessity of experts relying on reasonable inputs *Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co.*, states:

> "*…an expert's testimony must be excluded if it is 'speculative or conjectural' or if it is 'based on assumptions that are so unrealistic and contradictory' that the testimony*

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19 Highland Capital Management, LP Complaint, filed May 2, 2025.

20 Federal Rule of Evidence 702.

21 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

22 *Albert v. Warner-Lambert Co.*, 234 F.Supp.2d 101, 103 (D. Mass. 2002). See also *W.W. Gay Mechanical Contractor, Inc. v. Wharfside Two, Ltd.*, 545 So.2d 1348, 1351 (Fla. 1989) .

23 Fannon, Nancy J. and Dunitz, Jonathan M. The Comprehensive Guide to Economic Damages. Volume 1. Business Valuation Resources, LLC. p. 232.

24 See, e.g. *Ashland Management Inc. v. Janien*, 82 N.Y.2d, 103 (1993).

25 Fannon, p. 232.

amounts, in essence, to an 'apples and oranges comparison.' Similarly, 'when an expert opinion is based on data, a methodology, or studies that are simply inadequate to support the conclusions reached, Daubert and Rule 702 mandate the exclusion of that unreliable opinion testimony.' Moreover, an expert's analysis must be 'reliable at every step'…"[26]

32. Furthermore, courts require experts to evaluate and test inputs, particularly material assumptions, that drive their damage calculations. Reliance on inputs that are untested, contradictory, or incomplete may result in an exclusion under the Daubert precedent.[27] The NACVA's professional standards also require experts to obtain "sufficient relevant data" and to confirm the reliability of assumptions and inputs used in any damages model.[28]

33. It is our understanding at the date of this Report, the outcome of the IRS Audit is still pending. Given that the IRS Audit has not been resolved (i.e., that there has not been a final determination), the core inputs needed for a reasonable and reliable damages calculation do not yet exist. Any model attempting to calculate damages with the current information would be forced to rely on assumed and unknown variables, in contrast with expert witness guidelines outlined in FRE 702.

B. Opinion No. 2

34. The IRS Audit has not been finalized and the timeline for conclusion is unknown. The sequence of a typical IRS audit under TEFRA is outlined below. Milestones highlighted in green have been completed, while steps in blue indicate outstanding stages of the process:[29]

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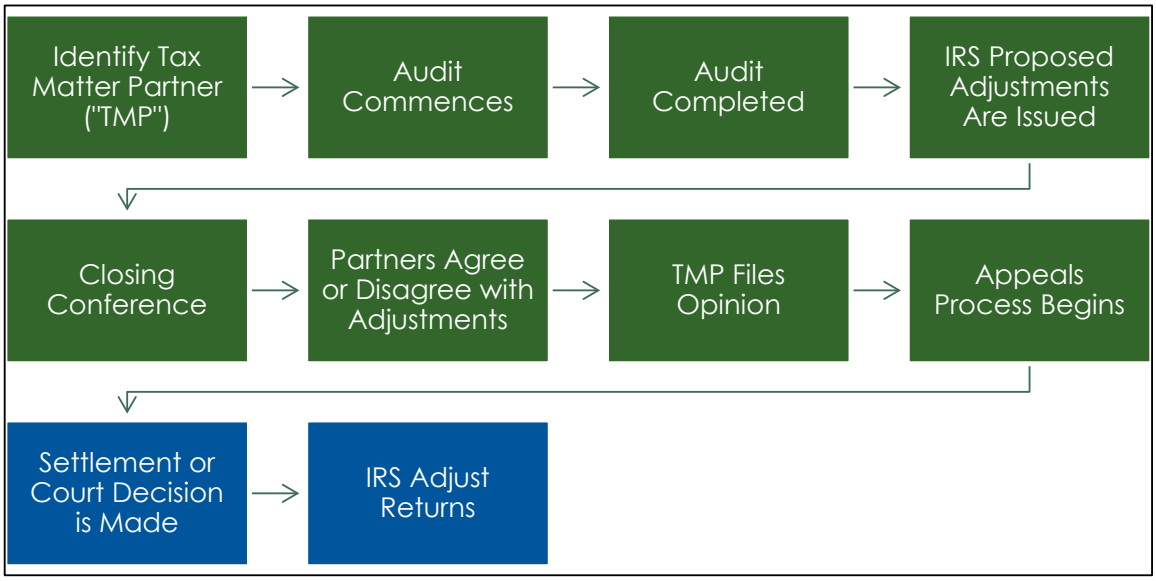
[26] *Compania Embotelladora del Pacífico, S.A. v. Pepsi Cola Co.,* No. 00 Civ. 7677 (JSR) (S.D.N.Y. Sept. 4, 2009).

[27] *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993).

[28] National Association of Certified Valuators and Analysts (NACVA), Professional Standards, Rev. Nov. 22, 2024

[29] Internal Revenue Service, Internal Revenue Manual (IRM) 4.31.2, TEFRA Examinations – Field Office Procedures, Part 4, Chapter 31, Section 2 (Apr. 22, 2025).



35. It is our understanding the IRS Audit has not been finalized, and the timeline of conclusion is unknown. The chart above outlines no final agreement, or settlement has been reached with the IRS. Therefore, since the IRS Audit is unresolved and there is no expected completion date, it would be not be reasonable or reliable for a financial expert to assess damages, at this point.

b. Basis for Opinion No. 2

36. As of the date of this Report, the IRS Audit has not yet resulted in a final determination. In December 2017, IRS field examiners completed their examination of the 2008 return and issued a summary report proposing adjustments.[30]

37. A letter dated February 3, 2018 from Highland's Director of Human Resources, Brian Collins ("Mr. Collins"), states, "[Highland] scheduled a closing conference on March 2, 2018. You do not need to attend the closing conference…Highland will handle the closing conference…and appeal the proposed adjustment to the IRS Appeals Office after the conference."[31] It was clear Highland intended to appeal the IRS Proposed Adjustments

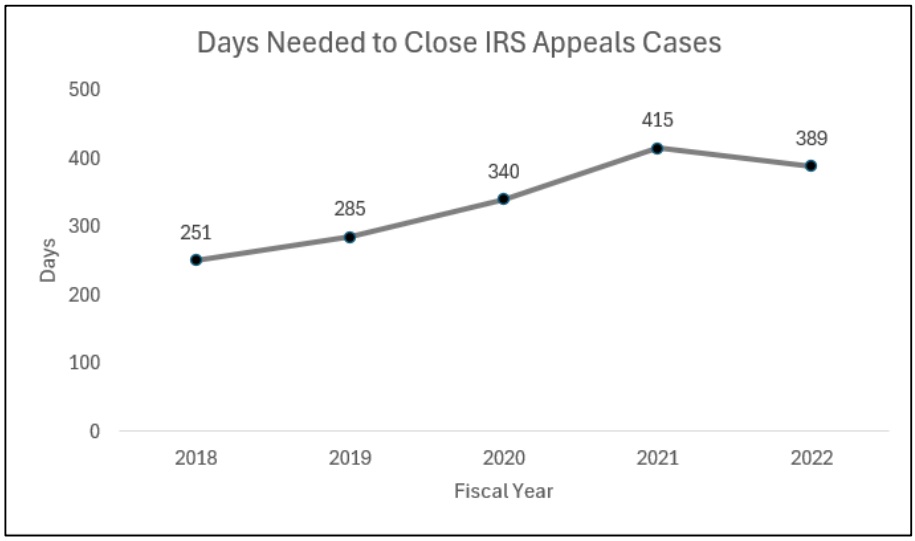
[30] Based on IRS correspondence in a December 9, 2019, email from Highland's Director of Human Resources, Brian Collins, which states that "By letter dated December 8, 2017, Exam indicated that they had concluded their audit and provided a summary report proposing certain adjustments." [PDADV_004856]

[31] Daugherty_ROGs00003740.

soon after receiving the results, which would indicate reliance on the December 2017 results would not be reasonable or reliable.

38. Almost two years later, in an apparent update email to Mr. Daughtery on December 9, 2019, Mr. Collins states, "the matter recently was transferred to the IRS Office of Appeals."[32] Approximately two years apart, Mr. Collins indicates the appeals process was "recently" started, while still maintaining the position the IRS Proposed Adjustments are not reliable. Later in the letter, Mr. Collins further cast doubt on the IRS Proposed Adjustments when he states, "Highland will continue to defend against the proposed adjustments by Exam and prosecute the appeal of those adjustments in the Appeals Office."[33] The sentiment expressed from a Highland representative, until this point, has been the results of the IRS Audit are not final and are, therefore, not reliable.

39. According to Government Accountability Office ("GAO"), the average time to close an appeal with the IRS Office of Appeals in 2019 was 282 days, trending upward from 251 the previous year.[34] The number of days to resolve a case with the IRS Office of Appeals would continue to rise in the following years as seen in the chart below.[35]



[32] PDADV_004856.

[33] PDADV_004856.

[34] U.S. Government Accountability Office, Tax Enforcement: IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits, GAO-23-105552 (May 2023, rev. June 7, 2023).

[35] GAO-23-105552.

40. Although, the IRS Office of Appeals had received the case by December 2019, no timetable existed for when the IRS Office of Appeals would conduct its review or issue any decision. Mr. Collins emphasized this point when states, "we have no further information regarding when the Appeals Office will review Highland's appeal or when a resolution may be made."[36] In connection, this information shows that while the IRS examination was completed in 2017 and a summary report was issued, it did not constitute a final determination of tax liability as Highland has not exhausted its efforts in an appeal.

41. Highland's Tax Partner As outlined above, Highland continues to dispute the proposed adjustments before the IRS Office of Appeals. The most recent communication dated February 28, 2025, indicates Highland's Tax Partner submitted a revised settlement counteroffer and again requested post-Appeals mediation.[37]

42. These actions confirm that, at least by February 28, 2025, no final partnership-level adjustment had been reached and the Appeals review was still ongoing. As of the date of this report, Mr. Daugherty has received no notice settlement. As such, it is clear Highland's Tax Partner is actively negotiating with the IRS on settlement offers.

43. With no expected timeline for completion and the ongoing dispute of the IRS Audit, it would not be reasonable or reliable for a financial expert to opine on damages. As such, it is our opinion a damage calculation cannot be made until Highland's Tax Matters Partner resolves the IRS Audit.

C. Opinion No. 3

44. If or when Highland's Tax Partner reaches a final agreement with the IRS, the tax impact to Mr. Daugherty should be calculated using the following process:

Step 0: Identify adjustment type (income, deductions, etc.);
Step 1: Total partnership adjustment for that item (IRS proposed change);
Step 2: Partner allocation % for that item (from K-1 / agreement);
Step 3: Partner's share = (Step 2) × (Step 3);
Step 4: Calculate tax effect = (Step 4) × partner's marginal rate;

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[36] PDADV_004856.

[37] HUNTON_001105- HUNTON _001108.

Step 5: Calculate partnership basis impact;[38]

Step 6: Assess if there is any underpayment. If no, process ends here.

Step 7: If necessary, assess penalties;[39]

Step 8: Compute interest (Interest = Underpayment x Rate x Time Outstanding);[40]

Step 9: Calculate total partner-level exposure (Tax + Penalties + Interest).

c. Basis for Opinion No. 3

45. If Highland's Tax Partner reaches a final partnership-level agreement with the IRS, the resulting tax impact to Mr. Daugherty must be computed at the partner level. The partnership-level adjustment itself is the first step; the ultimate economic consequence to any individual partner necessarily depends on the partner's allocable share of the adjustment, federal and state tax rates, basis consequences, and any penalties or interest that may be imposed.

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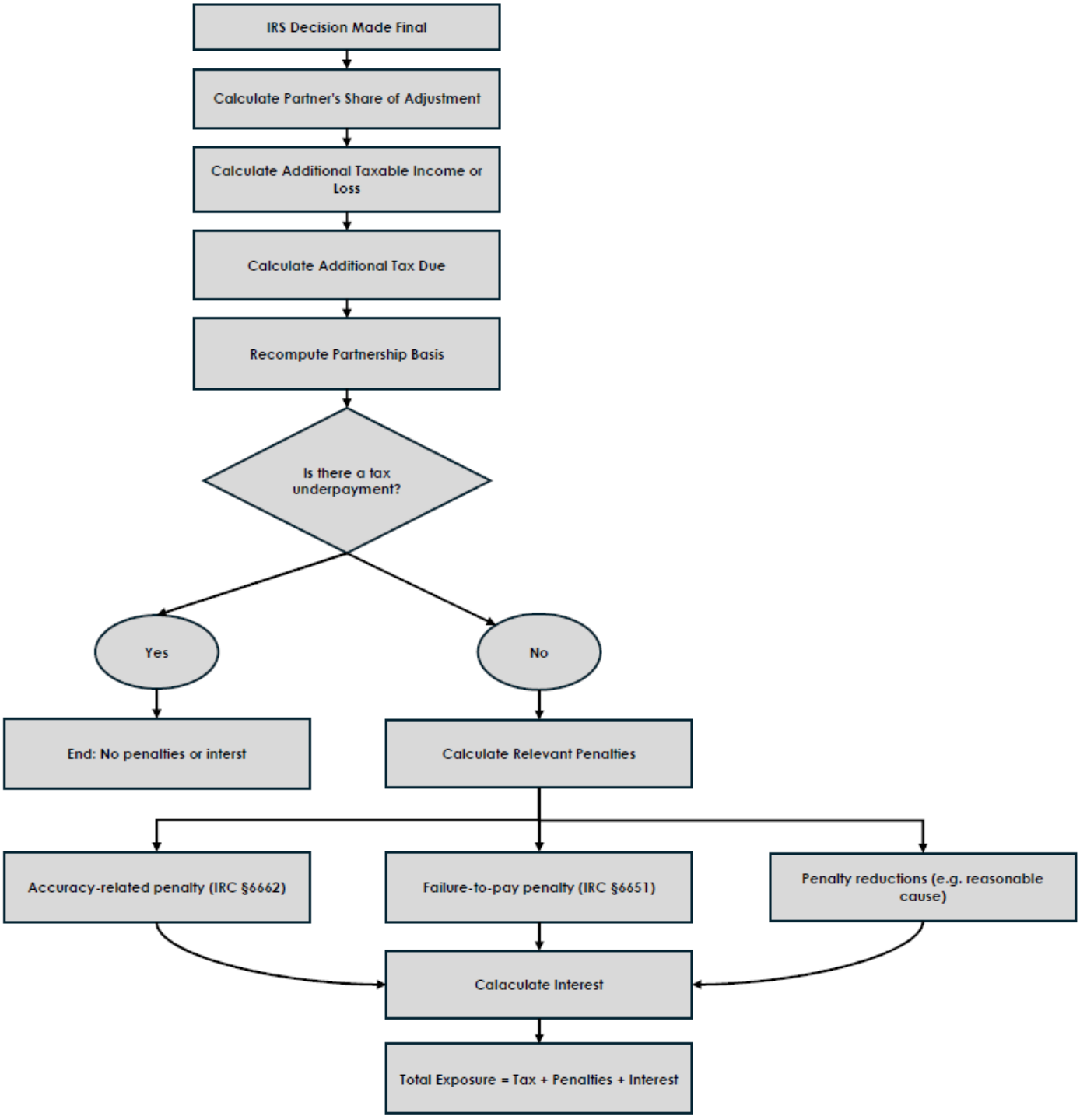
38 26 C.F.R. § 1.705-1, *Determination of basis of partner's interest* (as amended)

39 26 U.S.C. § 6651; 26 U.S.C. § 6662.

40 26 U.S.C. § 6601; 26 U.S.C. § 6621.

46. The chart below illustrates the steps that occur ***after*** the IRS's determination becomes final.



47. However, this process cannot begin until the IRS issues a final determination. As shown in the record, the IRS examination concluded in 2017 with "proposed" adjustments, not final ones, and Highland formally disagreed and appealed those adjustments. Subsequent correspondence confirms:[41]

- Highland did **not** accept the IRS Proposed Adjustments;
- Highland intended to and did appeal;
- The case entered the IRS Office of Appeals, where no timeline existed for resolution; and
- As of 2025, Highland continued to negotiate, submit revised counter offers, and request post-Appeals mediation.

48. Because no final partnership-level adjustment exists, any damage calculation today would not be reasonable or reliable. Once the IRS issues a final determination, however, the calculation of partner-level impact should follow the nine steps outlined above.

VII. Conclusion

49. As discussed throughout this report, due to Highland ongoing IRS Audit it would not be reasonable or reliable to opine on any economic damages to Mr. Daugherty. Our analysis, conclusions and opinions are based on the data and information that was available as of the date of this report. We reserve the right to revise the opinions, assumptions and calculations set forth herein upon consideration of the reports of any other testifying expert, the testimony of or new documents produced by any witness, any information or documents that any testifying expert produces or upon which he or she relies, and other material that may be presented to me prior to or at the time of trial that we may properly consider under the governing rules or guidelines set by the Court.

Dated: February 13, 2026

By: T.J. Liles-Tims

By: Gary McIntosh CPA, CFF

[41] Daugherty ROGs00003740; PDADV_004856; HUNTON_001105–HUNTON_001108.

VIII. Appendices

T.J. Liles-Tims, MBA, CVA, CFE, MAFF

Partner – Forensics, Litigation, and Valuation Services

T. J. Liles-Tims is a Partner in Weaver's Forensics, Litigation, and Valuation Services practice and serves as the Firm's Leader for Valuation Disputes and Family Law service lines. His expertise lies in business valuations, fraud examination, and quantification of commercial damages. T. J. has more than 20 years of experience in business valuations, fraud examination, and the quantification of commercial and personal damages. T. J. regularly conducts business valuations for a variety of industries and for matters involving litigation, estate and gift tax, and ownership transfers. Experience in financial forensics includes litigation, detection and quantification of various forms of financial fraud, divorce-related matters, embezzlement, criminal tax fraud, and the quantification of commercial damages. Testimony experience includes cases in federal and state court, as well as arbitrations.

T. J. previously served as a Co-Founding Partner at BVFF Partners, LLC which was a business valuation and financial forensics advisory firm. Prior to BVFF Partners, T. J. managed his own firm LilesTims, Inc. where he also conducted business valuations and financial forensics. T. J. received a B.B.A and an M.B.A in Finance from the University of Central Oklahoma, where his field of graduate study was finance. Additionally, he has earned his designation as a Certified Valuation Analyst (CVA), Certified Fraud Examiner (CFE), and Master Analyst in Financial Forensics (MAFF). He is an Instructor, Contributor, and Author for the National Association of Certified Valuators and Analysts (NACVA) in the areas of business valuation, litigation consulting, and financial forensics and was awarded NACVA's "2020 Circle of Light Award," "2018/2019 Instructor of the Year," and former Chair of NACVA's "Business Valuation Credentialing Board," and currently serves as Chair for the NACVA "Leadership Initiatives Board." He has taught numerous continuing education classes in the areas of business valuations and financial forensics.

Professional History

October 2023 to Present: Partner, Weaver & Tidwell, L.L.P.

- Public accounting firm providing assurance, tax, and advisory services.

July 2015 to October 2023: Co-Founding Partner, BVFF Partners, L.L.C.

- Acquired by Weaver & Tidwell, L.L.P. as of October 2023
- Professional services firm specializing in valuation, dispute advisory and forensics.

August 2007 to October 2023: President, LilesTims, Inc.

- Owner of BVFF Partners, LLC.
- Professional services firm specializing in valuation, dispute advisory and forensics.

Education and Certifications

- Certified Fraud Examiner (CFE) – Association of Certified Fraud Examiners
- Certified Valuation Analyst (CVA) – National Association of Certified Valuators and Analysts
- Master Analyst in Financial Forensics (MAFF)
- Master (M.B.A.) and Bachelor (B.B.A.) of Business Administration in finance from the University of Central Oklahoma

Representative Presentations and Publications

- "NACVA: Foundations of Financial Forensics" – (Co-Author) Training curriculum for NACVA's Master Analyst in Financial Forensics (MAFF) designation.

- "NACVA: Special Purpose Valuations – Mergers and Acquisitions, Forensic Accounting, Litigation" – (Co-Author) Training materials for Certified Valuation Analyst training center and exam.
- "NACVA & IBA: Business Valuation Certification and Training Center On-Demand Video Series" – (Co-Author)

Professional Seminars Taught

- *"M&A: Top Disputes and When They Arise."* National Business Institute. August 2024
- *"Understanding Market Forces in Value Appreciation for Marital Dissolution."* Oklahoma County Bar Association. March 2024.
- *"Building the Clock v. Telling the Time: Drafting an Effective Litigation Report."* National Association of Certified Valuators and Analysts Financial Forensics 2022 Super Conference. December 2022.
- *"A Sock & A Sock or A Sock & A Shoe? How Not to be Hidebound in Valuation and Financial Forensics."* National Association of Certified Valuators and Analysts Financial Forensics 2022 Super Conference. December 2022.
- *"Valuation and Vows: We Still Have to Play by the Rules."* American Academy of Matrimonial Lawyers – Oklahoma Chapter. October 21, 2022. (Also authored a white paper titled the same)
- *"Valuing Assets in Divorce and Presentation to the Court."* Oklahoma Bar Association – Family Law Section. October 22, 2021.
- *"Beyond the Numbers: Using Psychology Hacks to Influence Outcomes."* National Association Certified Valuators and Analysts' Financial Forensics 2020 Super Conference. November 17, 2020.
- *"Foundations of Financial Forensics"* Five-day certification training for Master Analyst in Financial Forensics. Taught multiple times annually since 2016
- *"Commercial Damages and Lost Profits: An Overview for Attorneys & Judges" An* OBA/CLE Webcast, September 2016
- *"Business Valuation: What an Attorney Needs to Know"* National Business Institute CLE, July 2016
- *"Commercial Damages and Lost Profits"* Master Analyst in Financial Forensics certification training for the National Association of Certified Valuators and Analysts. October 2014; February 2015; October 2015; May 2016
- *"Art with Numbers: Appealing to the Triers of Fact"* National Association of Certified Valuators and Analysts' Financial Forensics Conference. October 20, 2015
- *"Business Valuations: Reports, Standards, and Analysis"* Risk Management Association – Oklahoma Chapter. February 26, 2015
- *"The Expert's Role in Financial Forensics: Real-World Guidance for Managing the Engagement"* continuing education presentation for the National Association of Certified Valuators and Analysts. June 25, 2015.
- *"Navigating Expert Deposition and Trial Testimony"* continuing education presentation for the National Association of Certified Valuators and Analysts. June 26, 2015.
- *"Business Valuation for Attorneys"* continuing education presentation for the Oklahoma Bar Association, November 20-21, 2014.
- *"Valuing Family Limited Partnerships"* continuing education and workshop for the National Association of Certified Valuators and Analysts. August 12th & 13th, 2014
- *"Business Valuations in Litigation Matters"* continuing education presentation for the Oklahoma Bar Association. May 28, 2014.
- *"Examining the Business Valuation Report"* continuing education presentation for the Oklahoma Bar Association. March 27, 2013.

Expert Report / Testimony

Fix My Phones Plus Franchise, LLC v. Fix My Phone 63rd & May, LLC, 5924, LLC, and Damon Wooten
American Arbitration Association, Case No. 01-23-0003-9884 – Deposition Testimony on June 16, 2025
Provided testimony as to the Respondents' lost profits and lost business value with respect to a retail cellular repair service franchise.

Drannon Moss, Atlas Termite and Pest Controls, Inc, and Atlas Termite and Pest Controls, LLC v. Jimmie Moss and Jacquelyn Sue Moss
Cleveland County, Oklahoma Case No. CJ-2022-730 – Deposition Testimony on April 4, 2025 and Trial Testimony, April 9, 2025
Provided testimony as to the fair market value of a termite and pest control company. Additionally, provided testimony as to the misappropriation of company assets and the additional benefits paid to the Defendant above and beyond those paid to the Plaintiff.

Rebecca Ellithorp v. Brian Ellithorp
Oklahoma County, Oklahoma Case No. FD-2023-1057 – Deposition Testimony on April 2, 2025 and Trial Testimony, April 7, 2025
Provided testimony as to the fair market value of a manufacturer of gas separators within the oil and gas industry, as well as an oil and gas consulting firm.

Proposed Rules Change - Treasury Department Circular No. 230
Internal Revenue Service, Washington D.C. Testimony, March 6, 2025
Provided testimony to IRS and Department of Treasury Senior Counsel, on behalf of the NACVA Leadership Initiatives Board and the collective NACVA membership, in regards to the proposed changes to Circular 230 as it relates to business valuation/appraisers and the regulations governing practice before the Internal Revenue Service.

Jacob Brown v. Anna Connor Brown
Oklahoma County, Oklahoma Case No. FD-2023-1769. Testimony, December 6, 2024.
Provided expert testimony as to the fair market value of a veterinarian clinic.

Derek Allen Wilson v. Stevie Lynell Wilson
Cleveland County, Oklahoma Case No. FD-2023-53. Testimony, July 10, 2024.
Provided expert testimony as to the fair market value of a commercial real estate agency.

Maria Lopez-Almarez, et. al. v. Evelyn Lopez, et. al..
U. S District Court: Western District of Oklahoma. Case No. CIV-22-501-HE. Deposition, April 16, 2024.
Provided rebuttal testimony to the Plaintiff's expert report (business valuation) for four (4) different Mexican food restaurants. Additionally, provided testimony regarding the Plaintiff's expert reports claims to economic damages.

Mira Suvedi v. Kiriti Suvedi.
Oklahoma County, Oklahoma Case No. FD-2021-3174. Testimony, March 25, 2024.
Provided expert testimony as to the fair market value of seven (7) different businesses consisting of construction, land development, residential duplexes, fast food franchises, and trading post/C-Store.

Lacy J. Greene v. Charles Greene.
Logan County, Oklahoma Case No. FD-2022-210. Testimony, February 20, 2024.
Provided expert testimony as to the marital versus separate property of Petitioner's retirement funds, as well as restricted and unrestricted stock options.

Jeffrey R. Hartwig v. Rebecca A. Hartwig.
Oklahoma County, Oklahoma Case No. FD-2023-254. Testimony, January 17 & 18, 2024.
Provided expert testimony to the fair market value of Wife's Staffing Agency and Husband's Landman business. Additionally, provided opinions regarding *Thielenhaus* calculations and personal goodwill issues for both businesses.

Keating Poteet v. Vicki Poteet.
Woodward County, Oklahoma Case No. FD-2021-00082. Deposition Testimony, December 15, 2023.
Provided expert testimony as to asset tracing for funds brought into the marriage versus those collected during the marriage. Also, provided opinions regarding *Thielenhaus* calculations.

T. Sage v. K. Sage.
Tulsa County, Oklahoma Case No. FD-2020-1720. Testimony, November 6 & 9, 2023.
Provided expert testimony as to the fair market value of the Respondent's multiple businesses including a lawn and landscape company, pest control company, and recreational land holding company.

Amy Lorraine Chen v. Ting Kon Chen.
Oklahoma County, Oklahoma Case No. FD-2019-3403. Testimony, October 27, 2023.
Provided testimony as to the fair market value of a medical anesthesiology practice and additional testimony regarding the 'disposable' income of the parties for purposes of the Court's determination of alimony.

Heidi Vaughn v. Clay Vaughn.
McClain County, Oklahoma Case No. FD-2022-11. Testimony, July 24, 2023.
Provided testimony regarding the fair market value of the Respondent's carpentry trim business and rebuttal testimony to the Petitioner's experts business valuation "review" and its lack of adherence to professional standards.

Brian K. Cook v. Sarah E. Cook.
Lincoln County, Oklahoma Case No. FD-2020-140. Testimony, April 28, 2023.
Provided testimony as to the appreciation in fair market value of the Petitioner's trucking company and the inability to establish a starting fair market value due to the lack of documentation and data available.

Michael Lyles v. Darlene Lyles.
Oklahoma County, Oklahoma Case No. FD-2020-3025. Testimony, April 24, 2023.
Provided testimony regarding the appreciation in the fair market value of the Petitioner's Section 8(a) information technology company from date of marriage to the date of filing the petition.

Colette Lynn Lesh v. Joel Alvin Lesh.
Love County, Oklahoma Case No. FD-2022-00009. Testimony, February 28, 2023.
Provided testimony as to the accounting of the Petitioner's horse training and breeding facility, as well as the Respondent's horse training facility. Also, provided testimony, based on the Court's questions, as to the preliminary fair market value of the businesses held by the marital estate.

Stacie Nichole Currie v. Jeffrey Don Currie.
Flathead County, Montana Cause No. DR-22-63(D). Testimony, January 12, 2023.
Provided testimony regarding the fair market value of the Respondent's insurance agency and bail bonds company.

Gina Leigh Heald v. Ronald Erick Heald.
Oklahoma County, Oklahoma Case No. FD-2019-2089. Testimony, April 13, 2022; April 14, 2022; April 19, 2022; and April 26, 2022.
Provided testimony as to the fair market value of the Respondent's metal fabrication business, as well as the Respondent's tornado shelter manufacturing business.

Brenda Sasnett Cummings v. Luther Gregory Cummings.
Oklahoma County, Oklahoma Case No. FD-2009-855. Testimony, November 5, 2021.
Provided testimony of the present value of the Respondent's pension benefits and rebuttal testimony as to the appropriate interest factor related to the pension benefits.

Mark Sheets v. Sarah Sheets.
Oklahoma County, Oklahoma Case No. FD-2018-3112. Testimony, December 9, 2020.
Provided testimony of the fair market value of an ownership interest in the Claimant's accounting firm and the impact of a buy-sell agreement on the firm's fair market value.

Amy L. Darter v. James M. Darter.
Oklahoma County, Oklahoma Case No. FD-2018-3642. Testimony, September 28 & 29, 2020
Provided testimony regarding the fair market value, primarily, of the Petitioner's medical practice and associated personal goodwill and the Respondent's legal and financial protection business for firearm owners. The testimony included a fair market value opinion of a real estate holding company, as well.

Citizens State Bank and American Southwest Mortgage Funding Corp v. Heard, McElroy & Vestal.
United States District Court for the Western District of Oklahoma, Case No. CIV-2018-360-G. Deposition, July 15, 2020.
Provided deposition testimony regarding the commercial damages sustained by the Plaintiff due to the alleged improper audits performed by the Defendant.

Randi Michele Wilkins v. Jeremy Dale Wilkins.
Murray County, Oklahoma Case No. FD-2018-00032. Deposition, April 8, 2020.
Provided deposition testimony regarding the fair market value of the Respondent's lawn and landscaping business.

Clayton Bruner v. Hillery Bruner.
Custer County, Oklahoma Case No. FD-2019-00077. Testimony, March 4, 2020.
Provided testimony regarding the fair market value of the Claimant's law practice and the personal goodwill of the Claimant, as well as rebuttal testimony as to the available income of the marital estate for the Court's calculation of permanent alimony.

State of Oklahoma, et. al. v. Wildcat BDP, Inc., et. al.
Pottawatomie County, Oklahoma Case No. CJ-2015-124. Testimony, January 30, 2020.
Provided rebuttal testimony as to the fair market value of the Defendant's convenience store for purposes of eminent domain.

Paul Snowden, et. al. v. Stellar Construction, Inc., et. al.
Cleveland County, Oklahoma Case No. CJ-2016-255. Testimony, November 19, 2019. Deposition, January 14, 2019.
Provided trial and deposition testimony regarding a forensic accounting of the cost and billings of a new home construction, specifically, the alleged misrepresentation of the amounts reported to the Petitioner during, and throughout, the build.

Myers, et. al. v. Myers, et. al.
Oklahoma County, Oklahoma Case No. CJ-2015-189. Testimony, February 6, 2019, and Deposition, November 9, 2017.
Provided deposition and trial testimony regarding the alleged mismanagement of assets held in trust by the trustee and the trustee's advisors.

McKayla Leann Doty v. Patrick Cowan, et. al.
Beckham County Case No. CJ-2016-00028. Testimony, April 9, 2018
Provided testimony as to the proper documents needed to determine a trust accounting. More specifically, what documents and reports would be necessary to conduct a forensic accounting for purposes of determining the source and use of funds held in trust.

Carla Denita Nievar v. Steven Welsey Nievar.
Cleveland County Case No. FD-2017-884. Testimony, January 22 & 23, 2018
Provided testimony as to the Respondent's needs for temporary alimony and the profitability of the Respondent's start-up heating and air conditioning business. Additionally, provided an opinion of the fair market value of the heating and air conditioning business owned during the marriage.

John Cockerell, Jr. v. Howell Amirald Gee, IV, et. al.
Oklahoma County Case No. CJ-2017-4469. Testimony, August 21, 2017
Provided testimony on behalf of the Defendant for allegations of hiding assets. The analysis included a forensic accounting for the source of funds and, more specifically, the use of those funds.

Audrey Brown v. Steve Brown.
Cleveland County Case No. FD-2016-1154. Testimony, March 15, 2018, and Deposition, July 31, 2017
Provided both trial and deposition testimony as to the fair market value of the Respondent's engineering company, as well as the value of the patents owned by the Respondent.

Jana D. Eldridge v. Kent Eldridge.
Oklahoma County Case No. FD-2016-420. Testimony, August 23, 2016
Provided testimony based on a needs analysis of the Petitioner for purposes of the Court determining alimony. Also provided consulting opinions to Petitioner's counsel as to the fair market value of the Respondent's law practice, as well as Respondent's personal goodwill.

Scott D. Sachs v. Chesapeake Energy Corporation.
American Arbitration Association. Case No. 01-15-0002-8356. Testimony, October 26, 2015
Provided deposition testimony regarding the amount of employment benefits due to the Claimant. The employment benefits included wages, stock options, and other ancillary benefits.

Bryan Butler v. Tanya L. O'Connell and O'Connell's Roofing, LLC.
Cleveland County Docket No. CJ-2011-961. Testimony, June 29, 2015
Provided testimony on the fair market value of the Respondent's roofing company.

United States of America v. Teddy Dryden Mitchell.
U.S. District Court: Western District of Oklahoma, Case No. CR – 12-00216-R. Testimony, January 17, 2014.
Provided testimony regarding the allegations of the Defendant's lack of reporting income in certain businesses of the Defendant. This testimony included a forensic accounting to trace funds from the sources to its use.

Glynis Suzanne Andrews Koester v. Glenn Alan Koester.
Oklahoma County Docket No. FD-2010-1523. Testimony, June 18, 2012
Provided testimony regarding the fair market value of the Respondent's dermatology practice and offered additional testimony as to the personal goodwill of the Respondent.

Lawanda Padgett v. Capital West Securities, Inc.
FINRA Arbitration, File No. 09-02953. Testimony, February 2, 2011.
Provided testimony to opine on the losses sustained in a stock portfolio. The analysis included calculating the net out of pocket losses and the performance of a stock portfolio invested in a model portfolio.

Gary D McIntosh, CPA, CFF

Managing Director, Forensics and Litigation Services

Retired Partner, Of Counsel –Tax Services

Gary D McIntosh, CPA, CFF, is a Managing Director in Weaver's Forensics and Litigation Services practice. Gary has 54 plus years of public accounting experience, and has been assisting clients with the financial aspects of disputes, investigations and analysis, and turnaround and restructuring services as a part of his practice for over 40 years. He has served as an expert witness in state and federal court, including bankruptcy court, as well as in arbitration. Gary's experience includes developing and analyzing damage claims, conducting fraud and financial forensics investigations, assisting businesses in the analysis of governance, restructure, and turnaround needs, valuing business and intangible assets, evaluating complex data sets resulting from allegations of breach of contract, financial misrepresentation, fraud, director, officer and employee misconduct, misuse of corporate or partnership funds, breach of fiduciary duty, compliance with partnership agreements or corporate bylaws and operating agreements, assessing operational deficiencies and ways to efficiently operate the business in times of economic downturns, or business distress, family law division of property, tracing of assets, community and separate property including claims for reimbursement, including the tax impact of transactions in various family law, partnership, corporate and individual settings, estate, gift and probate disputes, and other related disputes. His clients have included law firms, general counsels, Boards of Directors, stockholders, and partners spanning construction, real estate investment and development, high-tech, restaurant and hospitality, manufacturing and distribution, service industry, oil and gas operators, energy, mortgage lending, title companies, professional services, automobile dealerships, estates and trusts, and related industries, among others.

Gary previously served as a Partner in the firm, prior to the required retirement date, as well as leading his own firm and two other large local/regional firms in the Austin area during his career. He graduated from the University of Texas at Austin in 1970 with a Bachelor of Business Administration degree in Accounting, and became a CPA in February 1972. He became certified in Financial Forensics by the American Institute of Certified Public Accountants (AICPA) in 2009, the first year such a certification became recognized. He is past Chairman of the Texas Society of Certified Public Accountants, past member of the 23 member Board of Directors of the AICPA (now over 400,000 members) for 3 years, was a member of the Uniform Accountancy Act Committee of the AICPA and NASBA for several years including its Co-Chair for 2 years, and has served on numerous committees of the Texas State Board of Accountancy (TSBPA), including as a member or advisory member of the TSBPA Rules Committee for over 25 years.

See attached detail resume for professional work history and community service.

General Commercial Contract Disputes, Family Law Disputes and Probate Disputes

Embezzlement of Assets Using False Contractual Documentation and Fictitious Invoices

Engaged by plaintiff counsel for forensics examination and report regarding $8.5 million embezzlement scheme for factored invoices, using false documentation and fictitious invoices; obtained settlement with various parties and conviction of financial officer who masterminded the scheme.

Probate Dispute Among Co-Executors of Estate With Assets in Multiple States

Engaged by counsel for one Co-Executor to determine validity of tax filings in estate and negotiate settlement of issues for asset distributions

Partnership Contract Dispute-Real Estate Entities

Real estate partnership disputes-Engaged by counsel to negotiate settlements with parties and dissolution of partnership including substantial tax impact of transactions

Testifying Expert in Probate Disputes Among Beneficiaries and Prior Executor and Agents

Engaged by Court in Probate Court disputes. Prepared multiple reports regarding forensics examination of the Estate and entities owned by the Estate, and prepared the estate and gift tax returns for the Estate and Decedent. Represented the multi-million dollar estate in the examination of the returns by the Estate and Gift Division Agent Attorney with a resolution of a very minimal amount of additional taxes. Testified multiple times from 2014 to 2021 relative to the forensics examination and the estate and gift tax issues. Provided information and documentation for claims against agents of the estate and the decedent.

Testifying Expert Regarding Mismanagement of Estate and Estate Assets

Engaged by plaintiff counsel in multi-year litigation relative to mismanagement claims against executors and other parties. Prepared reports and testified multiple times relative to tax reporting issues, failure to properly account for assets, failure to distribute to beneficiaries. Assistance with settlement of estate with substantial real estate assets and obtaining settlement of claims producing over $35 million to clients.

Testifying Expert Regarding Real Estate and Contractual Disputes

Engaged by counsel in dispute and forensics examination relative to various contractual disputes regarding leases of commercial building and related matters. Conducted examination and prepared report relative to the disputes, including commitments, contracts, remodeling of structures and costs relative thereto. Case settled during final deposition stage shortly before trial.

Consulting Expert Regarding Estate Disposition

Engaged by plaintiff counsel to assist in protecting assets of spouse in partnership and estate dispute regarding wealthy Bexar County decedent

Consulting Expert Regarding IRS Special Agent Investigation

Engaged by counsel for third party witness regarding IRS Special Agent investigation into potentially illegal structuring of partnership entities to avoid self-employment and payroll taxes

Testifying Expert Regarding Retirement Plan Structure and Income Tax Reporting

Engaged by defense counsel regarding structure of retirement plan, tax effects of the plan's implementation on the parties, subsequent IRS examination. Testified as to these matters, and client won the verdict of the jury

Testifying Expert Regarding Tax Issues Relative to US Bankruptcy Court Case

Engaged by plaintiff counsel to analyze tax issues relative to substantial claims in excess of $58 million judgment in US Bankruptcy Court in Connecticut. Prepared analysis of various tax issues and related issues regarding accounting for assets of marital estate, partnerships, corporations, trusts and related entities. Attended depositions of other experts relative to these issues.

Testifying Expert Regarding Probate Issues, Related Tax Issues and Distribution of Assets of Estates

Engaged by counsel for two of three beneficiaries in dispute over estate assets, and tax reporting for such estates. Both spouse died in the same year. Testified relative to the issues and the forensics examination, including alternative tax reporting alternatives to minimize impact of estate and gift tax filings. Successfully achieved transfer of over $35 million in assets without any estate tax to either estate. Assisted in negotiations to settle disputes among beneficiaries, and achieve distribution of the assets in accordance with such settlement.

Consulting Expert Regarding Partnership Dispute and Defalcations

Engaged by counsel re partnership agreements, forensic examination for potential defalcations and failure to comply with partnership agreement. Helped to negotiate settlement of the disputes

Consulting Expert Regarding Embezzlement of Cash Collections in Food Manufacturing Operation

Engaged by plaintiff counsel in forensics examination of embezzlement case relative to theft of cash from business operations. Issued extensive report to counsel and submitted to District Attorney.

Consulting Expert Regarding IRS Reporting Issues

Engaged by defense counsel regarding IRS investigation relative to potential unreported income from medical labs and testing facilities. Negotiated settlement with IRS relative to the findings of the forensics examination.

Consulting Expert Regarding Settlement of Estate

Engaged by counsel for a beneficiary of estate relative to dispute among the beneficiaries and preparation of analysis of assets and liabilities for settlement of estate.

Testifying Expert in Family Law Dispute

Represented spouse in family law dispute regarding assets from sale of business and division of said assets. Client counsel died during the case. Brought new attorney up to speed and helped to negotiate settlement of case and ensure assets were distributed in accordance with the decree and property settlement.

Consulting Expert in Medical Practice Dissolution Dispute

Engaged by counsel for a physician partner in a medical practice that was dissolving. Prepared analysis of capital accounts for settlement of dispute re buy-sell agreements and resolution of financial aspects of the agreements.

Testifying Expert in Family Law Dispute

Engaged by counsel for spouse in family law dispute over hiding of assets by spouse. Forensics examination conducted, report issued. Deposition and court testimony regarding the attempts at hiding assets, the property owned by the marital estate, and proposed distribution of assets. Findings were upheld by the Court in the distribution of assets mandated in the decree.

Testifying Expert in Family Law Dispute

Represented spouse in family law dispute regarding separate and community property issues, division of assets; prepared valuation of auto dealerships; prepared report relative to medical practice assets of physician spouse, and helped to negotiate settlement of the multiple assets and multiple businesses of the parties.

Testifying Expert in Probate Dispute

Engaged by counsel relative to probate dispute and related IRS reporting issues. Issued report analyzing findings and assisted in resolution and settlement of case.

Consulting Expert in Family Law Dispute

Engaged by counsel regarding oil and gas interests owned by client. Prepared analysis of the assets and tracing of separate versus community property. Assisted in negotiation of settlement of division of assets.

Testifying Expert in Defalcations by Agent of Business

Engaged by plaintiff counsel relative to analyzing and preparing report relative defalcations by manager of properties and funds of plaintiff, and failure of bank personnel to prevent the defalcations. Issued report and assisted in resolution of the case after deposition testimony by other parties to the case, which was resolved in favor of plaintiff.

Testifying Expert in Business Dispute Regarding Ownership of Assets and Defalcations

Engaged by counsel to prepare forensics analysis regarding assets of restaurant and related real estate, including defalcations by officer of the business. Analyzed financial documents re dispute as to ownership of the business and prepared report relative thereto. Assisted in negotiating settlement re buyout of the officer and offsetting those claims with the proof of defalcations and diversions of assets by the officer.

Consulting Expert Regarding Shareholder Dispute Relative to Contract Compliance

Engaged by counsel in shareholder dispute to prepare analysis of contract requirements and generate report relative to distributions required by agreements versus distributions actually made.

Consulting Expert Regarding Insurance Contract Terms and Lack of Compliance

Engaged by plaintiff counsel to analyzed proposals for sale of insurance policy and represented terms and projections versus actual terms and policy issued. Prepared analysis and report on issues, leading to eventual settlement with insurance agent, broker and insurance company.

Consulting Expert Regarding Lost Profits and Failure to Comply With Contract Terms

Engaged by counsel in dispute regarding compliance with contractual terms regarding sale of business interests and failure to pay party to the contract according to the terms of the contract. Generated settlement of claims substantially in excess of original payment by potential defendant.

Consulting Expert Regarding Potential Sale of Oil and Gas Operating Entity

Engaged by counsel to assist in potential sale of entity providing services in oil and gas industry. Prepared analysis of operations and assets and assisted in negotiations relative to the sale of the business.

Testifying Expert Regarding IRS Examination Relative to Purported Unreported Income of Retail Entity

Engaged by defense counsel relative to intensive investigation into purported unreported income by a retail entity relative to its cash collections and Paypal accounts. Prepared analysis, met with Internal Revenue Service on multiple occasions and provided documentation allowing counsel to settle case with the Internal Revenue Service.

Consulting Expert Regarding Contract Disputes for Art Museum

Engaged to prepare analysis of transactions and resolution of contract disputes. Assisted in negotiation settlement of disputed amounts.

Consulting Expert Regarding Contract Disputes for Construction of Commercial Building

Engaged by counsel regarding contract dispute in real estate transaction relative to building construction. Prepared analysis of costs and documented claims of client regarding expenditures in accordance with terms of contract.

Testifying Expert in Probate Court Relative to Substantial Contractual Disputes

Engaged by the District Court, in a case transferred to the Probate Court, regarding substantial disputes relative to terms of agreements, disposition of assets, accounting for assets, distributions to partners and related transactions. Prepared analysis and testified relative to findings. Court decision relative to the findings of the forensics analysis upheld by appellate court.

Testifying Expert in Minority Shareholder Oppression

Engaged by counsel for minority shareholder in dispute relative to buyout terms. Issued report and testified in deposition relative to defendant attempts to oppress and manipulate terms to minority shareholder.

<u>Other Cases Not Listed</u>

Have testified over many years in at least forty family law cases, relative to proposed equitable distribution of assets and liabilities, valuations of assets, tax impact on settlements, alimony, child support calculations and related matters.

Have participated in many analyses and structures of sales or acquisitions of businesses, including followup analyses of compliance with contracts, resulting in disputes to be mediated or arbitrated.

Have analyzed lost profits, damages claims and related matters for several disputes relative to contract disputes where I was not hired by counsel, but by an entity or person party to the dispute.

Expert Witness Testimony in Prior Four Years

In the Matter of The Estate of Roy Orey Lindsay, Sr, Deceased

Civil Action Cause No 13-12-20542 CVR, District Court, Reeves Co, Texas, 143rd Judicial District, Sitting in Matters of Probate

Engaged by the Estate, under specific Order of the Court. Provided reports and testimony relative to analysis, tax issues, forensics examination of estate assets and liabilities and tracing of assets, some of which were transferred outside the estate. Testified as to tax liabilities and claims of estate against outside parties.

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Eugene L Watkins, Jr vs Anthony R Bertucci, American Affordable Homes, LP and American Affordable Homes & Properties, Inc

Probate Action Cause No C-1-PB-17-00937, related to Cause No C-1-PB-000577, Probate Court One, Travis County, Texas

Provided deposition testimony and testimony in hearings regarding substantial disputes relative to terms of agreements, disposition of assets, accounting for assets, distributions to partners and related transactions.

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Daniel Measurement and Control, Inc and Micro Motion, Inc vs Angus Measurement Services, LP and Angus Operations, LLC

Civil Action Cause No B-18-01-0086 CV, in the District Court of Ector County, Texas, 161st Judicial District

Case settled. Provided deposition testimony as to claims of plaintiffs for lost profits and breach of contract in contractual disputes among the parties.

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In the Matter of the Marriage of Tabatha Brown and Cameron Brown, et al

Family Law Matter, Cause # D-1-FM-22-000776, in the 261st Judicial District of Travis County, Texas

Testified as to federal income tax liability and associated interest and penalties, through date of divorce; testified as to tax-effected present values of retirement benefits

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In Re: Joseph Paul Beninati, Debtor
United States Bankruptcy Court, Western District of Texas, Chapter 7, Case No 20-10096-TMD

Provided deposition testimony regarding substantial disputes relative to terms of agreements, US

federal and state income taxes relative to the debtor and related entities, trusts, coporations, LLCs and partnerships, taxability of certain transactions, conflicting information on tax returns and related matters

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In the Matter of the Marriage of Tamara Marie Rezler and Steven Bryan Warner, the 353rd Judicial District Court of Travis County, Texas; Cause No D-1-FM 23-003516

Testified in deposition and court proceedings regarding separate and community property characterization and tracing issues, income tax issues and related property settlement discussions

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In Re: J Craig Walter, individually and as beneficiary of the Walter Bypass Trust, the Walter Marital Trust, the J Craig Walter Children's Trust and the J Craig Walter Children's Exempt Trust, Plaintiff v J Brian Walter, individually, and as Trustee of the Walter Bypass Trust, the Walter Marital Trust, the J Brian Walter Trust; J Blake Walter, individually and as Trustee of the J Craig Walter Children's Trust. the J Craig Walter Children's Exempt Trust, and the J Blake Walter Trust; High Tines Ranch LP and JVW, Inc, Defendants; Cause No DC-22-04675 in the District Court, 192nd Judicial District of Dallas County, Texas

Testified in court proceedings regarding the accountings prepared of the trusts on behalf of the Trustees and various tax issues relative to the trusts, their principal and income as reported in said accountings

BIBLIOGRAPHY RELATED TO CASE

1. **Vernon's Texas Statutes and Codes Annotated, Subtitle B Texas Trust Code, Chapter 113 Administration, Subchapter E, Accounting by Trustee**
   a. **Property Code Section 113.151 Demand for Accounting**
   b. **Property Code Section 113.152 Contents of Accounting**
   c. **Property Code Section 114 Liabilities, Rights and Remedies of Trustees, Beneficiaries and Third Persons**
   d. **Property Code Section 116 Uniform Principal and Income Act**
   e. **Property Code Section 117 Uniform Prudent Investor Act**
2. **Vernon's Texas Statutes and Codes Annotated, Estates Code, Title 2, Subtitle I. Independent Administration**
   a. **Chapter 351 Powers and Duties of Personal Representative**
   b. **Chapter 404.001 Accounting**

Appendix B

Documents Reviewed

Bates Start	Bates End	Document
N/A	N/A	2024 Tax Return Robert & Brandi Ylla.pdf
N/A	N/A	Client's Financial Docs 2.18.25.pdf
N/A	N/A	Daugherty Settlement Agreement.pdf
N/A	N/A	Doc No. 1 - Adv. Complaint.pdf
N/A	N/A	Doc. No. 1-1 - Adv. Complaint (Exhibit A).pdf
RNY(ATI)_0001	RNY(ATI)_0326	Respondent's ATI docs- Bates nos. RNY(ATI)_0001-326 ATI Docs (02099851x7A25A).PDF
000637	000726	2020.11.18 - Hearing Transcript.pdf
N/A	N/A	2022.05.04 - Discussion with Jim Seery.pdf
N/A	N/A	2025.09.04 - Hearing Transcript - Motion to Dismiss.pdf
N/A	N/A	RE Daugherty v. HCMLP.eml
Daugherty ROGs00003729	Daugherty ROGs00003729	Highland 2008 - Form 4605-A Daugherty ROGs00003729.pdf
HUNTON_000004	HUNTON_000008	HUNTON_000004.pdf
HUNTON_001131	HUNTON_001162	HUNTON_001131.pdf
HUNTON_001163	HUNTON_001169	HUNTON_001163.pdf
HUNTON_001170	HUNTON_001181	HUNTON_001170.pdf
PDADV_010244	PDADV_010261	PDADV_010244.pdf
PDADV_010262	PDADV_010267	PDADV_010262.pdf
PDADV_010268	PDADV_010339	PDADV_010268.pdf
PDADV_010346	PDADV_010346	PDADV_010346.pdf
PDADV_010520	PDADV_010520	PDADV_010520 - 2008 Comp statement dated Feb 09.pdf
PDADV_011013	PDADV_011017	PDADV_011013.pdf
N/A	N/A	Tab 01--Dkt 39 Answer to HCMLPs complaint and original counterclaim.pdf
Daugherty ROGs00016700	Daugherty ROGs00016702	Tab 02--Email from JAM to Uebler 5.5.2022-Daugherty ROGs00016700-5.5.2022.pdf
Daugherty ROGs00022527	Daugherty ROGs00022528	Tab 03--Email from Seery to Daugherty 10.19.2022 Daugherty ROGs00022527.pdf
N/A	N/A	Tab 04--Email from JAM to Bobo 5.24.2024.pdf
PDADV_010182	PDADV_010210	Tab 05--Settlement Agreement PDADV_010182.pdf
N/A	N/A	Tab 06--2025.12.12 Daugherty's Amended Responses to Highland's RFA.pdf
N/A	N/A	Tab 07--2025.12.12 Daugherty's Amended Resp to Highland's Interr.pdf
PDADV_004267	PDADV_004449	Tab 08--2nd A&R LP Agreement PDADV_004267.pdf
DAUGHERTY ROGS01407735	DAUGHERTY ROGS01407742	Tab 09--First Amend to 2nd Amend LP Agmt DAUGHERTY ROGS01407735.pdf
DAUGHERTY ROGS01407743	DAUGHERTY ROGS01407749	Tab 10--Second Amend to 2nd Amend LP Agmt DAUGHERTY ROGS01407743.pdf
DAUGHERTY ROGS00336187	DAUGHERTY ROGS00336201	Tab 11--DAUGHERTY ROGS00336187-Amend Empl Agmt.pdf
PDADV_000019	PDADV_000019	Tab 12--PDADV_000019 - Resignation 2011.pdf
PDADV_010520	PDADV_010520	Tab 13--PDADV_010520 - 2008 Comp statement dated Feb 09.pdf
PDADV_004224	PDADV_004225	Tab 14--PDADV_004224 - JD and PD email exchange 9-27-11.pdf
N/A	N/A	Tab 15--PN-0007_PATRICK DAUGHERTY - FINAL 2008 K1.pdf
Daugherty ROGs00003729	Daugherty ROGs00003729	Tab 16--Highland 2008 - Form 4605-A Daugherty ROGs00003729.pdf
Daugherty ROGs00003740	Daugherty ROGs00003740	Tab 17--2.3.18 Letter from Collins to Daugherty Daugherty ROGs00003740.pdf
Daugherty ROGs00003730	Daugherty ROGs00003733	Tab 18-- Form 886-Z - Daugherty ROGs00003730.pdf
Daugherty ROGs00003734	Daugherty ROGs00003736	Tab 19-- Form 870-PT Daugherty ROGs00003734.pdf
PDADV_004687	PDADV_004687	Tab 20-- PDADV_004687 - Collins 7.2018 email to PD re 60 day lr and appeal.pdf
PDADV_004856	PDADV_004856	Tab 21-PDADV_004856 - Collins Dec 2019 email to PD re appeal of adjustments.pdf
HUNTON_001105	HUNTON_001108	Tab 22--2.28.25 Ltr to IRS Appeals HUNTON_001105.pdf
PDADV_004971	PDADV_004971	PDADV_004971.pdf

PD - Exhibit 83 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 84 Slipsheet

(Subject to Motion to Seal and Protective Order)

PD - Exhibit 85 Slipsheet

(Subject to Motion to Seal and Protective Order)

From: James Seery <jpseeryjr@gmail.com>
To: "John A. Morris" <jmorris@pszjlaw.com>, Jeff Pomerantz <jpomerantz@pszjlaw.com>, Marc Kirschner <marc.kirschner@teneo.com>
Subject: FW: SAS Platform - Sentinel - Patton - Nimitz - Dondero - Ellington connection [quite the web] - Part 1
Date: Tue, 13 Jul 2021 14:43:56 +0000
Importance: Normal

[redacted]

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Date: Sunday, June 27, 2021 at 4:18 PM
To: James Seery <jpseeryjr@gmail.com>
Subject: SAS Platform - Sentinel - Patton - Nimitz - Dondero - Ellington connection [quite the web] - Part 1

FYI - I am resending this email. Given the testimony last week, I believe there is additional information that Highland should consider before agreeing to any injunction. Importantly, Lauren Thedford was a key figure in this cabal and recently left Dondero/Ellington and joined Sixth Street Capital. She should be included on the depositions.

I will expand and send shortly.

Subject: SAS Platform - Sentinel - Patton - Nimitz - Dondero - Ellington connection [quite the web] - Part 1

This is complicated and I will endeavor to send you my analysis in parts to accommodate email file size limitations.

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What is the SAS platform and who is associated with it?

What it is:
SAS was created by Dondero, Ellington, Honis and members of the Highland legal team on January 26, 2012. [Recall that John Honis was once a Partner of the Debtor and is currently the Managing Partner and sole employee of Rand Advisors, Trustee to the Hunter Mountain Trust, and member of the board of NexPoint Advisor Funds and Highland Capital Management Fund Advisor funds]. Though not a lawyer, Honis managed the Highland legal team in 2011 as Michael Colvin, the GC and Chief Compliance officer prior to Ellington, was transitioning out of Highland. In fact, Honis officed next door to Ellington at the time I resigned from Highland in September 2011. I was aware they were working on some secret project that

would be named SAS - "Sword and Shield"- and was created to buy and sell litigation claims, among other things.

Note:
Scott Ellington was much more sure of his partnership interest in the SAS platform during his testimony before Judge Jernigan in the Acis Bankruptcy on February 7, 2018, pg 150, line 1. Compared to his Deposition from February 16, 2021, pg 16, line 20. He also is off 3 years from when it was created - by him.

<u>These are the human beings associated with it:</u>

The SAS platform consisted of the following Highland employees and related parties since inception (I have verified the email address of each person listed):

- James Dondero - Partner of SAS and operated through his sister, Nancy Dondero
- Nancy Dondero - Trustee of the Dugaboy Trust - ndondero@sasmgt.com
- Scott Ellington - Highland GC and Partner of SAS - sellington@sasmgt.com
- Sarah Bell (Goldsmith) - Executive Assistant to Scott Ellington - sbell@sasmgt.com
- Matt Diorio - current Highland employee and personal friend and partner of Scott Ellington - mdiorio@sasmgt.com
- Isaac Leventon - Highland Head Litigation Counsel - ileventon@sasmgt.com
- Lauren Garza - Business Development for SAS and now wife of David Klos - lgarza@sasmgt.com
- Stephanie Vitiello - current Highland Managing Director of Distressed - svitiello@sasmgt.com
- Lauren Thedford - current Highland Associate Legal Counsel - lthedford@sasmgt.com
- Dilip Massand - Managing Director of Middle East and Asia - dmassand@sasmgt.com
- Tabor Pittman - Assistant General Counsel - tpittman@sasmgt.com
- Marsha (Ellington) Maslow - sister of Scott Ellington who performed project management consulting services and worked closely with Dilip Massand.

Many of these people are no longer with Highland but their @sasmgt.com addresses remain operational to this day.

SAS Board of Directors:

- John Cullinane - longtime Cayman director of various CLOs and Cayman businesses affiliated with Highland dating back to at least 2005 (including as Director for Liberty CLO, Valhalla CLO, Aberdeen CLO, Highland CLO Funding, Highland HCF Advisor). Central figure in Cayman entities involved in the Acis transfers. Partner at Summit Management. Ellington testified that he has never spoken with him.
- David Egglishaw - longtime Cayman director of various CLOs and Cayman businesses affiliated with Highland dating back to at least 2005 (including Liberty CLO, and Valhalla CLO). Partner at Summit Management. Ellington testified that he has never spoken with him.

Laura Medley - is not a director of SAS but she is a Director of Highland HCF Advisor for the last 3 years - where Scott Ellington serves as Secretary. Partner at Summit Management.

Note: Recall when Ellington referenced a "John" during his deposition. Cullinane is "John".

Also, recall that testified he had never met the directors of SAS Asset Recovery Ltd despite serving as Secretary of Highland HCF Advisor while John Cullinane and his partner, Laura Medley, served as Directors of that entity as recently as March 20, 2020 (see attached Highland ADV, search Cullinane). We will examine Pollack Ltd and Summit Management in subsequent emails.

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President and Chief Investment Officer

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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.[1]	Chapter 11 Case No. 19-34054-sgj11

SCOTT ELLINGTON'S OBJECTION TO THE REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK DAUGHERTY

Scott Ellington ("***Ellington***") files this objection to the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith*, dated December 8, 2021 (Doc. 3088, the "***Motion***"), and the proposed *Settlement Agreement* related thereto (Doc. 3089-1, the "***Settlement Agreement***"). In support of this objection, Ellington respectfully states as follows:

[1] On August 11, 2021 (the "***Effective Date***"), the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. No. 1808] (the "***Plan***"), filed by Highland Capital Management, L.P. ("***HCMLP***"), became effective. Therefore, all references made herein to HCMLP are to the "Debtor" as debtor in possession prior to the Effective Date or to the debtor as reorganized from and after the Effective Date.

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BACKGROUND

1. On February 2, 2021, prior to confirmation of the Plan, counsel for HCMLP announced they had reached an agreement to settle the claims of Patrick Daugherty ("***Daugherty***"). Counsel for HCMLP then read into the record the following terms of the settlement:

> I am also pleased to let the Court know — breaking news — that this morning we reached an agreement to settle Patrick Daugherty's claims. I would now like to, at the request of Mr. Kathman [counsel to Daugherty], read into the record the Patrick Daugherty settlement.
>
> Under the Patrick Daugherty settlement, Mr. Daugherty will receive a $750,000 cash payment on the effective date. He will receive an $8.25 million general unsecured claim, and he will receive a $2.75 million Class 9 subordinated claim.
>
> The settlement of all claims against the Debtor and its affiliates — and affiliates will be defined in the documents — with the exception of the tax claim against the Debtor, Mr. Dondero, and Mr. Okada — and for the avoidance of doubt, except as I describe below, nothing in the settlement is intended to affect any pending litigation Mr. Daugherty has against Mr. Dondero, Scott Ellington, Isaac Leventon, Marc Katz, Michael Hurst, and Hunton Andrews Kurth.
>
> Mr. Daugherty will release the Debtor and its affiliates and current employees for all claims and causes of action, except for the agreements I identify below, and dismiss all current employees as to pending actions. We believe this only applies to Thomas Surgent and no other employee is implicated.
>
> Mr. Surgent and other employees, including but not limited to David Klos, Frank Waterhouse, Brian Collins, Lucy Bannon, and Matt Diorio, will receive releases similar to the covenant in Paragraph 1D of the Acis settlement agreement, which essentially provided the release would go away if they assisted anyone in pursuing claims against Mr. Daugherty.
>
> Highland will also use material — will use reasonable efforts at no material cost to assist Daugherty in vacating a Texas judgment that was issued against him. We've also looked at a form of the motion and believe we have agreed on the form of the motion.
>
> Highland, its affiliates, and current employees will covenant and agree they will not pursue or seek to enforce the injunction and the Texas judgment against Daugherty.
>
> And lastly, Daugherty will not be able to settle any claims for negligence or other claims that might be subject to indemnification by the Debtor or any successor.

February 2, 2021 Confirmation Hearing Tr. at 15:23-16:25; 17:7-17. Counsel to HCMLP further

stated that the settlement would be subject to a 9019 motion. *Id.* at 15-30.

2. On December 8, 2021 HCMLP filed the Motion with the Settlement Agreement annexed. Although the Settlement Agreement includes the terms announced at the Confirmation Hearing, it also includes two substantive provisions not previously disclosed at the Confirmation Hearing. As discussed below, these two provisions provide no additional benefit to HCMLP, but do directly affect and prejudice Ellington. As such, this objection to approval of the Settlement Agreement is limited to these two new provisions of the Settlement Agreement.

3. Subsequent to the Confirmation Hearing, Ellington learned that Daugherty had been stalking Ellington and other people closely associated with Ellington, including Ellington's girlfriend and elderly father, as well as three minor children. As part of Daugherty's activities, it appeared that Daugherty was parking his vehicle outside of the homes of Ellington and other people and photographing their activities. These activities, which are believed to have started as early as January 2021, are detailed in a complaint filed by Ellington in Texas state court on January 11, 2022 in which Ellington asserts claims against Daugherty for stalking and seeks damages and injunctive relief. Daugherty removed the Texas state court action to this Court, and the adversary proceeding is pending as *Scott Byron Ellington v. Patrick Daugherty,* Adv. Proc. No. 22-03003-sgj (the "***Ellington Action***"). Ellington has filed a motion requesting the Court to abstain and remand such adversary proceeding to the Texas state court.

4. Ellington has no reason to believe that HCMLP was aware of the alleged activities of Daugherty or the allegations raised in the Ellington Action at the time HCMLP entered into the Settlement Agreement and agreed to include the two new provisions discussed below. Given the concerns over these provisions, as well as Daugherty's apparent lack of good faith and candor in dealing with HCMLP in requesting these provisions, this Court should not grant the Motion so

long as the two provisions are included and afford HCMLP the opportunity to reconsider the inclusion of these provisions in the Settlement Agreement.

OBJECTION

5. Ellington does not object to any of the economic terms of the Settlement Agreement. Ellington also acknowledges that the Settlement Agreement, in accordance with the terms announced on the record at the Confirmation Hearing, allows Daugherty to continue to pursue his existing litigation against Ellington and others, and Ellington does not object to that provision. Ellington does object, however, to two newly added provisions that provide no additional benefit to HCMLP, but give Daugherty a platform to obtain confidential information about Ellington and others and a mechanism to find new ways to harass Ellington.

6. The first such provision requires HCMLP to give Daugherty observer status on the Claimant Trust's Oversight Board. Article V of the Claimant Trust Agreement[2] gives the Oversight Board broad authority and responsibilities to oversee the activities of both the Claimant Trust and the Litigation Sub-Trust. This would include the action that Marc Kirschner, as the trustee of the Litigation Sub-Trust, has commenced against Ellington and others and that is pending as *Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust, Plaintiff, v. James D. Dondero*, Adv. Pro. No. 21-03076-sgj. The relevant provision of the Settlement Agreement reads as follows:

> Observation Access: As soon as practicable following entry of an order of the Bankruptcy Court approving this settlement, ***HCMLP shall use reasonable efforts to petition the Claimant Trust Oversight Board to permit Daugherty to have access as an observer to meetings of the Claimant Trust Oversight Board***, subject to policies, procedures, and agreements applicable to other observers of the Claimant Trust Oversight Board, including policies, procedures, and agreements related to confidentiality and common interest.

[2] The form of Claimant Trust Agreement is included as Exhibit "A" to the *Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.*, dated November 30, 2020 [Doc. No. 1389]. HCMLP has never filed with the Court an executed, final version of the Claimant Trust Agreement or related documents.

> Whether Daugherty will be granted observer access and any continuing observer access is and will remain at the sole discretion of the Claimant Trust Oversight Board.

Settlement Agreement, ¶ 3 (emphasis added).

7. The second provision requires HCMLP to transfer to Daugherty, for no additional consideration, HCMLP's equity interests in Highland Employee Retention Assets LLC ("***HERA***") and Highland ERA Management, LLC ("***ERA***"):

> HERA and ERA: The Parties acknowledge and agree that as of the date hereof, HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released at or prior to the date hereof, and no claims against the HCMLP Released Parties. . . . To facilitate recovery of such potential claims – which expressly excludes any and all claims by or in the name of HERA and ERA against any of the HCMLP Released Parties – ***HCMLP will transfer its interests in HERA and ERA to Daugherty*** …

Settlement Agreement ¶ 8 (emphasis added). The Settlement Agreement should not be approved by this Court if it contains these two added provisions.

8. The Fifth Circuit has stated that a bankruptcy court may approve a compromise or settlement "only when the settlement is fair and equitable and in the best interest of the estate." *See Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.),* 801 F.3d 530, 540 (5th Cir. 2015). At the Confirmation Hearing, counsel to HCMLP read into the record the terms of the proposed settlement with Daugherty, and counsel to Daugherty agreed that the record reflected the terms of the settlement. No one, however, mentioned either of the provisions that are now included in paragraphs 3 and 8 of the Settlement Agreement. Moreover, HCMLP has not stated in the Motion why such provisions are necessary or beneficial to HCMLP, and it does not appear that HCMLP was aware of Daugherty's alleged activities or the allegations raised in the Ellington Action when HCMLP agreed to include these provisions. In light of what has come to light about Daugherty's alleged activities, HCMLP should have an opportunity to reconsider

whether it wishes to include these added provisions, especially as it appears that their sole purpose is to allow an alleged stalker to have further access to his victims and to create more opportunities for Daugherty to pursue his victims through litigation.

9. The Claimant Trust Agreement provides great detail about who will be the members of the Oversight Board, their powers, tenure, and removal, and how successor members are appointed. *See* ¶¶ 1.1(kk) and 4.1-4.2 of the Claimant Trust Agreement. The members of the Oversight Board act as fiduciaries and have a duty to the Claimant Trust Beneficiaries (as defined therein), including a duty of confidentiality. *Id.* at ¶¶ 4.3 and 4.12. As an observer, Daugherty will not be bound by any provision allowing his replacement or removal, and Daugherty will not be a fiduciary. Instead, he would be free to advise the Claimant Trustee, Litigation Sub-Trustee, and the Oversight Board members based upon his own self-interest, and not the interests of the Claimant Trust Beneficiaries. Of course, these sophisticated parties may choose to ignore any such self-serving statements. The Claimant Trust and the Oversight Board, however, have no apparent reason to need a non-fiduciary to weigh in on their deliberations. At a minimum, the Claimant Trust should consider the allegations relating to Daugherty's activities in determining whether it should provide such extraordinary access to Daugherty.

10. In addition, by agreeing to use best efforts to have the Claimant Trust grant Daugherty observer status on the Oversight Board, HCMLP is seeking to modify the Claimant Trust Agreement, which is considered to be part of the Plan. Nothing in the form of the Claimant Trust Agreement filed with the Court purported to allow the Claimant Trust to grant observer status to any party. As such, through paragraph 3 of the Settlement Agreement, HCMLP is attempting to modify the Plan, which is prohibited by section 1127(b) of the Bankruptcy Code.

11. With respect to paragraph 8 of the Settlement Agreement, the sole apparent purpose of the proposed assignment of HCMLP's shares in HERA and ERA to Daugherty is to give Daugherty further means to harass and pursue Ellington and the other victims of Daugherty's actions. HERA and ERA are defunct entities and have no economic value. Indeed, the Settlement Agreement acknowledges that "HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released." The Motion does not articulate why such terms were added to the settlement and why such terms should be approved. Seemingly, the only purpose of paragraph 8 of the Settlement Agreement is to permit Daugherty to bring additional causes of action against Ellington and other former employees of the Debtor.

CONCLUSION

12. Since the inception of the Ellington Action, Daugherty has had numerous opportunities to deny that he has been "observing" Ellington and other people closely associated with him, but he has not done so. In light of the allegations that have come to light subsequent to HCMLP agreeing to include the provisions discussed above, HCMLP should be afforded the opportunity to determine the impact of these allegations on its decision to include them in the Settlement Agreement and revisit inclusion of these provisions in the Daugherty Settlement.

13. Accordingly, for the foregoing reasons, the Court should deny the Motion to the extent that it includes paragraphs 3 and 8 of the Settlement Agreement.

Dated: February 16, 2022

By: */s/ Frances A. Smith*

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Co-Counsel for Scott Ellington

1 CIT ES
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SCOTT BYRON ELLINGTON	§	**IN THE DISTRICT COURT**
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Plaintiff,	§	
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v.	§	**_____ JUDICIAL DISTRICT**
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant.	§	**DALLAS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

tt r E i t i ti h r i d i thi *Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction* i t d t tri h rt d i rt th r d r t h th rt th i

Dallas County LR 1.08 Disclosure

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I. Discovery Control Plan

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II. Parties & Service

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III. Rule 47(c) Disclosure

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IV. Jurisdiction & Venue

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VI. Causes of Action

A. Count One: Stalking.

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B. Count Two: Invasion of Privacy by Intrusion.

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VII. Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction

A. Elements for Injunctive Relief.

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VIII. Exemplary Damages

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IX. Conditions Precedent

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LYNN PINKER HURST & SCHWEGMANN, LLP
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ATTORNEYS FOR PLAINTIFF

EXHIBIT
A

DECLARATION OF GREGORY ALLEN BRANDSTATTER

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Gregory Allen Brandstatter declares as follows:

1. My name is Gregory Allen Brandstatter. I am over 21 years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this declaration.

2. I am able to swear, and hereby do swear under penalty of perjury, that the facts stated in this declaration are true and correct and within my personal knowledge.

3. I am a Licensed Texas Master Peace Officer with fifteen (15) years of experience, a U.S. Government Contractor with over twelve (12) years of experience in the areas of high threat protection, counterterrorism, and counternarcotics, and I am also a licensed private investigator and security consultant.

4. On Feb 3, 2021, Scott Ellington ("Scott") called, advising me that he believed someone was stalking himself and his girlfriend Stephanie Archer ("Stephanie"). The day prior to his calling me (Feb 2, 2021), Stephanie had been followed to 120 Cole Street, Dallas, Texas, where Scott has an office. Stephanie stated that for the past month or so she had noticed a large Black SUV possibly following her. On Feb 2, 2021, she noticed that the person in the Black SUV was actively taking pictures of her, and she attempted to confront the individual while she simultaneously took pictures of the Black SUV and its driver. Her picture shows the vehicle Make and License Number, . In Stephanie's photo you can also see the person driving holding

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Exhibit A-1

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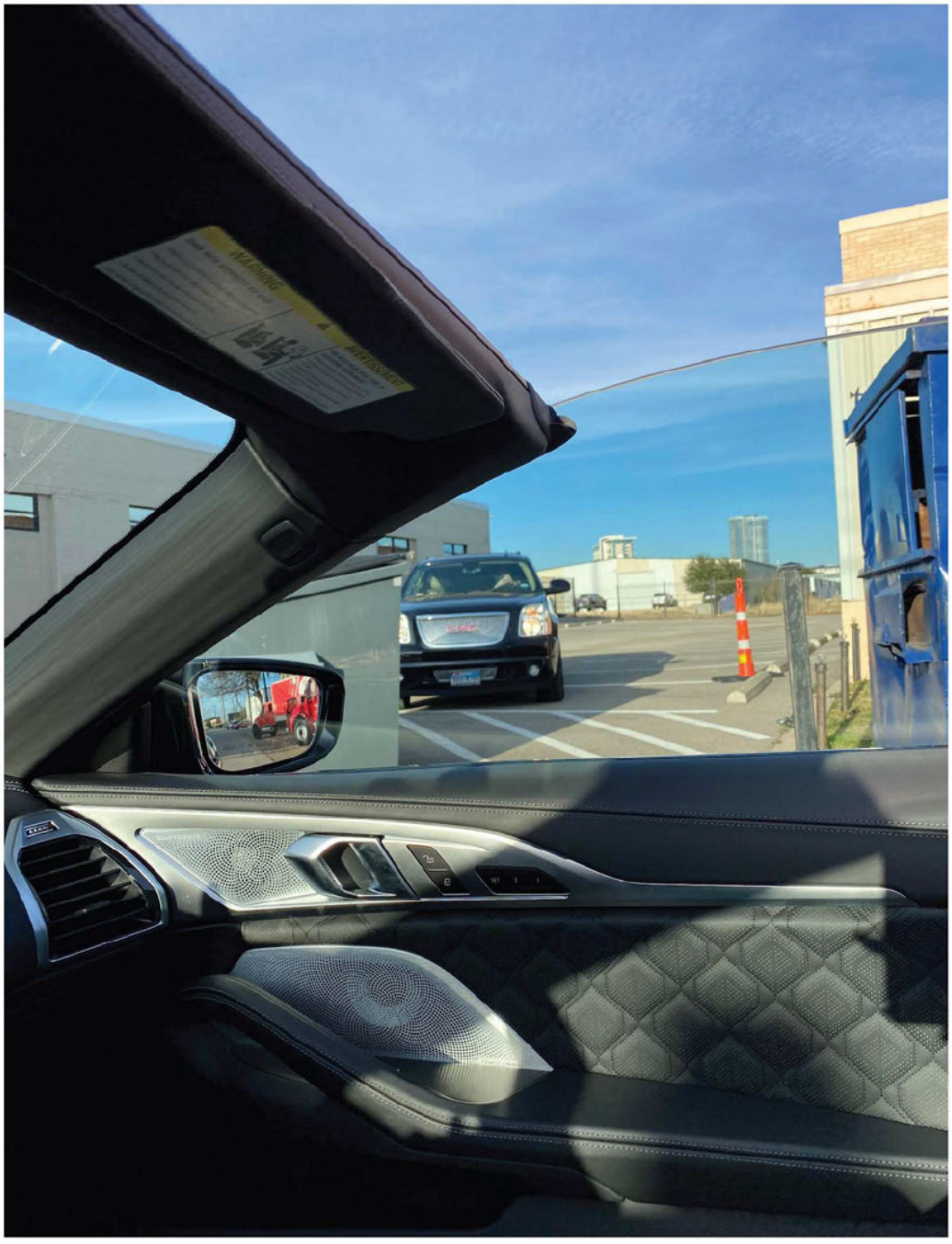
FURTHER DECLARANT SAYETH NOT.

My name is Gregory Allen Brandstatter. My date of birth is [illegible]. My address is [illegible]. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 28th day of December, 2021.

Gregory Allen Brandstatter

Gregory Allen Brandstatter



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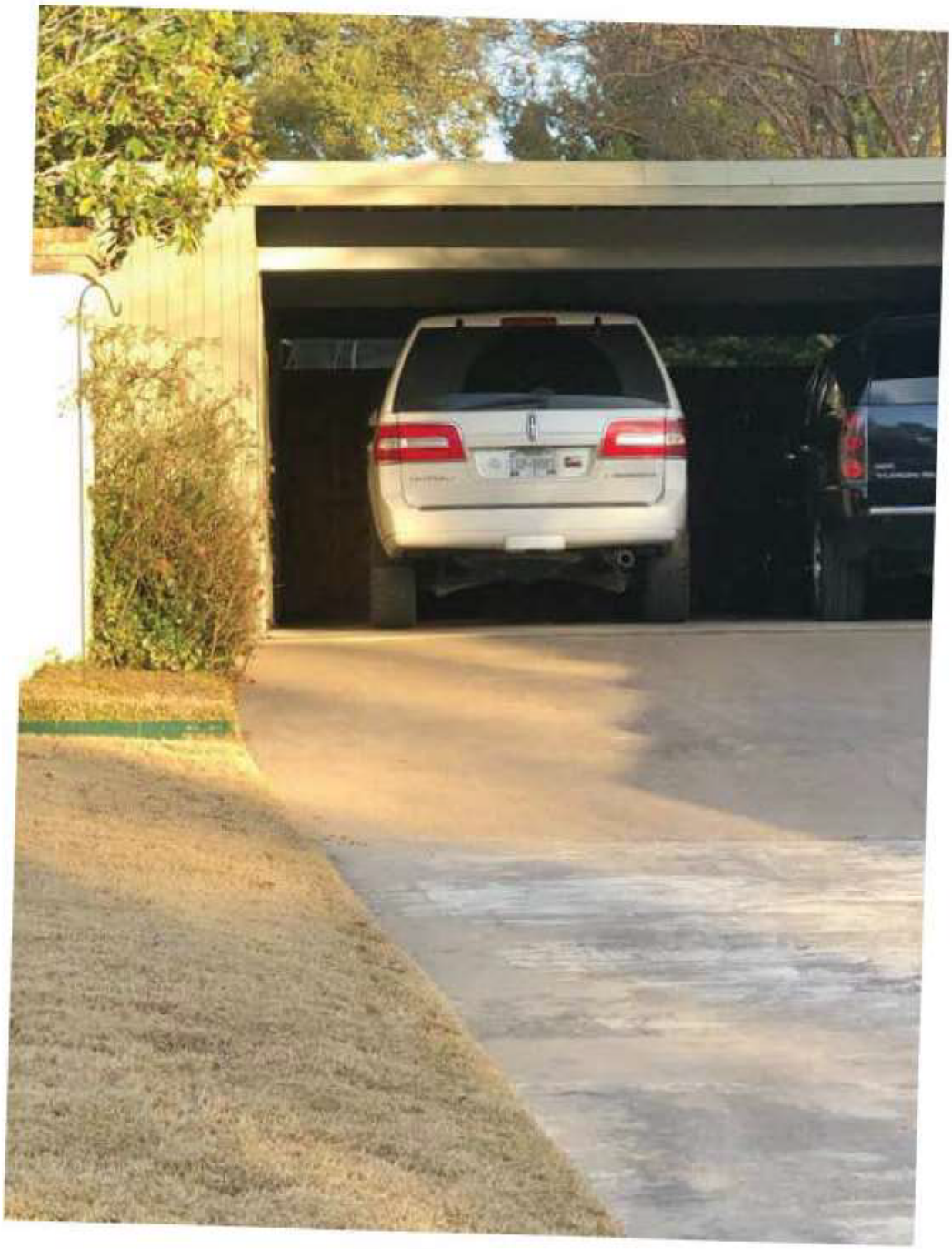

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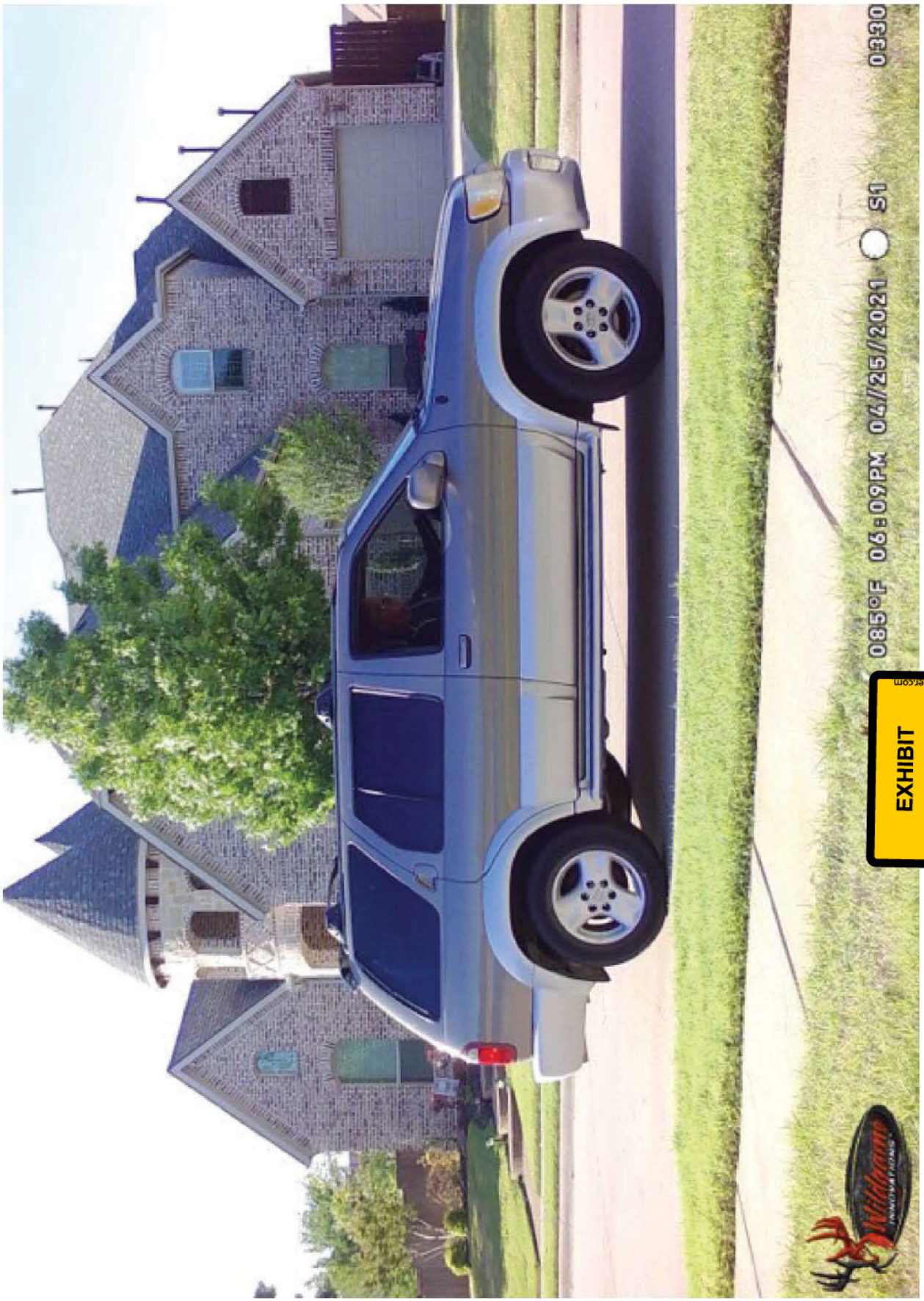
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Greg Brandstatter, Pat D Investigation / Counter Surveillance log

On Feb 3 2021, Scott Ellington (Scott) called, advising me that he believed someone was stalking himself and his girlfriend Stephanie Archer (Stephanie). The day prior, Feb 2 2021 to his calling me Stephanie had been followed to 120 Cole Street, Dallas, Texas, where Scott has an office. Stephanie stated that she had noticed that for the past month or so she had noticed a large Black SUV possibly following her. On Feb 2 2021 she noticed that the person in a Black SUV actively taking pictures, she had, had enough and attempted to confront the individual while taking a picture of the vehicle. Her picture shows the vehicle Make and License Number, [redacted]. In Stephanie's photo you can also see the person driving holding up a cell phone as if taking pictures. See Stephanie's photo.

The following day Scott was in his office on Cole Street, when he noticed a vehicle resembling a "Toyota 4 Runner, Tan in color, stop in front of his office. He observed the driver of the taking pictures and or video of his officer and the vehicles parked in front. Scott was able to obtain the License Number of the Vehicle, [redacted] , he also noted that vehicle had a "WMR sticker on the rear window. Scott stated the driver of the vehicle looked like Pat Daugherty (Pat). Scott and Pat both previously worked at an investment firm in Dallas, and are currently opponents in financial litigation. Scott believes that Pat is attempting to harass him, his friends and coworkers due to the litigation. It should be noted that Pat has a history of anger issues and he believes Pat may be trying to intimidate him.

Scott asked if I could assist him in determining who the person(s) were taking the photos/videos. I advised Scott that I could check some Open Sources Intelligence sites and see what I could come up with in reference to the vehicle registrations. I also suggested that we set up a counter surveillance program to determine if these were random acts of an organized surveillance effort.

On Feb 4 2021 an investigation was opened along with a counter surveillance operation. OSINT sources showed Pat to be the registered owner of the Black SUV [redacted] and that Pat was the previous owner of the Infinity QX4 [redacted]. The Infinity QX4 closely resembles a Toyota 4 Runner (as observed by Scott above). We believe that Pat sold the Infinity to one of his domestic employees and "borrowed" the vehicle to avoid detection.

At approx. 1120 on Feb 4th the Infinity [redacted] driven by a W/M Sandy Blonde hair drives by WB on Cole slows when passing 120 proceeds W on Cole, S on Levee, E on Alley (rear of 120 Cole), U-turn, S on Levee and E on Leslie. I viewed the driver of this vehicle as he was exiting alley and can verify after comparing Photos, that Pat was the driver of the infinity.

At approx 1322 on Feb 4th Scott advises that the Pat had followed him to 120 Cole, I was parked on at Cole and Levee as Scott parked I observe the Infinity drives W on Cole towards me, I observe Pat driving infinity [redacted]. Pat turns south on Levee, U-turn, N on Levee then E on Cole. I keep my distance as Infinity slows and then stops in front of 120, While stopped in front of 120, Pat verbally engages Stephanie and Joe (friend of Scott). Pat proceeds E on Cole, I follow, Pat turns left on Rivers Edge, I am

unable to follow due to traffic conditions. Stephanie and Joe are able to Identify the Driver as Pat after comparing to photos. See photos for rear of Infinity, on Cole Street, Note Sticker (WMR).

At Approx 1715 on Feb 4, Reese Morgan (Reese) PI drives by Pat's residence and is able to confirm two vehicles parked in carport, White Lincoln Navigator [redacted] and Black GMC Yukon [redacted], same vehicle that followed Stephanie on Feb 3, The Infinity [redacted] is parked on the street across the street from Pat's carport, see photos

Feb 5 2021, approx 1340, Reese drive by Pat's Residence verify Infinity [redacted] parked across street from carport.

Feb 8 2021, approx. 1010, Drive by Pats Residence verify Infinity [redacted] parked across street from carport

Feb 19 2021 approx 1700 Sarah Goldsmith, moving files to 120 Cole St, confronted my W/M Sandy Blonde, Graying hair, driving a "Silver Toyota 4 Runner" (Infinity). Driver ask "Do you know if Scott is back in town?" She ignored him and went into office space until he left. She did not feel safe, she departed and had her husband accompany her back to Cole St. After viewing a picture of Pat, Sarah was able to verify the driver who confronted her was Pat.

Feb 23 2021 approx 1707 Black GMC Yukon [redacted], Driven by Pat (visual), business attire blue shirt, E-W on Cole, slows at 120, proceeds N on Levee, E on Oaklawn. (Day in Court)

March 4 2021 approx 1113, Black GMC Yukon [redacted], drives by E-W on Cole slows when passing 120, S on Levee, pulls over appears to be taking notes, continues S on Levee, turns E on Leslie at.

March 9 2021 approx 1110, Black GMC Yukon [redacted] drives by E-W on Cole, slows, then N on Levee.

approx 1340, Black GMC Yukon [redacted], drives by E-W on Cole, slows, then N on Levee.

March 23 2021 approx 1450, Black GMC Yukon [redacted], driven by Pat, drives by E-W on Cole, Stops in front of 120, (note Scott's Vic out front with door open), S on Levee, U-turn, N on Levee. Visually confirm Pat driving.

approx 1700, Black GMC Yukon [redacted], driven by Pat, drives by E-W on Cole, Stops in front of 120, Scott is in office and observes Pat taking pictures or video of building and vehicles, Pat proceeds W on Cole , N on Levee

March 25 2021 approx 1414, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole Stops short of 120, I observed Pat, dressed in business attire, exit vehicle and put trash in trash container, then proceed W on Cole where he stopped in front of 120 for an extend period of time, before proceeding W on Cole

Approx. 1417, Black GMC Yukon [redacted], driven by Pat, drives by E-W on Cole, Stops in front of 120, another extended stop at 120 before proceeding W on Cole.

March 26 2021, approx 1414, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole. I pass in opposite direction. Pat is wearing business attire, talking on cell phone

March 29 2021, approx 1430, Infinity QX4 [redacted], with "WMR sticker on the rear window, driven by Pat, drives by E-W Stops front of 120, peers into building.

Approx 1433, Infinity QX4 [redacted], driven by Pat, drives by E-W Stops front of 120, appears to be taking pictures of building and vehicles.

Approx 1450, Infinity QX4 [redacted], driven by Pat, drives by E-W Slows front of 120

March 31 2021, approx 1508, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole, opens door slightly

Approx 1511, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole stops front of 120, takes pictures

Approx 1518, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole stops front of 120, takes video

Approx 1522, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole stops front of 120, takes extensive video of inside garage door and vehicles out front

April 13 2021, approx 1428, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole

Approx 1430, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole, slows at 120, takes video of building and vehicles

Approx 1433, Black GMC Yukon [redacted], driven by Pat, driving W-E on Cole

April 14 2021 Scott's Sister Marcia Reports, Black GMC Yukon Denali, stopped in front of her house and was taking pictures of her home, family and vehicles, she reports this is the second instance. First instance was 3 25 2021, She provides Video of second instance, See Marcia's report. Stealthcam deployed.

April 16 2021, approx 1453, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole, slows takes pics/video of vehicles

Approx 1455, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole,I nterested in Scott' new assistant Charleigh.

Approx 1456, Black GMC Yukon [redacted], driven by Pat, driving W-E on Cole, Passenger in vehicle, New Player

April 19 2021, approx 1423, Black GMC Yukon [redacted], driven by Pat, driving E-W on Cole, Stops takes Video

Approx 1426, Black GMC Yukon [redacted], driven by Pat, driving W-E on Cole

April 20 2021, approx 1335, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

Approx 1338, Black GMC Yukon [redacted], driven by Pat drives by, E-W on Cole slows takes pictures

Approx 1340, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

April 21 2021, approx 1028, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

Approx 1038, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

Approx 1040, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

Approx 1043, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, stops for extended period looking inside garage door, car behind him honks

Approx 1055, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, fast

Approx 1058, Black GMC Yukon [redacted] driven by Pat drives by W-E on Cole

Approx 1215, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, stops and takes pictures of vehicles

Approx 1217, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, slows at 120 and takes video

Approx 1448, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, Stops and takes video of vehicles, Scott confirms he saw, Black GMC Yukon

April 22 2021, approx 1010, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, talking on phone or into voice recorder

Approx 1013, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, talking on phone or into voice recorder

Approx 1220, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, takes picture of Charleigh Vehicle

Approx 1325, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

Approx 1547, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

April 23 2021, approx 1027, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

Approx 1321, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, Pics of Ryan's and Trevor Vehicles

Approx 1324, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

Approx 1457, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole, Good Facial Picture

Approx 1500, Black GMC Yukon [redacted], driven by Pat drives by W-E on Cole

Infinity QX4 GPF9512, driven by Pat, drives by E-W, E-W on Cole

Approx 1432, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

April 24 2021, (Sat) approx 1158, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

approx 1432, Black GMC Yukon [redacted], driven by Pat drives by E-W on Cole

approx 1605 Black GMC Yukon, driven by Pat drives by Marcia's House

April 25 2021, (Sun) approx 1608, Infinity QX4 [redacted], driven by Pat drives by Marcia's House

April 26 2021, approx 1533, Infinity QX4 [redacted], driven by Pat drives by Byron's House

approx 1534, Infinity QX4 [redacted], driven by Pat drives by Byron's House

April 27 2021 Infinity QX4 [redacted], drives by E-W on Cole, Video only, Not typical behavior, cannot confirm.

April 28 2021, approx 1030, Infinity QX4 [redacted], driven by Pat, drives by E-W, slows takes Video, Faster than normal, visual only

approx 1510, Infinity QX4 [redacted], driven by Pat, drives by E-W, slows but behavior atypical

approx. 1650, Infinity QX4 [redacted], driven by Pat, drives by E-W, Video confirmation

approx 1745, Black Yukon drives by, Cam Only no Confirmation, (note change vehicle)

April 30 2021, approx. 1634 Infinity QX4 [redacted], driven by Pat, drives by E-W, Cam only **Atypical**

May 3 2021, approx. 1506 Lincoln Navigator XXXXXX, driven by Pat, drives by E-W, note vehicle change

approx. 1546 Lincoln Navigator XXXXXX, driven by Pat, drives by W-E

May 4 20212 approx 1642 Infinity QX4 [redacted], driven by Pat, drives by E-W

approx 1651 Infinity QX4 [redacted], driven by Pat, drives by W-E, License Plate

approx 1652 Infinity QX4 [redacted], driven by Pat, drives by E-W

May 5 2021 approx 1123 Infinity QX4 [redacted], driven by Pat, drives by E-W, Video on site

approx 1254 Infinity QX4 [redacted], driven by Pat, drives by E-W

approx 1040 Infinity QX4 [redacted], driven by Pat, drives by Marcia's house

May 12 2021 Approx 0955 Infinity QX4 [redacted], drives by E-W, License Plate

approx 1308 Infinity QX4 [redacted], driven by Pat, drives by E-W, takes video, sticker

approx 1311 Infinity QX4 [redacted], drives by E-W, License Plate, sticker

May 13 2021 approx 1055 Infinity QX4, drives by, E-W

approx 1213 Infinity QX4, drives by, E-W, License Plate

May 14 2021 approx 1523 Infinity QX4, drives by, E-W

May 18 2021 approx 1416 Infinity QW4, drives by E-W

May 19 2021	approx	1411 Infinity QW4, drives by E-W, License Plate
May 18 2021	approx	1436 Infinity QW4, drives by 4432 Potomac
May 21 2021	approx	1147 Infinity QW4, drives by E-W, License Plate
May 22 2021	approx	1345 Infinity QW4, drives by E-W, License plate
May 24 2021	approx	1132 Infinity QW4, drives by E-W
	approx	1436 Infinity QW4, drives by W-E, License Plate
	approx	1526 Infinity QW4, drives by Marcia's house
May 26 2021	approx	1035 Infinity QW4, drives by E-W
	approx	1329 Infinity QW4, drives by E-W
	approx	1330 Infinity QW4, drives by W-E
	approx	1333 Infinity QW4, drives by E-W, License Plate
	approx	1334 Infinity QW4, drives by W-E, License Plate, Sticker
	approx	1428 Infinity QW4, drives by Byron's house
	approx	1430 Infinity QW4, drives by Byron's house, Sticker
May 27 2021	approx	1336 Infinity QW4, drives by E-W
May 28 2021	approx	1043 Black GMC Yukon, drives by E-W, reverts to GMC, Baseball cap
May 29 2021	approx	1126 Black GMC Yukon, drives by E-W, License Plate
	approx	1430 Black GMC Yukon, drives by E-W, License Plate
	approx	1432 Black GMC Yukon, drives by W-E
	approx	1432 Black GMC Yukon, drives by E-W, License Plate
	approx	1433 Black GMC Yukon, drives by W-E, License Plate
	approx	1506 Black GMC Yukon, drives by W-E, License Plate
June 1 2021	approx	1325 Black GMC Yukon, drives by W-E, License Plate
June 2 2021	approx	1012 Black GMC Yukon, drives by W-E, License Plate, Stop
	approx	1012 Black GMC Yukon, drives by W-E, License Plate, Stop
June 4 2021	approx	1406 Black GMC Yukon, drives by E-W, License Plate
	approx	1411 Black GMC Yukon, drives by W-E, License Plate
June 5 2021	approx	0959 Black GMC Yukon, drives by E-W, driven by Pat Blue Shirt
	approx	1007 Black GMC Yukon, drives by E-W, License Plate

June 7 2021	approx 1504 Black GMC Yukon, drives by E-W gb Visual from office BX9
June 9 2021	approx 1022 Black GMC Yukon, drives by E-W taking Pics, Trevor
	approx 1023 Black GMC Yukon, drives by W-E, stopped
	approx 1023 Black GMC Yukon, drives by W-E, stopped
	approx 1024 Black GMC Yukon, drives by E-W, License Plate, Video
	approx 1423 Black GMC Yukon, drives by E-W License Plate Red Shirt
	approx 1524 Black GMC Yukon, drives by E-W, License Plate + Visual Red Shirt
July 7 2021	approx 1037 Black GMC Yukon, drives by E-W, License Plate, visual id
Aug 9 2021	approx 1017 Black GMC Yukon, drives by E-W, License Plate
Aug 11 2021	approx 1141 Black GMC Yukon, drives by E-W, License Plate
Aug 21 2021	approx 1658 Black GMC Yukon, drives by Byron house in
Aug 21 2021	approx 1500 Black GMC Yukon , drives by Byron house out
Aug 21 2021	approx 1509 Black GMC Yukon, drives by Byron house out
Aug 22 2021	approx 1230 Black GMC Yukon, drives by Cole E-W
Aug 22 2021	approx 1316 Black GMC Yukon, drives by Marcia house L-R
Aug 24 2021	approx 1331 Infinity, drives by Cole E-W
Aug 26 2021	approx 1458 Black GMC Yukon, drives by Cole W-E
Sept 18 2021	approx 1720 Black GMC Yukon, drives by Cole E-W
Sept 21 2021	approx 1419 Black GMC Yukon, drives by Cole E-W
Oct 16 2021	approx 1235 Black GMC Yukon, drives by Cole E-W ?? enhance LP
Oct 23 2021	approx 1245 Black GMC Yukon, drives by 3825 Potomac W-E, ID by LP
	approx 1635 Black GMC Yukon, drives by 3825 Potomac W-E, ?? enhance LP
	approx 1635 Black GMC Yukon, drives by 3825 Potomac E-W, ?? enhance LP
Oct 30 2021	approx 0953 Black GMC Yukon, drives by 3825 Potomac E-W
	approx 0956 Black GMC Yukon, drives by 3825 Potomac E-W
Nov 3 2021	approx 1555 Black GMC Yukon, drives by 3825 Marcia' house W-E Profile ID
	approx 1557 Black GMC Yukon, drives by 3825 Marcia' house W-E Profile ID, either stopped for 2 mins or returned after 2 mins

Nov 6 2021	approx 1004 Black GMC Yukon, drives by Cole E-W, D clearly visible – driver
Nov 8 2021	approx 1027 Black GMC Yukon, drives by Cole E-W, got in behind PI visual on LP and Driver, Nest Cam Confirm
Nov 10 2021	approx 0747 Black GMC Yukon, drives by Cole W-E, lengthy stop Nest cam confirm
Nov 20 2021	approx 1128 Black GMC Yukon, drives by Cole W-E, Driver Visual
Nov 21 2021	approx 1410 Black GMC Yukon, drives by 3825 W-E, Passenger female? LP
Nov 22 2021	approx 1109 Black GMC Yukon, drives by Cole E-W, Driver visual
Nov 23 2021	approx 1803 Black GMC Yukon, drives by Cole E-W, Driver visual, taking pictures
	Note SE on Cole earlier
	approx 1806 Black GMC Yukon, drives by Cole W-E
	approx 1810 Black GMC Yukon, drives by Cole E-W, Driver visual, taking pictures

EXHIBIT
B

DECLARATION OF SCOTT BYRON ELLINGTON

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Scott Byron Ellington declares as follows:

1. My name is Scott Byron Ellington. I am over 21 years of age, have never been convicted of a felony or other crime involving moral turpitude, and suffer from no mental or physical disability that would render me incompetent to make this declaration.

2. I am able to swear, and hereby do swear under penalty of perjury, that the facts stated in this declaration are true and correct and within my personal knowledge.

3. Starting in January of 2021, my longtime girlfriend, Stephanie Archer ("Stephanie"), noticed a large, Black SUV possibly following her. On February 2, 2021, she was followed by the SUV to my office located at 120 Cole Street, Dallas, Texas. She noticed that the driver in the SUV was taking pictures from inside the vehicle. She confronted the individual while simultaneously taking pictures of the SUV and the driver. The license plate number of the black SUV was [redacted]

4. The next day, on February 3, 2021, I was at my office when I noticed a vehicle resembling a tan Toyota 4 Runner stopped in front of my office with the driver either taking photographs or making a videorecording, or both. The license plate number of the vehicle was GPF9512. The driver of the vehicle appeared to be Patrick Daugherty ("Daugherty").

5. Until January of 2021, I was the general counsel for Highland Capital Management, L.P. ("Highland"). Daugherty is a former employee of Highland. In 2012, Highland sued Daugherty and Daugherty counterclaimed. The lawsuit was ultimately resolved by a jury trial, with

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Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Envelope ID: 60728974
Status as of 1/12/2022 8:55 AM CST

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Exhibit 20

DEFENDANT'S EXHIBIT
89
25-03055

Highland Capital Bankruptcy Claim Assignment to CPCM by Waterhouse 03 24 21.pdf.pdf
CPCM LLC formation Tex Sec of St Ellington Highgate Consulting 02 19 21.PDF
Ellington-CPCM-Highgate-Skyview Family Tree 2021.pdf

From: Patrick Daugherty
Sent: Wednesday, January 5, 2022 3:03 PM
To: Paige Montgomery <pmontgomery@sidley.com>; Newman, Deborah (EXTERNAL @QUINNEMANUEL.COM) <deborahnewman@quinnemanuel.com>; Marc Kirschner <marc.kirschner@teneo.com>; Karthik Bhavaraju <karthik.bhavaraju@teneo.com>
Cc: James Seery <jpseeryjr@gmail.com>
Subject: CPCM, LLC - another avatar for Scott Ellington

I reviewed the recent court filings regarding the Waterhouse Claim assignment to CPCM, Inc. In my research of the stealthy Ellington empire, I have observed that Ellington often uses friends, family and former Highland colleagues to front his business activities. In this case, I noticed that Waterhouse initially listed the following address in his transfer notice on March 11, 2021:

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This address is located at a UPS Store in Plano where "mail box" services are offered (this is not a United Stated Postal Service PO Box). Importantly, Ellington and his family members operate other entities out of other UPS Store addresses in the Plano area (6 miles away and close to where Isaac Leventon and Ellington's family members live). Recall that Ellington created many entities that later enlisted Connie Ellington (his mother, now deceased) and Matt DiOrio (his business partner that he later employed at Highland) out of the following address in Plano:

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Compare the attachments and see that CPCM, Inc is managed by Highgate Consulting Group (DBA Skyview), which are entities that Ellington ultimately manages (owns) and are linked back to his mail box operating business addresses out of two UPS store locations in Plano. Interestingly, the McKinney address listed for the Highgate Consulting offices was the NexBank address that Dondero and Ellington operated from after they were ousted from Highland's ofices. Also of interest, I understand that NexPoint Advisors et al have contracted with Highgate Consulting (aka Skyview) to provide sub-advisory services in replacement of Highland Capital. Accordingly, Ellington, Leventon, Waterhouse, Sevilla and the gang have collaborated with Dondero to recreate their roles with a counterparty that is subject to the Highland demand notes.

I understand that Waterhouse and a CPCM are scheduled for depositions. Among other things, I would like to know the following:

- Who contacted Waterhouse (and Ellington, Leventon, Sevilla, etc) to purchase their claims?
- Why did they list the address of CPCM at 6505 W. Park Blvd.?
- What did they get for the transfer?
- Was their job offer at Highgate/Skyview contingent on assigning the claim to CPCM?
- For the CPCM designee, who created the UPS Store mailbox at 6505 W. Park Blvd?
- For the CPCM designee, who has/had access to the UPS Store mailbox at 6505 W. Park Blvd? [Ellington family members, friends, or colleagues?]
- Highland should also depose Highgate Consulting Group as this is the entity that manages CPCM. As such, I would ask the same questions about 3100 Independence Parkway.

In my 10+ years of litigation with Highland's previous leadership, I have been duped by the transfer of assets from defendant parties on three different occasions. Ellington has played a central role in those transfers and I encourage the Highland estate to be vigilant in investigating alleged claims brought by him individually or through his affiliates (including those fronted by his friends or family members).

r d d O r

Glacier Lake Capital Advisors
(t) (m)
(e) d r r

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Counsel for James P. Seery, Jr.

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-sgj11
Reorganized Debtor.	)	

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLAIMANT TRUST, AND JAMES P. SEERY, JR.'S JOINT MOTION FOR AN ORDER REQUIRING SCOTT BYRON ELLINGTON AND HIS COUNSEL TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE GATEKEEPER PROVISION AND GATEKEEPER ORDERS

DEFENDANT'S EXHIBIT **90** 25-03055

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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Pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9011, Highland Capital Management, L.P. ("HCMLP," or, as applicable, the "Debtor"), the reorganized debtor in the above-referenced action, the Highland Claimant Trust (the "Trust"; together with HCMLP, "Highland"), and James P. Seery, Jr., HCMLP's Chief Executive Officer and the Claimant Trustee of the Trust ("Seery"), by and through their undersigned counsel, file this motion (the "Motion") seeking an order requiring Scott Byron Ellington ("Ellington") and his counsel, The Pettit Law Firm ("Pettit") and Lynn Pinker Hurst & Schwegmann, LLP, to show cause why they should not be held in civil contempt for violating the Gatekeeper Provision and Gatekeeper Orders.[2] In support of their Motion, Highland and Seery state as follows:

PRELIMINARY STATEMENT

1. Ellington and his counsel point blank admit—in writing—that they are using a Texas state court "stalking" case against Daugherty to pursue claims against Highland and Seery.

2. Ellington and his counsel allege, among other things, that (i) "with the assistance of at least one other individual" (*i.e.*, Seery), Daugherty stalked Ellington and others, and (ii) Daugherty and Seery engaged in a *quid pro quo* pursuant to which "Daugherty's settlement in the bankruptcy became materially better . . . only after Daugherty had provided Seery and Clubok with thousands upon thousands of pages of his investigatory work regarding Ellington."

3. Relying on these meritless allegations, Ellington seeks discovery in connection with the "settlement of Mr. Daugherty's proof of claim in the Highland bankruptcy" and "negotiations between Mr. Daugherty and Mr. Seery, as a representative of the Highland Estate" for the purpose of manufacturing claims against Highland and Seery:

[2] Capitalized terms not defined in this Preliminary Statement have the meanings ascribed to them below.

> The production provided by Mr. Daugherty, Mr. Seery, and others in this matter suggests the factual conclusion that the Highland Estate provided Mr. Daugherty with ***additional settlement consideration*** in exchange for information on Mr. Ellington.
>
> We believe that Mr. Daugherty and Mr. Seery's communications regarding ***settlement of Mr. Daugherty's proof of claim*** in the Highland bankruptcy are relevant to the factual issues that will be tried in this matter. To the extent that the redacted communications relate in any way to the ***negotiations between Mr. Daugherty and Mr. Seery, as a representative of the Highland Estate***, please produce those communications.

Ellington's pursuit of claims against Highland and Seery is a clear violation of the Gatekeeper Provision and Gatekeeper Orders.

4. The Gatekeeper Provision in the Court-approved Plan and this Court's Confirmation Order prohibit any "Enjoined Parties"—including Ellington and his counsel—from "pursu[ing] a claim or cause of action of any kind against any Protected Party"—including Highland and Seery—"that arose or arises from or is related to the Chapter 11 Case" without first obtaining leave from this Court. This Court's January and July 2020 Gatekeeper Orders likewise prohibit Ellington and his counsel from pursuing claims against any Independent Director or Seery without first obtaining leave from this Court.

5. In January 2022, Ellington and his counsel commenced the state court Stalking Action alleging that Daugherty followed, harassed, and photographed Ellington, his girlfriend, and his family members, and asserting state-law claims for stalking and invasion of privacy. Ellington's lawsuit does not refer to Seery or any settlement negotiations. Daugherty sought to remove the Stalking Action to this Court, arguing that this Court had jurisdiction because, among other things, the case related to Daugherty's settlement of his proof of claim with the Debtor (the "Daugherty Settlement"), to which Ellington had objected. But Ellington falsely represented to this Court that "[t]he State Court Action does not implicate the Daugherty Settlement; even if it

did, the Daugherty Settlement is resolved and its relevance is moot." This Court relied on Ellington's representations and remanded the Stalking Action to state court.[3]

6. Having successfully evaded this Court's jurisdiction, Ellington and his counsel are now using the Stalking Action as a vehicle to pursue claims against Highland and Seery, contending—among other things, and notwithstanding their prior representations to this Court—that the negotiation of the Daugherty Settlement was an integral part of a "stalking" conspiracy. In response to Ellington's broad third-party subpoenas in the Stalking Action, Seery has produced tens of thousands of pages of documents, including text messages between Seery and Daugherty. Because certain text messages strings include unresponsive communications, Seery produced approximately 38 pages of documents with redactions. While pressing for the production of those unresponsive communications and for the deposition of Judge Russell Nelms (a former independent director of the Debtor), Ellington and his counsel revealed that they are pursuing claims against Highland and Seery based on Seery's negotiation of the Daugherty Settlement.

7. This timing is no accident. Ellington and his counsel are coordinating their efforts with James Dondero ("Dondero") and his related entities, which have used the Stalking Action to advance Dondero's interests in the bankruptcy case. For example, Dugaboy (Dondero's supposed family "trust") filed a motion to compel forensic imaging of Seery's iPhone based on text messages and related correspondence exchanged in the Stalking Action.[4] Now, as this Court is aware, the parties in this post-confirmation case are scheduled to hold a mediation regarding a global

[3] Based on Ellington's representations that the Stalking Action was not related to Highland or its Protected Parties, Highland did not take a position regarding removal of the Stalking Action.

[4] *See The Dugaboy Investment Trust's Motion to Preserve Evidence and Compel Forensic Imagining of James P. Seery, Jr.'s iPhone* (the "Imaging Motion"; Dkt. No. 3802). The Imaging Motion is based entirely on discovery-related communications exchanged among counsel in the Stalking Action—which never included counsel for Dondero or Dugaboy.

settlement in October. By pursuing yet another post-confirmation dispute, Ellington and his counsel are desperately trying to create leverage for Dondero and his affiliates against Highland and Seery in the mediation.

8. If Ellington and his counsel can use the Stalking Action to pursue claims against Highland and Seery relating to the Debtor's bankruptcy, then the Gatekeeper Provision is a dead letter and Enjoined Parties will pursue harassing and frivolous claims against Highland and Seery in state court. Ellington and his counsel clearly violated the Gatekeeper Provision and must face consequences to ensure future compliance by all Enjoined Parties. Accordingly, Highland and Seery respectfully request that this Court order Ellington and his counsel to show cause why they should not be held in civil contempt for violating this Court's Orders.

RELEVANT BACKGROUND

A. This Court Adopted The Gatekeeper Orders And Provision To Protect Against Baseless, Distracting Litigation And The Threat Of Such Litigation.

9. On January 16, 2020, this Court entered a gatekeeper order ("January 2020 Order"; Dkt. No. 339) protecting the Debtor's Independent Directors:

> ***No entity*** may commence or ***pursue a claim or cause of action of any kind*** against ***any Independent Director***, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

(*Id.* ¶ 10 (emphasis added).)

10. On July 16, 2020, this Court entered a substantially similar gatekeeper order ("July 2020 Order"; Dkt. No. 854; together with the January 2020 Order, the "Gatekeeper

Orders"), protecting "Mr. Seery" from pursuit of claims "relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor." (*Id.* ¶ 5.)

11. On February 22, 2021, this Court entered an order ("Confirmation Order"; Dkt. No. 1943) confirming Highland's Plan, which contains a similar "gatekeeping" provision ("Gatekeeper Provision") protecting "any Protected Party" from pursuit of claims by any "Enjoined Party" "that arose or arises from or is related to the Chapter 11 Case." (*Id.* at 77; Plan at 50–51.)[5] "[T]he Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor)." (Aug. 25, 2023 Order at 32 ("August 2023 Order"; Dkt. No. 3903).) Under the Plan, Ellington and his counsel are "Enjoined Parties" and Seery and Highland are "Protected Parties."[6]

12. "The Gatekeeper Provision was not included in the Plan *sans raison*." (August 2023 Order at 4.) The Gatekeeper Provision, among other things, "prevent[s] baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents," mitigates the "costs and distraction such litigation or the threats of such litigation would cause," and "avoid[s] abuse of the Court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." (Confirmation Order ¶¶ 78–79.)

[5] References to the "Plan" are to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (Dkt. No. 1808).

[6] Ellington is an "Enjoined Party" because he (i) held "Claims against or Equity Interests in the Debtor"; (ii) "has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case"; and (iii) is a "Related Entity," because he was Debtor's former general counsel was therefore "an insider of the Debtor on or before the Petition Date." (Plan at 8, 14.) Ellington's counsel are "Enjoined Parties" because they are "Related Persons" to Ellington. (*Id.*) HCMLP, the Trust, and Seery, are expressly listed as "Protected Parties." (*Id.* at 13.)

13. The Gatekeeper Provision is working as this Court intended. Most recently, in this Court's August 25 Order, the Gatekeeper Provision prevented Hunter Mountain Investment Trust ("HMIT") from pursuing baseless, speculative claims against Seery and certain purchasers of claims in Debtor's bankruptcy. (August 2023 Order at 91, 94, 104.)

B. Ellington Unsuccessfully Objected To The Daugherty Settlement.

14. On December 23, 2020, Patrick Daugherty ("Daugherty") filed an amended proof of claim in Debtor's Chapter 11 case for $40,710,819.42, relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. (Confirmation Order ¶ 9.) On February 2, 2021, the Debtor and Daugherty informed this Court that they had reached an agreement in principle to settle Daugherty's claim under which Daugherty would receive $750,000 in cash, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim. (*Id.*)

15. On December 8, 2021, the Debtor sought this Court's approval of the finalized settlement of Daugherty's proof of claim. (Dkt. No. 3088.) The final terms of the Daugherty Settlement were the same as the terms announced in February 2021 with three differences: (i) Daugherty would receive a $3.75 million (instead of a $2.75 million) subordinated claim; (ii) the Debtor would transfer to Daugherty interests in an employee deferred-compensation vehicle; and (iii) the Debtor would make reasonable efforts to petition the Oversight Board to grant Daugherty observer access. (*Id.* ¶ 40; Dkt. No. 3257 ¶¶ 2–3.)[7]

16. On February 15, 2022, Ellington objected to the Daugherty Settlement. (Dkt. No. 3242.) Ellington did "***not object to any of the economic terms*** of the Settlement Agreement."

[7] Highland agreed to these modifications after discovering the pre- and post-petition Sentinel frauds directed by Dondero and Ellington after the confirmation hearing.

(*Id*. ¶ 5 (emphasis added).) He objected only to "two newly added" non-economic terms, which he claimed would "give Daugherty a platform to obtain confidential information about Ellington and others and a mechanism to find new ways to harass Ellington." (*Id.*)[8] Ellington could have taken discovery on his objections, *see* Fed. R. Bankr. P. 9014(c), including discovery into the negotiation of the Daugherty Settlement, but chose not to. Ellington represented to this Court that he "has no reason to believe that HCMLP was aware of the alleged [stalking] activities of Daugherty or the allegations raised in the [Stalking] Action at the time HCMLP entered into" the Daugherty Settlement. (*Id.* ¶ 4.)

17. On March 1, 2022, this Court overruled Ellington's Objections and approved the Daugherty Settlement in its entirety. (Dkt. No. 3306.) Ellington did not appeal this Court's ruling.

C. Ellington Sues Daugherty In Texas State Court For Alleged Stalking.

18. On January 11, 2022, Ellington commenced an action (the "Stalking Action") by filing a petition in the 101st Judicial District Court of Dallas County ("Petition"; Ex. 2)[9] alleging that Daugherty was "observed outside Ellington's office, his residence, the residence of his long-time girlfriend, . . . his sister's residence, and his father's residence no less than 143 times, often taking photographs and video recordings while either parked or driving slowly by." (*Id.* ¶ 12.) Ellington asserts claims against Daugherty for stalking and for invasion of privacy by intrusion under Texas law and seeks injunctive relief and exemplary damages. (*Id.* ¶¶ 19–36.)

19. Under Texas law, Ellington's claims turn on whether Daugherty "engaged in harassing behavior" such that Ellington "reasonably feared for [his] safety or the safety of a member of [his] family." (*Id.* ¶¶ 21–22); Texas Civ. Prac. & Rem. Code §§ 85.001–02. Ellington

[8] Notably, although the Debtor agreed to make reasonable efforts to petition the Oversight Board to grant Daugherty observer access, Daugherty has never appeared before the Oversight Board or participated in any of its meetings.

[9] References to "Ex." refer to exhibits to the accompanying declaration of Joshua S. Levy.

acknowledges that Daugherty's "supposed motivations in stalking Plaintiff are irrelevant." (Ex. 1 ¶ 2.) Ellington's Petition makes no mention of Seery or the Daugherty Settlement.

1. Ellington Represented Repeatedly To This Court That The Stalking Action Is Unrelated To This Chapter 11 Case Or The Daugherty Settlement.

20. On January 18, 2022, Daugherty removed the Stalking Action to this Court and initiated an adversary proceeding. (Dkt. No. 3185.) On January 25, 2023, Ellington moved to remand the Stalking Action to state court, arguing repeatedly that the Stalking Action "***does not implicate*** the Daugherty Settlement," "the Daugherty Settlement ***has no bearing*** on the merits of Ellington's stalking and invasion of privacy claims," and the Stalking Action "***has no impact*** on the already resolved Daugherty Settlement." (Ex. 3 at 3, 6 (emphasis added); *see also* Ex. 4 (Mar. 29, 2022 Hr'g Tr.) at 14:13–16 (arguing that the Daugherty Settlement is "fully resolved and really moot to the motion before the Court").) Ellington further argued that Stalking Action "is independent of the administration of the bankruptcy" and "do[es] not invoke substantive rights in bankruptcy." (Ex. 3 at 4, 7.)

21. Relying on Ellington's representations, this Court remanded the Stalking Action to state court, holding that "[t]here is a remoteness, extreme remoteness to the bankruptcy case," because "the only possible hook . . . for the bankruptcy court or federal jurisdiction was if this somehow implicated the gatekeeping order" or "if the estate was somehow going to be impacted," but "I just didn't find, based on the evidence or argument, any of those things implicated." (Ex. 4 at 32:23–34:4.)

2. Ellington And His Counsel Are Using Discovery Materials From The Stalking Action To Facilitate Litigation Against The Highland Parties and Seery.

22. On November 3, 2022, Ellington served on Seery a third-party subpoena in the Stalking Action (the "Subpoena"; Ex. 5) seeking, among other things, "all communications and documents" between Seery and Daugherty relating to Ellington, certain individuals affiliated with

Ellington, certain locations associated with Ellington, and any "investigation conducted by Daugherty" relating to Ellington. Seery produced tens of thousands of pages of documents in response to the Subpoena, including emails and text messages between Seery and Daugherty.

23. In February and March 2023, Highland's counsel and Ellington's counsel corresponded about Seery's text messages on his personal iPhone in connection with the Subpoena. (Dkt. Nos. 3803-1 to -4.) Two different Dondero-controlled entities—HMIT and Dugaboy Investment Trust ("Dugaboy")—used this correspondence in the Stalking Action (on which neither of them were copied) to advance Dondero's interests in this bankruptcy case by (i) bringing the Imaging Motion, and (ii) contending that the mistaken allegation concerning the supposed loss of certain text messages somehow made HMIT's claims "colorable." (*See* August 2023 Order at 39–42; Ex. 6 (June 8, 2023 Hr'g Tr.) at 28:24–29:12, 33:2–4, 33:14–35:15, 36:2–17, 237:2–25.)

3. Ellington And His Counsel Are Using The Stalking Action To Pursue Claims Against The Highland Parties And Seery.

24. On June 19, 2023, Ellington served a second third-party subpoena on Seery in the Stalking Action seeking Seery's deposition. (Ex. 7.) Counsel for Ellington and Seery met and conferred by email and telephone about this subpoena for several weeks, and Seery's counsel provided Ellington's counsel with copies of the Gatekeeper Orders and Gatekeeper Provision. (Ex. 9.) On July 13, 2023, Ellington served a further amended subpoena on Seery, which included additional topics for testimony. (Ex. 8.) Ellington and his counsel sought to depose Seery about, among other things, "[a]ny consideration provided to Daugherty with respect to Mr. Daugherty's so-called 'investigation' of Mr. Ellington or the stalking in this case, including, but not limited to, the treatment of Mr. Daugherty's Proof of Claim in the Highland bankruptcy." (*Id.*) Ultimately,

Seery agreed to testify about certain topics relevant to the Stalking Action, and Seery's deposition was scheduled for July 31, 2023. (Ex. 10.)

25. On July 14, 2023, Seery made a supplemental production to Ellington of text messages between Seery and Daugherty "with redactions to the extent they contain information that is not responsive to the Subpoena." (Ex. 11.) On July 19, 2023, Ellington's counsel, Julie Petit, asserted—without any knowledge of what was redacted—that "we do not see how the redacted texts could truly be nonresponsive" and demanded that Seery "produce the redacted text messages" without redactions. (Ex. 12.) Seery's counsel responded that "[t]he redacted material is not responsive to any request" in the Subpoena, represented that it "is unrelated to Mr. Ellington or the allegations in your complaint," and cautioned that "seeking materials beyond those related to 'stalking' would exceed the scope of reasonable discovery directed to Mr. Seery as a third-party and would constitute the 'pursuit' of claims against Mr. Seery or other covered parties without leave of the Bankruptcy Court" in violation of the Gatekeeper Provision. (*Id.*)

26. On July 24, 2023, Pettit provided a new theory of relevance for the redacted text messages:

> The production provided by Mr. Daugherty, Mr. Seery, and others in this matter suggests the factual conclusion that the Highland Estate provided Mr. Daugherty with ***additional settlement consideration*** in exchange for information on Mr. Ellington.
>
> We believe that Mr. Daugherty and Mr. Seery's communications regarding ***settlement of Mr. Daugherty's proof of claim*** in the Highland bankruptcy are relevant to the factual issues that will be tried in this matter. To the extent that the redacted communications relate in any way to the ***negotiations between Mr. Daugherty and Mr. Seery, as a representative of the Highland Estate***, please produce those communications.

(*Id.* (emphasis added).) Pettit acknowledged that documents regarding the Daugherty Settlement may not be relevant to the Stalking Action, stating that "we can always amend our live petition as needed to give you comfort that you are producing relevant and responsive materials." (*Id.*)

27. On July 25, 2023, Seery's counsel responded to Ellington's new theory of relevance, arguing that "these allegations regarding settlement with Mr. Daugherty are not legitimately related to the 'stalking' claims alleged in Texas state court." (*Id.*) Seery's counsel again "advised that Mr. Ellington is bound by the Plan, the Plan Injunction, and the Gatekeeping Orders," and "[t]o the extent Mr. Ellington is now seeking discovery regarding the settlement, this constitutes 'pursuit' of claims against Highland and/or Mr. Seery without leave of the Bankruptcy Court in violation of the Bankruptcy Court's Gatekeeping Orders." (*Id.*) Seery's counsel put Ellington and his counsel on notice that "Mr. Seery, Highland, and the Claimant Trust take these matters seriously and will enforce all rights and seek appropriate sanctions." (*Id.*) Finally, Seery's counsel confirmed that, "[i]n any event, the redacted information does not relate to any allegations in your stalking lawsuit or even settlement negotiations between Mr. Daugherty and Mr. Seery," so they are "irrelevant and therefore appropriately redacted." (*Id.*)

28. While Ellington and his counsel were seeking irrelevant documents and testimony from Seery in the Stalking Action, they were also seeking to obtain documents from and depose Judge Nelms. (Declaration of Richard L. Wynne Exs. 1, 3, 5.) Judge Nelms responded that he had no responsive documents, and his counsel represented to Ellington's counsel that Judge Nelms "was not involved in, and has no knowledge of, the matters that are at issue in" the Stalking Action, and asked Ellington's counsel "to reconsider your plan to depose him." (*Id.* Exs. 2, 4.)

29. On July 25, 2023, the day after Pettit raised the relevance of the Daugherty Settlement to Seery's counsel, Pettit did the same in a lengthy email to Judge Nelms's counsel filled with baseless speculation and inaccuracies:

> While we do believe Daugherty left Judge Nelms was left in the dark regarding Daugherty's stalking, what is significant is that all of this happened during the time Judge Nelms was on the board and Jim Seery and Andy Clubok *did know about Mr. Daugherty's inappropriate investigation*. In fact, not only were Seery and Clubok aware—but according to Daugherty, Seery himself told Daugherty that he "appreciated" the investigation. . . .
>
> At the Plan Confirmation hearing on February 2, 2021, the Debtor and Daugherty announced a ***settlement of Daugherty's proof of claim in the Highland Bankruptcy***. Nine months later in November 2021, ***the Debtor and Daugherty executed a settlement agreement*** that, in addition to the material terms announced in February 2021, gave Daugherty an additional $1m in Class 9, part of Highland's investment track record to claim as his own, ownership of two Highland affiliates he could use to pursue litigation claims, and a prospective observer role on the Claimant Oversight Board. The Debtor agreed to all of this additional settlement consideration subsequent to receiving Mr. Daugherty's cooperation in investigating Ellington. Given the Board's role in approving settlement of material proofs of claim in the bankruptcy, Ellington believes that Judge Nelms should have been made aware of Daugherty's actions—if not by Daugherty, then certainly by Jim Seery and Andy Clubok.
>
> It does not seem to be a coincidence that Judge Nelms was excluded from all communications relating to the stalking and investigation. It does not seem to be a coincidence that ***Mr. Daugherty's settlement in the bankruptcy became materially better for Mr. Daugherty*** after Judge Nelms was seemingly cut out of communications and only after Mr. Daugherty had provided Seery and Clubok with thousands upon thousands of pages of his investigatory work regarding Ellington. And it does not seem to be a coincidence that Judge Nelms participated in the legitimate negotiations with Daugherty, but that Judge Nelms was purposefully excluded from what Mr. Ellington believes were the illegitimate negotiations.

(*Id.* Ex. 4 (citations omitted; certain emphasis added).)

30. Ellington and his counsel then stopped responding to Judge Nelms' counsel and personally served a second third-party subpoena on Judge Nelms in the Stalking Action seeking Nelms' deposition, forcing Judge Nelms to file a motion to quash the renewed deposition. (*Id.* Ex. 5.) After conferring for weeks, Petit eventually provided to Judge Nelms' counsel proposed deposition topics, including:

> 9. Any consideration provided to Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking in this case, including, but not limited to, the treatment of Mr. Daugherty's Proof of Claim in the Highland bankruptcy.
>
> 10. The process for approval of Mr. Daugherty's proof of claim with respect to the settlement announced on the record in the Highland bankruptcy on February 2, 2021.
>
> 11. The ordinary process for negotiation and settlement of material proofs of claim in the Highland bankruptcy.

(*Id.* Ex. 6.)

31. Judge Nelms and John Dubel (another former independent director of the Debtor) have offered to provide declarations that they do not have any knowledge relevant to the stalking allegations, but Ellington and his counsel have continued to use the Stalking Action to harass them. For example, Ellington left a document subpoena at Dubel's home when he was out of town and, when Dubel did not respond, Ellington and his counsel sought to hold Dubel in contempt and threatened monetary damages. (*Id.* Exs. 7, 8.)

32. On July 27, 2023, two business days before Seery's scheduled deposition, Ellington's counsel informed Seery's counsel that "[w]e are going to file a Motion to Compel the redacted text messages," "[w]e will postpone Mr. Seery's deposition," and will "take it after the issue of the redactions is resolved by the Court." (Ex. 10.)[10]

[10] Seery is prepared to provide unredacted copies of the text message conversations at issue to this Court *in camera* should this Court request that he do so.

33. On August 21, 2023, Ellington moved to compel the production of unredacted text messages between Daugherty and Seery ***from Daugherty***—not Seery—in Texas state court. (Ex. 1.) Ellington did not provide notice to Seery or his counsel of his motion and stated vaguely that he "intends to also seek full production from Seery." (*Id.* ¶ 12.) Ellington asserted that the redacted "text messages are relevant to Daugherty's investigation," but provided no basis for his assertion; he stated only that "they were sent during the relevant time, were by and between Seery and Defendant, and are surrounded by messages referencing Plaintiff and Defendant's investigation of him." (*Id.* at 5.) Tellingly, Ellington's motion made no mention of the Daugherty Settlement or any of the speculative theories of relevance Petit raised in her emails. Ellington also selectively attached email correspondence between his counsel and Seery's counsel to avoid showing the Texas court or Daugherty any emails referencing the Daugherty Settlement and Seery's counsel's responses. Instead, Ellington emphasized that his lawsuit is about allegations of "stalking and otherwise harassing him and his family," and asserted that Daugherty's "supposed motivations in stalking Plaintiff are irrelevant." (*Id.* ¶¶ 1–2 & Ex. D.)

34. On August 29, 2023, Daugherty filed a response to Ellington's motion arguing, among other things, that Ellington seeks "to gather otherwise impermissible discovery for use in concurrent bankruptcy proceedings" in violation of the "gatekeeping order in the bankruptcy court." (Ex. 13 ¶¶ 1, 3; *see also id.* ¶ 17 n.6 ("[T]his case is about gathering discovery for use in the bankruptcy proceedings, not an effort to support his baseless claims for stalking or invasion of privacy."); *id.* ¶ 20 ("Ellington should not be permitted to utilize this case as leverage to gain impermissible backdoor discovery in bankruptcy proceedings or elsewhere.").)

35. On September 11, 2023, the Texas state court granted in part Ellington's motion to compel with certain handwritten modifications: "Defendant [Daugherty] shall produce all text

messages with James Seery regarding Plaintiff [Ellington] ***and the stalking issues***; including the unredacted versions of the text messages already produced by James Seery." (Ex. 14 (handwritten modifications emphasized).) Because the redacted material does not relate to Ellington or any "stalking issues," this order will not result in the production of any additional documents or information.

ARGUMENT

I. Ellington And His Counsel Violated The Gatekeeper Provision And Gatekeeper Orders By Pursuing Claims Against Highland And Seery In The Stalking Action.

36. Under the Gatekeeper Provision, Ellington and his counsel may not "commence or ***pursue a claim or cause of action of any kind*** against" Highland and Seery "that arose or arises from or is related to the Chapter 11 Case" without this Court granting leave to do so. (Plan at 50–51 (emphasis added); Confirmation Order at 77.) Yet that is precisely what Ellington and his counsel are doing by using the Stalking Action to seek discovery into the Debtor's negotiations regarding the Court-approved Daugherty Settlement, which has nothing to do with any alleged stalking.

37. The Gatekeeper Provision applies to the claims Ellington and his counsel are pursuing against Highland and Seery, and Ellington's counsel has never disputed its applicability.

a. ***First***, under the Plan, Ellington and his counsel are Enjoined Parties subject to the Gatekeeper Provision and Highland and Seery are Protected Parties protected by the Gatekeeper Provision. (*See supra* ¶ 11, fn.6.)

b. ***Second***, Ellington and his counsel's speculation that Seery engaged in "inappropriate negotiations" with Daugherty in connection with his proof of claim in Debtor's Chapter 11 bankruptcy such that Debtor provided Daugherty with

additional consideration in the Daugherty Settlement plainly "arises from or is related to the Chapter 11 Case." (*See supra* ¶¶ 24–35.)

c. ***Third***, Ellington and his counsel's efforts to obtain discovery in the Stalking Action to develop potential claims against Highland and Seery constitutes "pursu[ing] a claim or cause of action" under the Gatekeeper Provision as a matter of law. During prior contempt proceedings under the Gatekeeper Orders, the District Court held that "[t]o pursue a claim, a party must 'try' or 'seek' to bring that claim," which encompasses a broader range of actions than "bring[ing] a claim against Seery." *Charitable DAF Fund LP v. Highland Capital Mgmt. LP*, 2022 WL 4538466, at *3 (N.D. Tex. Sept. 28, 2022). The District Court rejected contemnors' argument that "the term *pursue* in the gatekeeper orders refers only to legal activities that occur *after* a claim has already been filed," reasoning that "most dictionaries define *pursue* as 'seeking' or 'trying' to obtain a desired end." *Id.* at *2 (emphasis in original; citations omitted) (collecting dictionaries). By seeking discovery into negotiations between Seery, on behalf of Debtor, and Daugherty regarding the Daugherty Settlement—which has nothing to do with whether or not Daugherty stalked Ellington—Ellington and his counsel are pursuing claims against Highland and Seery.

38. The Gatekeeper Orders also apply to the claims Ellington and his counsel are pursuing against Seery. Under the January 2020 Order, Ellington and counsel may not "commence or pursue a claim or cause of action of any kind against any Independent Director," including Seery, "relating in any way to the Independent Director's role as an independent director" without this Court's leave. (January 2020 Order ¶ 10 (emphasis added).) Under the July 2020 Order,

Ellington and counsel may not "commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor" without this Court's leave. (July 2020 Order ¶ 5.) By seeking discovery regarding "the negotiations between Mr. Daugherty and Mr. Seery, ***as a representative of the Highland Estate***" (Ex. 12 (emphasis added)), Ellington and his counsel are pursuing claims against Seery in his capacities as Independent Director, CEO, and CRO of the Debtor, which are subject to the Gatekeeper Orders. Tellingly, Ellington did not pursue such discovery in connection with his objections to the Daugherty settlement but is instead doing so years later in the Stalking Action.

39. Ellington and his counsel are using the Stalking Action as a vehicle to pursue potential claims against Highland and Seery while evading this Court's jurisdiction, the Gatekeeper Provision, and the Gatekeeper Orders. But this Court held that "it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit." (Confirmation Order ¶ 81 (collecting cases).) And the Fifth Circuit agreed that the "bankruptcy court retains jurisdiction post-confirmation" under "the gatekeeper provision" over "matters pertaining to the implementation or execution of the plan." *In re Highland Capital Mgmt, L.P.*, 48 F.4th 419, 439 (5th Cir. 2022) (cleaned up); *see also In re Salubrio, LLC*, 2023 WL 3105153, at *8–9 (W.D. Tex. Mar. 31, 2023) (rejecting argument that a bankruptcy court's gatekeeping order was overly broad to the extent it prohibits claims brought in state court "against the Trustee, the Trustee's attorney, or other creditors without leave of Court") (citing *Highland*, 48 F.4th at 439).

II. This Court Should Hold Ellington And His Counsel In Civil Contempt.

40. "The power to impose sanctions for contempt of an order is an inherent and well-settled power of all federal courts—including bankruptcy courts." *In re Highland Capital Mgmt., L.P.*, 2021 WL 3418657, at *10 (Bankr. N.D. Tex. Aug. 4, 2021) (collecting in cases), *aff'd in*

relevant part sub nom. Charitable DAF Fund LP v. Highland Capital Mgmt. LP, 2022 WL 4538466 (N.D. Tex. Sept. 28, 2022). "A bankruptcy court's power to sanction those who 'flout its authority is both necessary and integral' to the court's performance of its duties." *Id.* (cleaned up) (quoting *Schermerhorn v. Cenurytel, Inc. (In re SkyPort Global Comm's, Inc.)*, 2013 WL 4046397, at *1 (Bankr. S.D. Tex. Aug. 7, 2013), *aff'd*, 661 F. App'x 835 (5th Cir. 2016)).

41. Parties "commit[] contempt when they violate a definite and specific order of the court requiring them to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Id.* at *11 (cleaned up) (quoting *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995)). "If the purpose of the sanction is to coerce the contemnor into compliance with a court order, or to compensate another party for the contemnor's violation, the order is considered purely civil." *Id.* (citing *In re Bradley*, 588 F.3d 254, 263 (5th Cir. 2009)). "[T]he party seeking an order of contempt in a civil contempt proceeding need only establish, by clear and convincing evidence (1) that a court order was in effect, and (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court's order." *Id.* (citing *United States v. Puente*, 558 F. App'x 338, 341 (5th Cir. 2013) (per curiam); *FDIC v. LeGrand*, 43 F.3d 163, 170 (5th Cir. 1995)). "[T]he contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court's order." *Id.* at *12 (quoting *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000)).

42. These requirements are easily satisfied here. As discussed above (*see supra* ¶¶ 9–39), the Gatekeeper Provision and Gatekeeper Orders remain in effect and apply to Ellington and his counsel; Seery's counsel provided copies of them to Ellington's counsel in the Stalking Action and repeatedly provided notice that they would seek sanctions for any violations; the Gatekeeper Provision prohibits pursuing claims against Highland or Seery relating to the Debtor's Chapter 11

case without this Court's leave; the Gatekeeper Orders prohibit pursuing claims against Seery relating to his role as Independent Director, CEO, or CRO of the Debtor; and Ellington's counsel admitted that Ellington and his counsel are using the Stalking Action to seek discovery into alleged misconduct in the negotiation of the settlement of Daugherty's proof of claim in Debtor's Chapter 11 case.

CONCLUSION

43. For the foregoing reasons, Highland and Seery respectfully request this the Court order Ellington and his counsel to show cause why they should not be held in civil contempt for violating the Gatekeeper Provision and Gatekeeper Orders, enter an Order in the form appended as Exhibit A hereto, and grant any further relief as the Court deems just and proper.

Dated: September 13, 2023

PACHULSKI STANG ZIEHL & JONES LLP

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CERTIFICATE OF CONFERENCE

On June 30, 2023, Seery's counsel emailed Ellington's counsel that Highland's counsel "wants to attend [Seery's] deposition and potentially raise objections under the Gatekeeper Orders entered by the Bankruptcy Court (which I've attached) to ensure discovery in the *Ellington* litigation is not used in connection with the *Highland* bankruptcy in violation of the Gatekeeper Orders." On July 11, 2023, counsel for Seery, Ellington, Highland, and Judge Nelms met and conferred by phone. All counsel agreed that counsel for Seery and Highland could raise objections to deposition questions to Seery based on the Gatekeeper Provision and Gatekeeper Orders.

On July 24, 2023, after Ellington's counsel's emailed demanding that Seery produce text messages without redactions, Seery's counsel emailed Ellington's counsel that seeking discovery from Seery beyond information related to the "stalking" allegations in the Stalking Action "would constitute the 'pursuit' of claims against Mr. Seery or other covered parties without leave of the Bankruptcy Court." Seery's counsel reserved the right to seek relief under the Gatekeeper Provision in the event Ellington proceeded with seeking this discovery. Later that day, Ellington's counsel responded demanding that Seery produce unredacted text message communications to the extent they "relate in any way to the negotiations between Mr. Daugherty and Mr. Seery, as a representative of the Highland Estate." On July 25, 2023, Seery's counsel emailed Ellington's counsel that Seery "will enforce all rights and seek appropriate sanctions" if Ellington continues to seek materials unrelated to the allegations in the Stalking Action. On July 27, 2023, Ellington's counsel emailed Seery's counsel that Ellington would file a motion to compel the production of Seery's text messages beyond those that are relevant to the stalking allegations. On August 21, 2023, Plaintiff filed a motion to compel these text messages from Daugherty in Texas state court.

On September 13, 2023, Seery's counsel made multiple telephone calls to, and left multiple voicemails with, Ellington's counsel, in an attempt to meet and confer regarding this Motion. Ellington's counsel did not return these calls or voicemails. Seery's counsel then emailed Ellington's counsel informing them that Seery and Highland counsel intended to file this Motion, explaining that "[a]s we've discussed by phone and by email, we believe that you and Scott Ellington are using discovery in the stalking litigation against Patrick Daugherty to pursue claims against Highland and Jim Seery in violation of the Gatekeeper Provision and Gatekeeper Orders entered by the Bankruptcy Court." Ellington's counsel demanded to see "a copy of the proposed motion prior to filing," which Seery's counsel opposed because it is not required by Local Civil Rule 7.1(a). Seery's counsel invited Ellington's counsel to "immediately withdraw all of [their] impermissible demands" and, "[f]ailing that, we will mark your position on this motion as opposed when filing." Ellington's counsel has not withdrawn any discovery requests and therefore opposes this Motion.

/s/ Joshua S. Levy

Joshua S. Levy

Exhibit A

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-sgj11
Reorganized Debtor.	)	

ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLAIMAINT TRUST, AND JAMES P. SEERY, JR.'S JOINT MOTION FOR AN ORDER REQUIRING SCOTT BYRON ELLINGTON AND HIS COUNSEL TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE GATEKEEPER PROVISION AND GATEKEEPER ORDERS

Having considered (1) *Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion For an Order Requiring Scott Byron Ellington and His Counsel*

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders [Docket No.__] (the "Motion");[2] (2) the exhibits annexed to the *Declaration of Joshua S. Levy in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion For an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* [Docket No.__], (3) the exhibits annexed to the *Declaration of Richard L. Wynne in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion For an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* [Docket No.__], and (4) all prior proceedings related to this matter, including the proceedings that led to the entry of each of the Gatekeeper Orders and the Confirmation Order; this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); this Court having found that venue of this proceeding and the Motion in this District is proper pursuant 28 U.S.C. §§ 1408 and 1409; this Court having found that sanctions are warranted under Section 105(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interest of Highland, its creditors, and other parties-in-interest; this Court having found that Highland's and Seery's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; upon all of the proceedings

[2] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.

2. Scott Byron Ellington and his counsel, The Pettit Law Firm and Lynn Pinker Hurst & Schwegmann LLP, shall show cause before this Court on **[ ], September [ ], 2023 at 9:30 a.m (Central Time)** why an order should not be granted: (1) finding and holding each of them in contempt of court; (2) directing them, jointly and severally, to pay Highland an amount of money equal to Highland's and Seery's actual expenses incurred in bringing this Motion, payable within three (3) calendar days of presentment of an itemized list of expenses; and (3) granting Highland and Seery such other and further relief as the Court deems just and proper under the circumstances.

3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and 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:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLAIMANT TRUST, AND JAMES P. SEERY, JR.'S REPLY IN FURTHER SUPPORT OF THEIR JOINT MOTION FOR CIVIL CONTEMPT AND IN OPPOSITION TO ELLINGTON'S COUNSEL'S MOTION TO STRIKE

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

DEFENDANT'S EXHIBIT
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Highland and Seery (together, "Movants"), by and through their undersigned counsel, hereby file this reply in further support of their joint motion for civil contempt ("Motion" or "Mot."; Dkt. No. 3910), in response to Ellington's Response in Opposition to the Joint Motion ("Ellington's Resp."; Dkt. No. 3958), and in opposition to Ellington's counsel's Motion to Strike ("Mot. to Strike"; Dkt. No. 3957; together with Ellington's Response, the "Oppositions").[2] In support of their Motion, Movants state as follows:

PRELIMINARY STATEMENT

1. The Oppositions and accompanying declarations succeed only in *confirming* that Respondents are using the Stalking Action to pursue claims against Highland and Seery in violation of the Gatekeeper Provision and Gatekeeper Orders. Indeed, Counsel point blank admit—in sworn declarations signed under penalty of perjury—that they "would like to investigate Daugherty's stalking of Ellington as a possible *quid-pro-quo* in exchange for a more beneficial settlement with Highland" in this bankruptcy case. The counterparties to this latest (yet predictably fictitious) *quid pro quo*, of course, are Highland and Seery. Moreover, Ellington does not—because he cannot—deny that he "intends to use the third-party discovery to file a future claim against Seery." And Ellington does not—because he cannot—deny that he is coordinating with counsel for Dugaboy and HMIT by providing them with discovery obtained from the Stalking Action, which they have already used to pursue claims against Highland and Seery in this bankruptcy case. Ellington's silence on these issues speaks volumes. Ellington and Counsel could end this now by disavowing that they will bring any claims against Highland or Seery, but they refuse to do so.

[2] Capitalized terms have the same meanings ascribed to them in the Motion, unless otherwise indicated. Ellington's counsel are referred to as "Counsel," and Ellington and Counsel together are referred to as "Respondents."

2. Respondents' backdoor efforts to challenge the bankruptcy process and the Daugherty Settlement have no bearing on whether Ellington can substantiate his allegations that Daugherty stalked Ellington. Nevertheless, just like HMIT did in its failed motion for leave to file an adversary proceeding, Respondents are pursuing claims against Highland and Seery by alleging yet another fabricated *quid pro quo*. But unlike HMIT, Respondents have not requested this Court's leave, which violates the Gatekeeper Provision and Gatekeeper Orders.

3. Respondents offer three meritless arguments for their misconduct. ***First***, they attack a strawman by arguing that they are not pursuing claims against Highland or Seery because they have not yet filed any such claims. This is a blatant attempt to read the word "pursue" out of the Gatekeeper Provision and Gatekeeper Orders. As the District Court held in prior litigation in this case, "[t]o pursue a claim, a party must 'try' or 'seek' to bring that claim," which encompasses a broader range of actions than "bring[ing] a claim against Seery." *Charitable DAF Fund LP v. Highland Cap. Mgmt. LP*, 2022 WL 4538466, at *3 (N.D. Tex. Sept. 28, 2022).

4. ***Second***, Respondents contend that Movants do not really believe that seeking third-party discovery constitutes pursuing a claim because Seery previously produced documents and was prepared to sit for a deposition in the Stalking Action. In so arguing, Respondents conflate legitimate third-party discovery in the Stalking Action, which Seery has provided without objection, with the *impermissible* discovery they now seek concerning the bankruptcy process and Daugherty Settlement, which violates the Gatekeeper Provision and Gatekeeper Orders.

5. ***Third***, Respondents incorrectly assert that civil contempt requires a finding of bad faith or willfulness. But as Counsel's own authority holds, the standard for civil contempt is "an *objective* one" and "the absence of willfulness does not relieve from civil contempt." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1802 (2019) (cleaned up; emphasis in original).

6. This Court should also deny Ellington's counsel Motion to Strike. Ellington's counsel argues that Movants did not comply with the procedural requirement of Federal Rule of Bankruptcy Procedure 9011, but twice admits that "Rule 9011 is inapplicable" to the Motion.

ADDITIONAL RELEVANT BACKGROUND

7. Movants recounted the relevant background at length in their Motion. (Mot. at 4–15.) Without addressing every incorrect and unsupported assertion in the Oppositions, Movants briefly provide additional procedural history to address Respondents' distorted and selective presentation.

8. On June 19, 2023, Ellington served a subpoena on Seery in the Stalking Action seeking Seery's deposition about six broad topics. (Mot. ¶ 24 Ex. 7.) Seery's counsel agreed to accept service of the subpoena and sought to schedule a meet-and-confer call to discuss, among other things, "the scope of the depositions," "the procedure for raising objections to questions that exceed that scope," and raising "objections under the Gatekeeper Orders entered by the Bankruptcy Court (which I've attached) ***to ensure discovery in the Ellington litigation is not used in connection with the Highland bankruptcy in violation of the Gatekeeper Orders***." (*Id.* Ex. 9 (emphasis added).)

9. On July 10, 2023, Counsel sent "revised topics" expanding the scope of the proposed deposition to nine topics, including:

> 6. Mr. Seery's receipt of communications, emails, photos, videos, data, or other information from Daugherty relating to Ellington or *entities affiliated with Ellington*.
>
> 7. Any meetings or communications between *any representative of the Highland Bankruptcy estate* and Mr. Daugherty and/or his representatives related in any way to Ellington.
>
> [. . .]

> 9. Any consideration provided to Daugherty with respect to Mr. Daugherty's so-called "investigation" of Mr. Ellington or the stalking in this case, including, but not limited to, the treatment of *Mr. Daugherty's Proof of Claim in the Highland bankruptcy*.

(*Id.* Exs. 8 & 10 (emphasis added).) Seery's counsel raised "concerns about the scope of the revised topics, particularly 'entities affiliated with Ellington' in Topic 6, Topic 7, and 'Mr. Daugherty's Proof of Claim in the Highland bankruptcy' in Topic 9. We'd like to discuss the topics ***in light of the Bankruptcy Court's Gatekeeper Orders*** and procedures for raising objections." (*Id.* Ex. 10 (emphasis added).)

10. On July 11, 2023, the parties met and conferred by telephone and agreed that counsel for Highland "can attend the deposition and ***can instruct the witness not to answer questions*** on privilege grounds or as he deems appropriate ***under the Bankruptcy Court's Gatekeeper Orders***." (*Id.* (emphasis added).) The parties also "agreed to limit the deposition to the topics noticed" and "agreed to exchange objections to the topics by email." (*Id.*) On July 13, 2023, counsel for Highland and Seery served the following objections by email:

> Topic No. 6. We object to Topic No. 6 to the extent it seeks testimony regarding "entities affiliated with Ellington" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and ***violates the Bankruptcy Court's Gatekeeper Orders***.
>
> Topic No. 7. We object to Topic No. 7 on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and ***violates the Bankruptcy Court's Gatekeeper Orders***.
>
> Topic No. 9. We object to Topic No. 9 to the extent it seeks testimony regarding "Mr. Daugherty's Proof of Claim in the Highland bankruptcy" on the grounds that it is overly broad, not relevant to the claims and defenses at issue, and ***violates the Bankruptcy Court's Gatekeeper Orders***.

(*Id.* (emphasis added).) Counsel never challenged any of those objections.

11. On July 27, 2023, Counsel "postpone[d] Mr. Seery's deposition" to "file a Motion to Compel the redacted text messages" produced by Seery. (*Id.*). Respondents falsely assert that the state court "grant[ed] Ellington's motion to compel." (Mot. to Strike ¶¶ 17–18; *see also id.* at 3; Ellington's Resp. ¶ 26.) They ignore that the state court added certain handwritten modifications such that it ordered ***Daugherty*** to produce only "text messages with James Seery regarding Plaintiff [Ellington] ***and the stalking issues***; including the unredacted versions of the text messages already produced by James Seery," in ***Daugherty's*** possession and control. (Mot. ¶ 35 Ex. 14 (handwritten modifications emphasized).) Because the redacted material does not relate to Ellington or any "stalking issues," unless Daugherty volunteers to provide more, that order will not result in the production of any additional documents or information. Thus, contrary to Respondents' baseless assertions, there is no attempt to "prevent[] the state court from making a routine decision about the scope of third-party discovery," no request "for this Court to decide the appropriate scope of discovery in the State Court Action," and no request for "this Court to intervene in and overrule the State Court's recent discovery order." (Mot. to Strike at 4; Ellington's Resp. ¶ 4; *see also id.* ¶¶ 26, 37; Mot. to Strike at 15–16.)

ARGUMENT

I. Respondents' Oppositions Confirm That They Should Be Held In Civil Contempt For Violating The Gatekeeper Provision and Gatekeeper Orders.

A. Respondents Admit That They Are Pursuing Claims Against Highland And Seery.

12. Counsel has now admitted at least ***four times*** that they are using discovery in the Stalking Case to pursue claims against Highland and Seery:

- **July 24, 2023 Email from Julie Pettit:** "We believe that Mr. Daugherty and Mr. Seery's communications regarding *settlement of Mr. Daugherty's proof of claim* in the Highland bankruptcy are relevant to the factual issues that will be tried in this matter. To the extent that the redacted communications relate in any way to the *negotiations between Mr. Daugherty and Mr. Seery, as a representative of the Highland Estate*, please produce those communications." (Mot. ¶ 26 Ex. 12 (emphasis added).)

- **July 25, 2023 Email from Julie Pettit:** "[W]e are seeking the deposition of Judge Nelms" to show "that Daugherty—with the assistance of at least one other individual [*i.e.*, Seery]—stalked Mr. Ellington" in a *quid pro quo* such that "*Daugherty's settlement in the bankruptcy became materially better . . .* only after Daugherty had provided Seery and Clubok with thousands upon thousands of pages of his investigatory work regarding Ellington." (Mot. ¶¶ 2, 29 (quoting Wynne Decl. Ex. 4) (emphasis added).)

- **Oct. 23, 2023 Declaration of Julie Pettit:** "[W]e would like to investigate Daugherty's stalking of Ellington as a possible *quid-pro-quo* in exchange for a beneficial settlement with Highland." (Mot. to Strike Ex. A ("Pettit Decl.") ¶ 24.)

- **Oct. 24, 2023 Declaration of Michael Hurst:** "[W]e have a good faith basis to investigate Daugherty's stalking of Ellington as a possible *quid-pro-quo* in exchange for a beneficial settlement with Highland." (Mot. to Strike Ex. B ("Hurst Decl.") ¶ 24.)

13. Daugherty's settlement with Highland has nothing to do with whether Daugherty stalked Ellington. Respondents admit that, as a matter of Texas law, their stalking claims turn on whether Daugherty "engaged in harassing behavior" such that Ellington "reasonably feared for [his] safety or the safety of a member of [his] family." (Mot. ¶ 19 Ex. 2 ¶¶ 20–22 (quoting Tex. Civ. Prac. & Rem. Code §§ 85.001–02).) Indeed, Respondents represented to the state court just three months ago that Daugherty's "supposed motivations in stalking Plaintiff are irrelevant." (*Id.* Ex. 1 ¶ 2.)[3]

[3] Respondents are aware that the contrived *quid pro quo* against Highland and Seery is irrelevant to the Stalking Action. When addressing this very point, Counsel suggested that she could cure the "relevan[ce]" objections by "amend[ing]" Ellington's complaint (which she never did). (Mot. ¶ 26 Ex. 12.) Ellington does not and cannot assert that communications concerning the Daugherty Settlement caused him to feel threatened or that an offense was being committed against him—as required by Texas stalking laws—because he learned of the communications only during discovery.

14. Respondents now claim—in direct contradiction to their own representations to the state court—that discovery into negotiations of the Daugherty Settlement are "relevant to [Daugherty's] motives in stalking Ellington." (Ellington's Resp. at 6; *see also id.* ¶ 25 ("Ellington could obtain materials related to Daugherty's apparent motive in stalking Ellington."); Mot. to Strike at 23 (seeking discovery because "Daugherty's stalking was motivated by malice and potential financial reward"). Respondents cannot have it both ways. By acknowledging that Daugherty's motives are irrelevant to the Stalking Action, they put the lie to any theory of relevance based on Daugherty's motives.[4] Such discovery is a blatant attempt to pursue claims against Highland and Seery in violation of the Gatekeeper Provision and Gatekeeper Orders.

15. This is not mere "speculation." (Mot. to Strike at 16; *see id.* at 19–20; Ellington's Resp. ¶ 36.) Ellington does not deny that he "intends to use the third-party discovery to file a future claim against Seery." (Ellington's Resp. ¶ 36.) Worse, Respondents have already provided discovery material from the Stalking Action to counsel for Dugaboy, which used it to file the Imaging Motion against Seery in this bankruptcy case, and counsel for HMIT, which used it to further their motion for leave to file an adversary proceeding. (Mot. ¶ 23.) Again, Ellington does not deny that he did so. Counsel's declarations effectively admit the same. They state that they "did not disclose those communications to Dugaboy or its counsel," but do not deny providing discovery material to counsel for HMIT. (Pettit Decl. ¶ 31; Hurst Decl. ¶ 31.) Counsel also state that they "have not coordinated in any way with James Dondero as it relates to the stalking litigation or the Highland Bankruptcy," but do not state that they have not coordinated with

[4] Respondents also assert that Highland's payments to Daugherty under the Daugherty Settlement are somehow relevant to Ellington's "damages" in the Stalking Action. (Ellington's Resp. ¶ 25 & n.5; *see also* Mot. to Strike at 23 (claiming that "discovery is also relevant to actual and exemplary damages").) Respondents provide no explanation of how payments by Highland to Daugherty are related to any harm Ellington and his family experienced from Daugherty's alleged stalking, because they are entirely unrelated.

Dondero's counsel. (Pettit Decl. ¶ 32; Hurst Decl. ¶ 32.) This Court should not permit Respondents to end-run the Gatekeeper Provision and Gatekeeper Orders by pursuing claims against Highland and Seery that are ultimately filed by different entities or different counsel. This is precisely why the Gatekeeper Provision extends to Ellington's "Related Persons," including his counsel. (Mot. ¶ 11 n.6.)

B. Respondents' Arguments That Their Misconduct Does Not Violate The Gatekeeper Provision and Gatekeeper Orders Fail.

16. Respondents do not—and cannot—dispute that they are subject to and aware of the Gatekeeper Provision and Gatekeeper Orders, and that Highland and Seery are protected by them. Respondents offer three meritless arguments for why their misconduct does not violate the Gatekeeper Provisions or Gatekeeper Orders.

17. ***First***, Respondents try to read the word "pursue" out of the Gatekeeper Provision and Gatekeeper Orders by arguing that "[s]eeking discovery is not the same as bringing a 'claim or cause of action' such that Gatekeeper Orders would be implicated." (Ellington's Resp. ¶ 2; *see also* Mot. to Strike at 17–18, 21–22.) Movants have never argued that discovery constitutes a claim or cause of action; they argue that seeking discovery to challenge alleged conduct in the bankruptcy settlement process constitutes "***pursu[ing]*** a claim or cause of action" under the Gatekeeper Provision and Gatekeeper Orders. (Mot. ¶ 37 (emphasis added).) Thus, Respondents' authority—much of which arises in the indemnification context—differentiating between a subpoena or Rule 202 petition and a "claim or cause of action" is irrelevant. (Ellington's Resp. ¶ 33 (citing *Dow Jones & Co. v. Highland Cap Mgmt., L.P.*, 564 S.W.3d 852, 858 (Tex. App.—Dallas 2018); *Tetra Tech, Inc. v. NSAA Investments Group, LLC*, 2016 WL 3364876, at *3 (Tex. App.—Fort Worth June 16, 2016)); Mot. to Strike at 17–18, 21–22 (citing same).)

18. As a matter of law, "the term *pursue* in the gatekeeper orders" refers to "legal activities that occur" *before* "a claim has already been filed." *Charitable DAF*, 2022 WL 4538466, at *2. While this may not encompass mere "legal research or client communications" (Mot. to Strike at 19 (quoting *Charitable DAF*, 2022 WL 4538466, at *3); Ellington's Resp. ¶ 35 (citing *Charitable DAF*, 2022 WL 4538466, at *6–7)), Respondents did much more than that. They have already used discovery in the Stalking Action to bring the Imaging Motion against Seery and to try and support HMIT's claims against Highland and Seery and now seek to use the Stalking Action to conduct a full-blown investigation into the negotiation of the Daugherty Settlement—with extensive document requests, depositions, and court filings—to "'try' or 'seek' to bring [a] claim" against Highland and Seery. *Charitable DAF*, 2022 WL 4538466, at *3.

19. Contrary to Ellington's assertions, the "*Barton* doctrine," on which the Gatekeeper Provision and Gatekeeper Orders "are based," is not "limited to the commencement of a legal action against a court appointee." (Ellington's Resp. ¶¶ 29–32.) "The *Barton* Doctrine applies to subpoenas issued by courts that are served" on "officers and agents owing their positions to bankruptcy court orders," following "the same principles as where the trustee becomes a party to a suit or adversary proceeding." *In re Eagan Avenatti, LLP*, 637 B.R. 502, 506, 508 (Bankr. C.D. Cal. 2022) (citing *In re Cir. City Stores, Inc*., 557 B.R. 443 (Bankr. E.D. Va. 2016)). Accordingly, bankruptcy courts will enjoin "[a] court issued subpoena targeting a bankruptcy professional" from another court where, as here, "the issuers of the subpoenas failed to ask for *Barton* approval before issuing a subpoena." *Id.* at 508–09 (citing *In re Cir. City*, 557 B.R. at 448–51).

20. The *Circuit City* case is instructive. There, the post-confirmation Trustee of the Liquidating Trust received a third-party deposition subpoena from a state court without prior approval from the bankruptcy court. 557 B.R. at 448. The bankruptcy court enjoined the issuer

"from enforcing the Subpoena against the Liquidating Trust," because it "would interfere with the Liquidating Trustee's administration of the estate," so the issuer "was required under the *Barton* doctrine to obtain leave from this Court before issuing the Subpoena to the Liquidating Trust." *Id.* at 451. Similarly, in *Eagan Avenatti*, the Central District of California Bankruptcy Court refused to permit the bankruptcy trustee to comply with two subpoenas issued by the District Court for the Southern District of New York, because they were issued without prior *Barton* approval and took "up considerable time and legal fees," which "is precisely the harm that the *Barton* doctrine was created to prevent." 637 B.R. at 509–10.

21. Ellington misreads *Shao v. Brady* (*In re Media Group, Inc.)*, 2006 WL 6810963, at *7–9 (B.A.P. 9th Cir. Nov. 14, 2006), which does not hold that "the propounding of discovery" is not "covered by the *Barton* doctrine." (Ellington's Resp. ¶ 31.) As the *Circuit City* court explained, "[a] third party subpoena had been issued to an attorney representing a chapter 7 trustee in *Media Group*," so "[c]ompliance with the subpoena by the attorney did not directly impact the trustee's administration of the bankruptcy estate," and "[t]he 9th Circuit BAP ruled that it was not inclined to extend the *Barton* doctrine to the issuance of the subpoena under those circumstances." 557 B.R. at 449. Here, Respondents seek discovery from Seery as the representative of the Highland bankruptcy estate regarding the "administration of the bankruptcy estate" in the Daugherty Settlement, which involves "very different facts and circumstances from those presented in" *Media Group*. *Id.* Ellington's remaining authority (*see* Ellington's Resp. ¶¶ 30, 32) either contradicts his position, holding that "the bankruptcy court provides the most appropriate forum" to address objections to discovery requests, *PFS Invs., Inc. v. Imhoff*, 2012 WL 254125, at *5 (E.D. Mich. Jan. 27, 2012), or is irrelevant, *see Carroll v. Abide*, 788 F.3d 502, 506–07 (5th Cir. 2015) (holding that debtors were not required to request leave of the bankruptcy court to bring

suit against the bankruptcy trustee for action taken pursuant to a district court order, which is not the case here); *Teton Mill Work Sales v. Schlossberg*, 2007 WL 9657995, at *2 (D. Wyo. June 22, 2007) (declining to stay discovery, which was already "substantially complete," while *Barton* doctrine motion "is currently pending before the Court.")

22. ***Second***, Respondents assert that "third-party discovery does not constitute pursuing a claim or cause of action" (Mot. to Strike at 16; *see also* Ellington's Resp. ¶ 33), which conflates discovery that violates the Gatekeeper Provision and Gatekeeper Orders with legitimate third-party discovery. Respondents admit that Seery produced "thousands of documents" and agreed "to appear for a deposition" in the Stalking Action. (Mot. to Strike at 2; *see also id.* at 3, 16; Ellington's Resp. ¶¶ 3, 22–23, 39.) Movants raised the Gatekeeper Provision and Gatekeeper Orders only when Respondents tried to use discovery in the Stalking Action to challenge the bankruptcy process regarding the Daugherty Settlement. (*See supra* ¶¶ [7]–[11]; *see also* Mot. ¶¶ 24–27.)[5] Ellington tries to minimize this conduct as simply "having an intent to pursue claims or causes of action against Seery in the future" (Ellington's Resp. ¶ 36), but serving subpoenas and filing motions in the Stalking Action to challenge the bankruptcy process is conduct, not just intent, which is why it violates the Gatekeeper Provision and Gatekeeper Orders.

23. ***Finally***, Respondents misstate the applicable legal standard for civil contempt, which does not require "a finding of bad faith." (Ellington's Resp. ¶ 38 (quoting *In re Correra*, 589 B.R. 76, 125 (Bankr. N.D. Tex. 2018) (Jernigan, C.J.)); Mot. to Strike at 23 (quoting same).)

[5] Counsel's attempt to frame Seery receiving unsolicited text messages from Daugherty as "Seery willingly conferred with Daugherty on a regular basis and accepted the fruits of Daugherty's improper stalking activities" (Mot. to Strike at 15) mischaracterizes the record and is not supported by Counsel's own declarations (*see* Pettit Decl. ¶ 28; Hurst Decl. ¶ 28.) To the contrary, in response to one of the unsolicited text messages, Seery strongly suggested that Daugherty cease pursuing Highland's former employees. (*See* Pettit Decl. Ex. A-5 at DEF 000246 (responding to an unsolicited picture Daugherty sent of Sarah Goldsmith allegedly delivering boxes to Ellington's storage facility, Seery wrote: "***Pat is a former employee as is he. I suggest leaving her alone*** but assume she just came across your view by accident") (emphasis added).)

Where, as here, a "party seek[s] an order of contempt in a civil contempt proceeding" because the contemnor "violate[d] a definite and specific order of the court," "the contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court's order." *In re Highland Cap. Mgmt., L.P.*, 2021 WL 3418657, at *11–12 (Bankr. N.D. Tex. Aug. 4, 2021) (Jernigan, J.) (cleaned up), *aff'd in relevant part sub nom. Charitable DAF Fund LP v. Highland Capital Mgmt. LP*, 2022 WL 4538466 (N.D. Tex. Sept. 28, 2022). As Counsel's own authority (*see* Mot. to Strike at 22–23) holds, "civil contempt sanctions may be warranted when a party acts in bad faith," but the "standard is generally an *objective* one," and "the absence of willfulness does not relieve from civil contempt." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1802 (2019) (cleaned up; emphasis added).

II. This Court Should Deny Counsel's Motion To Strike.

24. Counsel correctly states—and Movants agree—that "[c]ivil contempt motions in bankruptcy cases are governed by Fed R. Bankr. P. 9020 which implicates Rule 9014 governing contested matters," so "Rule 9011 is inapplicable" to the Motion. (Mot. to Strike at 8–9, 11.) Thus, Counsel's attempt to strike the Motion because Movants "failed to comply with Rule 9011" and its "notice requirement" (*id.* at 9–10) fails by Counsel's own admission.

25. Counsel's assertion that Highland and Seery "failed to properly serve" them "under Rules 7004, 7005, and 9014" (*id.* at 8 & n.5, 11) is wrong. Counsel admits that Movants "email[ed] a copy" of the Motion, and "L.B.R. 9014-1 instructs that '[t]he movant shall serve the motion ***electronically***, or by mail, in the manner provided by Bankruptcy Rule 7004. No summons is required.'" (*Id.* at 8 n.5 (quoting N.D. Tex. Local Bankr. R. 9014-1(b)) (emphasis added).) In any event, to avoid any doubt about the sufficiency of service, Movants also served Counsel by first-class mail and filed a certificate of service (Dkt. No. 3968). *See* Fed. R. Bankr. P. 7004(b), 7005; *see also, e.g.*, *Gates v. City of Abilene*, 2019 WL 13252682, at *3 (N.D. Tex. Feb. 21, 2019)

(denying motion to quash service as moot because "after the filing of Defendant's Motion, Plaintiff properly served the summons and complaint"). There can be no question that service here was proper and effective since Respondents objected to the Motion pursuant to an agreed-upon schedule. The Motion to Strike is without merit and should be denied.

CONCLUSION

26. For the foregoing reasons and those set forth in the Motion, Movants respectfully request this the Court order Respondents to show cause why they should not be held in civil contempt for violating the Gatekeeper Provision and Gatekeeper Orders, and deny Counsel's Motion to Strike.

Dated: November 10, 2023

PACHULSKI STANG ZIEHL & JONES LLP

/s/ John A. Morris
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
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-and-

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Counsel for Highland Capital Management, L.P., and the Highland Claimant Trust

WILLKIE FARR & GALLAGHER LLP

/s/ Mark T. Stancil
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-and-

REED SMITH LLP
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Texas Bar No. 24040402
Lindsey L. Robin
Texas Bar No. 24091422
2850 N. Harwood St., Ste. 1500
Dallas, Texas 75201
(469) 680-4292

Counsel for James P. Seery, Jr.

CERTIFICATE OF SERVICE

The undersigned certifies that on November 10, 2023, a true and correct copy of the foregoing will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

/s/ Mark T. Stancil

Docket #3991 Date Filed: 12/12/2023

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 December 12, 2023

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-sgj11
Reorganized Debtor.	)	

ORDER DENYING MOTION FOR AN ORDER REQUIRING SCOTT BYRON ELLINGTON AND HIS COUNSEL TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE GATEKEEPER PROVISION AND GATEKEEPER ORDERS

DEFENDANT'S EXHIBIT
92
25-03055

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

1934054231212000000000001

Having considered (1) *Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* [Docket No. 3910] (the "Motion")[2] filed by Highland Capital Management, L.P. ("HCMLP," or, as applicable, the "Debtor"), the reorganized debtor in the above-referenced action, the Highland Claimant Trust (the "Trust," and together with HCMLP, "Highland"), and James P. Seery, Jr., HCMLP's Chief Executive Officer and the Claimant Trustee of the Trust ("Seery," and collectively with Highland, the "Highland Parties") against Scott Byron Ellington ("Ellington") and his counsel, The Pettit Law Firm ("Pettit") and Lynn Pinker Hurst & Schwegmann, LLP (collectively with Ellington, Pettit, and the Highland Parties, the "Parties"); (2) the exhibits annexed to the *Declaration of Joshua S. Levy in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* [Docket No. 3912]; (3) *Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Reply in Further Support of Their Joint Motion for Civil Contempt and in Opposition to Ellington's Counsel's Motion to Strike* [Docket No. 3969]; (4) the exhibits annexed to the *Declaration of Richard L. Wynne in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Motion for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* [Docket No. 3914]; (5) *Ellington's Response in Opposition to the Joint Motion of Highland Capital Management, L.P., Highland*

[2] Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

Claimant Trust, and James P. Seery, Jr. for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders [Docket No. 3958]; (6) the exhibits annexed to the *Declaration of Michelle Hartmann in Support of Ellington's Response in Opposition to the Joint Motion of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr. for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* [Docket No. 3959]; (7) *Lynn Pinker Hurst & Schwegmann, LLP and The Pettit Law Firm's Motion to Strike and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* [Docket No. 3957]; and (8) all prior proceedings related to this matter, including the proceedings that led to the entry of each of the Gatekeeper Orders and the Confirmation Order; this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); this Court having found that venue of this proceeding and the Motion in this District is proper pursuant 28 U.S.C. §§ 1408 and 1409; this Court having found that the Highland Parties' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; this Court having found that, as a result of the consensual resolution reached by the Parties, as set forth on the record during the hearing on the Motion, held on December 4, 2023 (the "Hearing"), the relief sought in the Motion is moot; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **DISMISSED** with prejudice and the relief requested therein is denied as moot.

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

###END OF ORDER###

Hearing On Highland Capital Management, L.P.'s Motion to Withdraw its Answer and Consent to Judgment for Permanent Injunctive Relief,

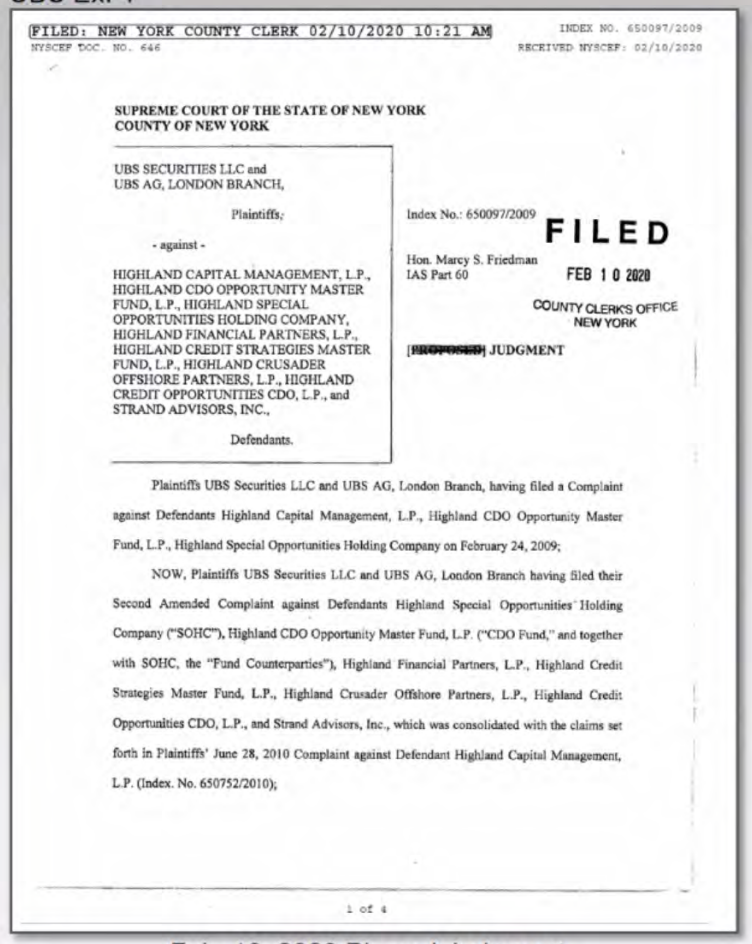
Adv. Proc. No. 21-03020-sgj, Docket No. 169 (Bankr. N.D. Tex.)

August 8, 2022

DEFENDANT'S EXHIBIT
93
25-03055

How Did We Get Here: UBS $1 Billion Judgment

UBS Ex. 4



FILED: NEW YORK COUNTY CLERK 02/10/2020 10:21 AM INDEX NO. 650097/2009
NYSCEF DOC. NO. 646 RECEIVED NYSCEF: 02/10/2020

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

UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiffs,

- against -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., and STRAND ADVISORS, INC.,

Defendants.

Index No.: 650097/2009

Hon. Marcy S. Friedman
IAS Part 60

FILED
FEB 10 2020
COUNTY CLERK'S OFFICE
NEW YORK

~~[PROPOSED]~~ JUDGMENT

Plaintiffs UBS Securities LLC and UBS AG, London Branch, having filed a Complaint against Defendants Highland Capital Management, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company on February 24, 2009;

NOW, Plaintiffs UBS Securities LLC and UBS AG, London Branch having filed their Second Amended Complaint against Defendants Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P. ("CDO Fund," and together with SOHC, the "Fund Counterparties"), Highland Financial Partners, L.P., Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., which was consolidated with the claims set forth in Plaintiffs' June 28, 2010 Complaint against Defendant Highland Capital Management, L.P. (Index. No. 650752/2010);

1 of 4

Feb. 10, 2020 Phase I Judgment,
NY Dkt. No. 646

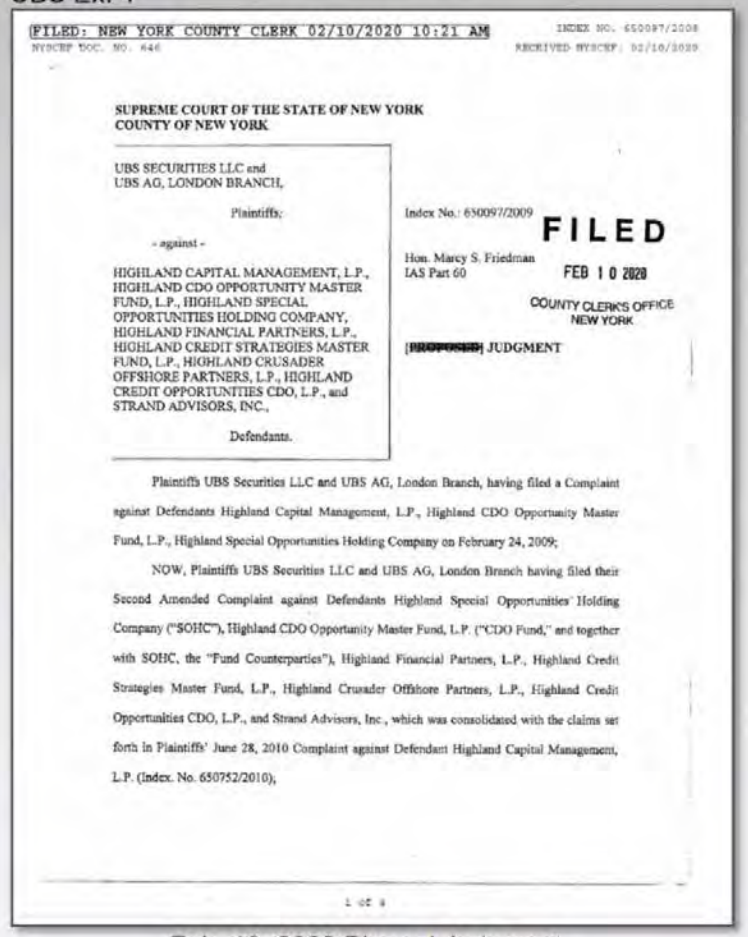
(i) $264,880,815.99 against Defendant Highland CDO Opportunity Master Fund, L.P. with an address of 52 Reid Street, Hamilton, Bermuda, plus $265,497,661.73 in prejudgment interest, for a total judgment against Defendant Highland CDO Opportunity Master Fund, L.P. as of January 22, 2020 of **$530,378,477.72** with additional prejudgment interest per day thereafter of $65,313.08 until entry of judgment in the total amount, and it is ordered that Plaintiffs shall have execution thereof, provided that enforcement shall be stayed as to $35,955,000 (51% of $70.5 million); and

(ii) $254,493,333.01 against Defendant Highland Special Opportunities Holding Company with an address of Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands, plus $255,085,988.72 in prejudgment interest, for a total judgment against Defendant Highland Special Opportunities Holding Company as of January 22, 2020 of **$509,579,321.73** with additional prejudgment interest per day thereafter of $62,751.78 until entry of judgment in the total amount, and it is ordered that Plaintiffs shall have execution thereof, provided that enforcement shall be stayed as to $34,545,000 (49% of $70.5 million).

DEF017816

How Did We Get Here: UBS $1 Billion Judgment

UBS Ex. 4



FILED: NEW YORK COUNTY CLERK 02/10/2020 10:21 AM INDEX NO. 650097/2008
NYSCEF DOC. NO. 646 RECEIVED NYSCEF: 02/10/2020

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

UBS SECURITIES LLC and
UBS AG, LONDON BRANCH,

Plaintiffs,

- against -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., and STRAND ADVISORS, INC.,

Defendants.

Index No.: 650097/2009

FILED

Hon. Marcy S. Friedman
IAS Part 60

FEB 10 2020

COUNTY CLERK'S OFFICE
NEW YORK

~~[PROPOSED]~~ JUDGMENT

Plaintiffs UBS Securities LLC and UBS AG, London Branch, having filed a Complaint against Defendants Highland Capital Management, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company on February 24, 2009;

NOW, Plaintiffs UBS Securities LLC and UBS AG, London Branch having filed their Second Amended Complaint against Defendants Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P. ("CDO Fund," and together with SOHC, the "Fund Counterparties"), Highland Financial Partners, L.P., Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., which was consolidated with the claims set forth in Plaintiffs' June 28, 2010 Complaint against Defendant Highland Capital Management, L.P. (Index. No. 650752/2010),

1 of 4

Feb. 10, 2020 Phase I Judgment,
NY Dkt. No. 646

(i) $264,880,815.99 against Defendant Highland CDO Opportunity Master Fund, L.P.

$531,619,426.24,

Opportunity Master Fund, L.P. as of January 22, 2020 of $530,378,477.72 with

against Defendant Highland CDO Opportunity Master Fund, L.P.

judgment in the total amount of $531,619,426.24, and it is ordered that Plaintiffs shall have execution thereof, provided that enforcement shall be stayed as to $35,955,000 (51% of $70.5 million), and

(ii) $254,493,3

$510,771,605.55,

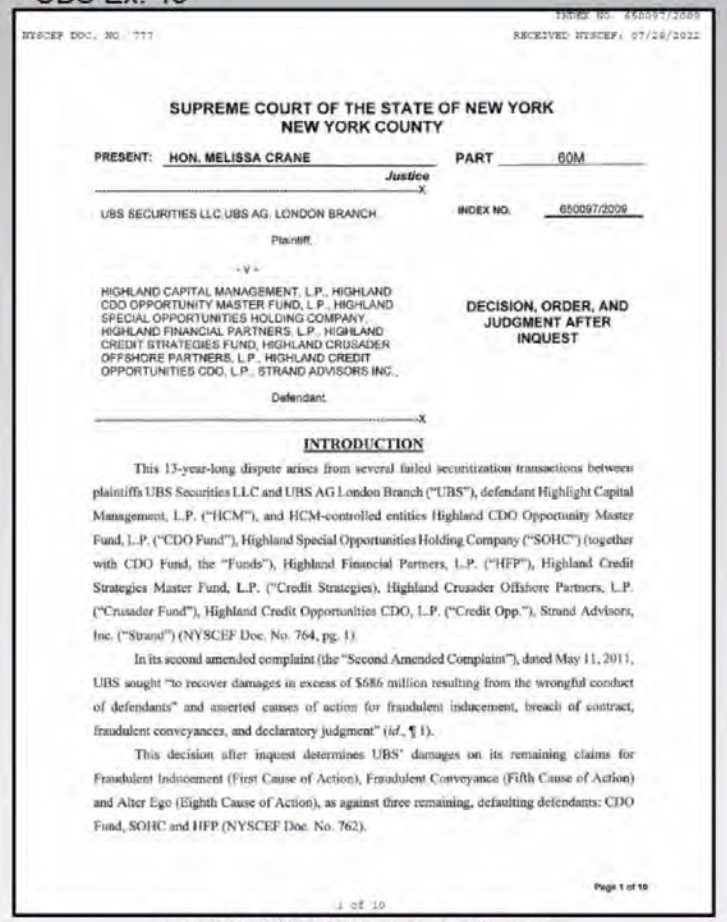
against Defendant Highland Special Opportunities Holding Company

day thereafter of $62,751.78 until entry of judgment in the total amount of $510,771,605.55, and it is ordered that Plaintiffs shall have execution thereof, provided that enforcement shall be stayed as to $34,545,000 (49% of $70.5 million).

DEF017817

How Did We Get Here: HFP Ruled SOHC's Alter Ego and Liable

UBS Ex. 43



INDEX NO. 650097/2009
NYSCEF DOC. NO. 777 RECEIVED NYSCEF: 07/29/2022

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA CRANE PART 60M
Justice

UBS SECURITIES LLC,UBS AG, LONDON BRANCH,

Plaintiff,

- v -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES FUND, HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., STRAND ADVISORS INC.,

Defendant.

INDEX NO. 650097/2009

DECISION, ORDER, AND JUDGMENT AFTER INQUEST

INTRODUCTION

This 13-year-long dispute arises from several failed securitization transactions between plaintiffs UBS Securities LLC and UBS AG London Branch ("UBS"), defendant Highlight Capital Management, L.P. ("HCM"), and HCM-controlled entities Highland CDO Opportunity Master Fund, L.P. ("CDO Fund"), Highland Special Opportunities Holding Company ("SOHC") (together with CDO Fund, the "Funds"), Highland Financial Partners, L.P. ("HFP"), Highland Credit Strategies Master Fund, L.P. ("Credit Strategies), Highland Crusader Offshore Partners, L.P. ("Crusader Fund"), Highland Credit Opportunities CDO, L.P. ("Credit Opp."), Strand Advisors, Inc. ("Strand") (NYSCEF Doc. No. 764, pg. 1).

In its second amended complaint (the "Second Amended Complaint"), dated May 11, 2011, UBS sought "to recover damages in excess of $686 million resulting from the wrongful conduct of defendants" and asserted causes of action for fraudulent inducement, breach of contract, fraudulent conveyances, and declaratory judgment" (*id.*, ¶ 1).

This decision after inquest determines UBS' damages on its remaining claims for Fraudulent Inducement (First Cause of Action), Fraudulent Conveyance (Fifth Cause of Action) and Alter Ego (Eighth Cause of Action), as against three remaining, defaulting defendants: CDO Fund, SOHC and HFP (NYSCEF Doc. No. 762).

Page 1 of 10

1 of 10

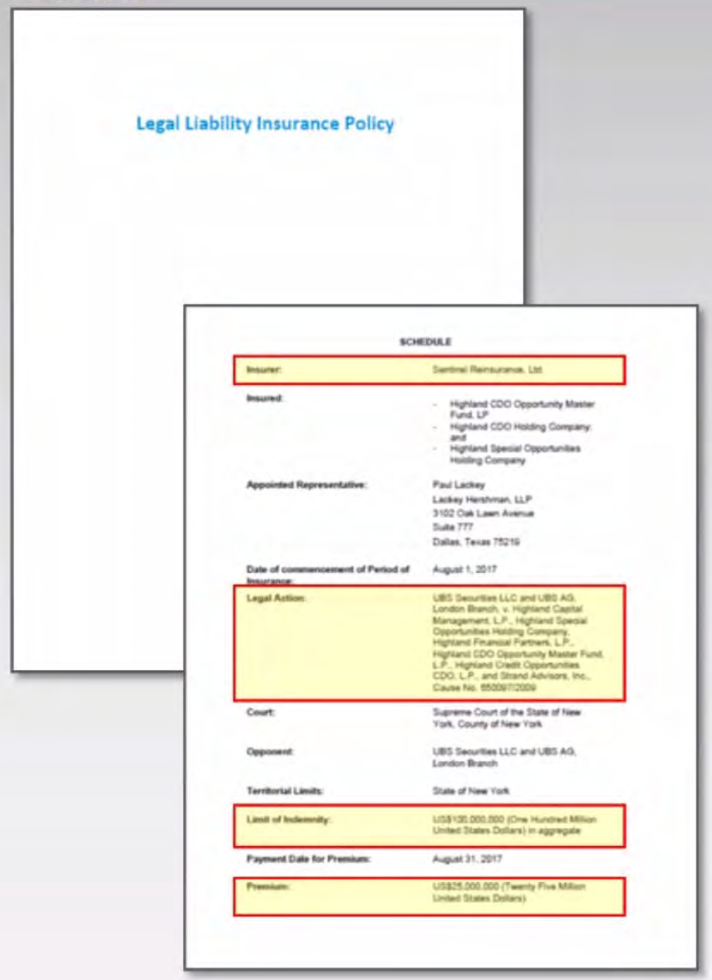
July 29, 2022 Phase II Judgment,
NY Dkt. No. 777

ORDERED, ADJUDGED, and DECLARED that defendant Highland Financial Partners, L.P., with an address at 100 Crescent Ct., Suite 1850, Dallas, Texas 75201, as an alter ego of defendant Highland Special Opportunities Holding Company, with an address at Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands, is liable for satisfying Plaintiffs' January 22, 2020 judgment against Highland Special Opportunities Holding Company on Plaintiffs' third and fourth causes of action in the amount of **$510,771,650.55**, together with post-judgment interest at the statutory rate as calculated by the clerk of the court, and that Plaintiffs shall have execution thereof; and it is further

DEF017818

How Did We Get Here: Sentinel "ATE" Policy

UBS Ex. 1



Legal Liability Insurance Policy

SCHEDULE

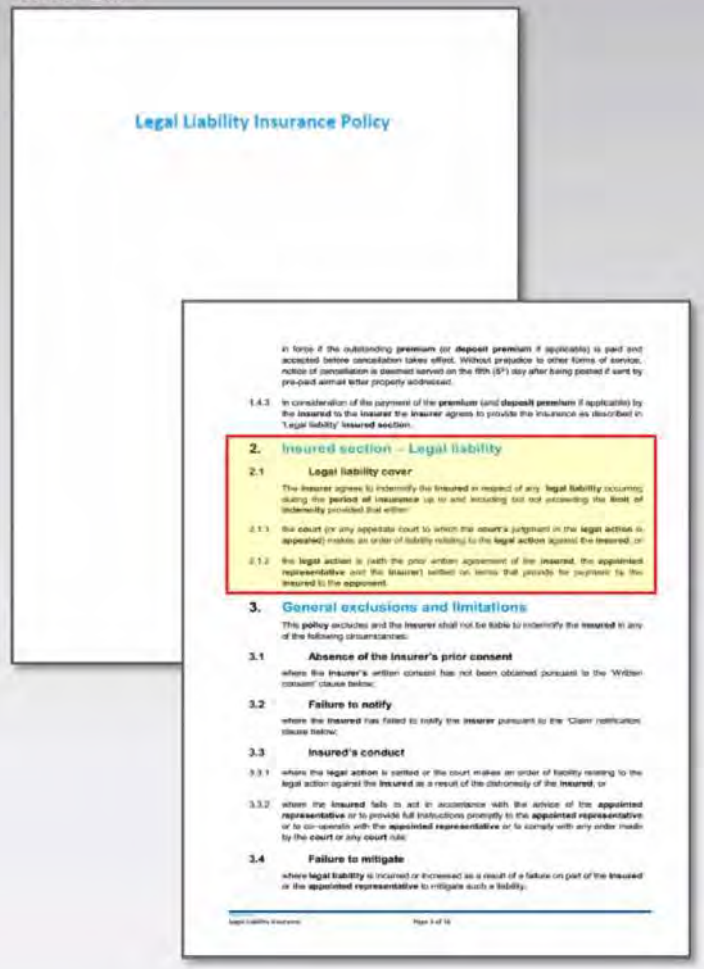
Insurer:	Sentinel Reinsurance, Ltd.
Insured:	- Highland CDO Opportunity Master Fund, LP - Highland CDO Holding Company; and - Highland Special Opportunities Holding Company
Appointed Representative:	Paul Lackey Lackey Hershman, LLP 3102 Oak Lawn Avenue Suite 777 Dallas, Texas 75219
Date of commencement of Period of Insurance:	August 1, 2017
Legal Action:	UBS Securities LLC and UBS AG, London Branch, v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., Cause No. 650097/2009
Court:	Supreme Court of the State of New York, County of New York
Opponent:	UBS Securities LLC and UBS AG, London Branch
Territorial Limits:	State of New York
Limit of Indemnity:	US$100,000,000 (One Hundred Million United States Dollars) in aggregate
Payment Date for Premium:	August 31, 2017
Premium:	US$25,000,000 (Twenty Five Million United States Dollars)

Insurer:	**Sentinel Reinsurance, Ltd.**
Legal Action:	UBS Securities LLC and UBS AG, London Branch, v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., Cause No. 650097/2009
Limit of Indemnity:	US$100,000,000 (One Hundred Million United States Dollars) in aggregate
Premium:	US$25,000,000 (Twenty Five Million United States Dollars)

DEF017819

How Did We Get Here: Sentinel "ATE" Policy

UBS Ex. 1


Legal Liability Insurance Policy

2. Insured section – Legal liability

2.1 Legal liability cover

3. General exclusions and limitations

3.1 Absence of the insurer's prior consent

3.2 Failure to notify

3.3 Insured's conduct

3.4 Failure to mitigate

2. Insured section – Legal liability

2.1 Legal liability cover

The **insurer** agrees to indemnify the **insured** in respect of any **legal liability** occurring during the **period of insurance** up to and including but not exceeding the **limit of indemnity** provided that either:

2.1.1 the **court** (or any appellate court to which the **court's** judgment in the **legal action** is **appealed**) makes an order of liability relating to the **legal action** against the **insured**; or

2.1.2 the **legal action** is (with the prior written agreement of the **insured**, the **appointed representative** and the **insurer**) settled on terms that provide for payment by the **insured** to the **opponent**.

How Did We Get Here: Sentinel "ATE" Policy

UBS Ex. 1

Highland CDO Opportunity Master Fund, L.P.
By: Highland CDO Opportunity Fund GP, L.P., its general partner
By: Highland CDO Opportunity GP, LLC, its general partner
By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner
By:
Name: James Dondero
Title: President

Highland CDO Holding Company
By:
Name: James Dondero
Title: Director

Highland Special Opportunities Holdings Company
By:
Name: James Dondero
Title: Director

DEF017821

PURCHASE AGREEMENT

This Purchase Agreement (the "***Agreement***") dated as of August 7, 2017 (the "***Effective Date***"), is entered into by and among Sentinel Reinsurance, Ltd. ("***Purchaser***") and each of Highland CDO Opportunity Master Fund, L.P., Highland CDO Holding Company and Highland Special Opportunities Holdings Company (together, "***Sellers***").

RECITALS

WHEREAS, Sellers are each party in a lawsuit styled UBS Securities LLC and UBS AG, London Branch, v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., Cause No. 650097/2009 (the "***Lawsuit***");

WHEREAS, Sellers desire to purchase a Legal Liability Insurance Policy relating to Sellers' potential liability in the Lawsuit in form substantially as set forth in Exhibit A hereto (the "***Policy***"); and

WHEREAS, Purchaser is an insurance company that is able to provide Sellers insurance coverage pursuant to the terms of the requested Policy, and Purchaser desires to provide Policy coverage to Sellers pursuant to the terms herein and therein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

1. Payment of Premium. Purchaser agrees to accept the assets listed in Schedule A hereto as 100% payment of the Premium, including any as yet unpaid or contingent financial proceeds or other benefits related thereto, with the explicit undertaking that if anything of value is received by the Sellers, such cash or other item of value shall be held in trust for the Purchaser and promptly remitted thereto (the "***Transferred Interests***"). Sellers undertake that immediately following signing this Agreement, they will each take all such steps and execute all such documents to vest legal and beneficial ownership free from liens or encumbrances (as hereinafter defined) in all the Transferred Interests in the Purchaser.

2. Entire Agreement. This Agreement and the Schedule and Exhibit attached hereto embody the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter.

3. Amendments and Waivers. This Agreement may be amended only by an agreement in writing signed by each party hereto, and no waiver or compliance with any provision or condition hereof and no consent provided for herein shall be effective unless evidenced by an instrument in writing duly executed by the party hereto sought to be charged with such waiver or consent.

4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

5. Headings. The headings contained in this Agreement are for convenience only and do not constitute a part of this Agreement.

6. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

How Did We Get Here: Asset Transfer

UBS Ex. 2

PURCHASE AGREEMENT

This Purchase Agreement (the "***Agreement***") dated as of August 7, 2017 (the "***Effective Date***"), is entered into by and among Sentinel Reinsurance, Ltd. ("***Purchaser***") and each of Highland CDO Opportunity Master Fund, L.P., Highland CDO Holding Company and Highland Special Opportunities Holdings Company (together, "***Sellers***").

RECITALS

WHEREAS, Sellers are each party in a lawsuit styled UBS Securities LLC and UBS AG, London Branch, v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., Cause No. 650097/2009 (the "***Lawsuit***");

WHEREAS, Sellers desire to purchase a Legal Liability Insurance Policy relating to Sellers' potential liability in the Lawsuit in form substantially as set forth in Exhibit A hereto (the "***Policy***"); and

WHEREAS, Purchaser is an insurance company that is able to provide Sellers insurance coverage pursuant to the terms of the requested Policy, and Purchaser desires to provide Policy coverage to Sellers pursuant to the terms herein and therein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

1. Payment of Premium. Purchaser agrees to accept the assets listed in Schedule A hereto as 100% payment of the Premium, including any as yet unpaid or contingent financial proceeds or other benefits related thereto, with the explicit undertaking that if anything of value is received by the Sellers, such cash or other item of value shall be held in trust for the Purchaser and promptly remitted thereto (the "***Transferred Interests***"). Sellers undertake that immediately following signing this Agreement, they will each take all such steps and execute all such documents to vest legal and beneficial ownership free from liens or encumbrances (as hereinafter defined) in all the Transferred Interests in the Purchaser.

2. Entire Agreement. This Agreement and the Schedule and Exhibit attached hereto embody the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter.

3. Amendments and Waivers. This Agreement may be amended only by an agreement in writing signed by each party hereto, and no waiver or compliance with any provision or condition hereof and no consent provided for herein shall be effective unless evidenced by an instrument in writing duly executed by the party hereto sought to be charged with such waiver or consent.

4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

5. Headings. The headings contained in this Agreement are for convenience only and do not constitute a part of this Agreement.

6. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

1. Payment of Premium. Purchaser agrees to accept the assets listed in Schedule A hereto as 100% payment of the Premium, including any as yet unpaid or contingent financial proceeds or other benefits related thereto, with the explicit undertaking that if anything of value is received by the Sellers, such cash or other item of value shall be held in trust for the Purchaser and promptly remitted thereto (the "***Transferred Interests***"). Sellers undertake that immediately following signing this Agreement, they will each take all such steps and execute all such documents to vest legal and beneficial ownership free from liens or encumbrances (as hereinafter defined) in all the Transferred Interests in the Purchaser.

SCHEDULE A

HIGHLAND CDO OPPORTUTNITY MASTER FUND, L.P.

ISIN	Description	Traded Shares/Par
KY009A1KXYH6	ABERDEEN LN FDG LTD PFD	2,000,000.00
KY84427P2029	SOUTHFORK CLO LTD CUM PFD 144A	10,000.00
KYG829101032	SOUTHFORK CLO LTD PFD	9,000.00
US00305M3007	ABERDEEN LN FDG LTD PFD	5,000.00
US3624682098	GSC ABS CDO 2006-4U LT CUM PFD 144A	16,000.00
US39364P2011	GREENBRIAR CLO LTD PFD 144A	16,250.00
US43009L2034	HIGHLAND FINL PARTNERS LP	615,733.00
US43009L9898	HIGHLAND FINL PARTNERS LP NPV	3,000,000.00
US5431742056	LONGSTREET CDO I LTD PFD 144A	3,000.00
US65340G2057	NEXPOINT C COM USD0.001 (POST REV S)	100.00
US69763NAD30	PAM CAP FDG LP 0.0 01MAY13 144A FRN	48,500,000.00 42,868,390.80
US8729623038	TOUSA INC 8.0 PFD 144A	1,337.00
US91914QAA40	VALHALLA CLO LTD 0.0 01AUG23 144A	6,000,000.00 6,000,000.00
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46 144A	6,000,000.00 6,000,000.00
N/A	HIGHLAND CREDIT OPPORTUNITIES CDO LTD. PARTNERSHIP INTEREST $2,157,088 PROMISSORY NOTE (GOVERNANCE RE, LTD. AS MAKER) AND CASH OF $539,272 – RE: NEXPOINT MULTIFAMILY CAPITAL TRUST INTEREST	24,313.00 269,636.00
N/A	NEXPOINT REAL ESTATE STRAT – Z	97,257.00
N/A	HIGHLAND GEMINI PROGRAM (POLLUX) $2,399,996 PROMISSORY NOTE (THE DUGABOY INVESTMENT TRUST AS MAKER) AND CASH	65,314.00
N/A	OF $599,999 – RE: SURVIOS INTEREST	2,999,995.00
BCC0MVTX4	CAMBR 5X FLOATING – 12/2045	19,350,000.00
N/A	CASH	$7,779,722.00

HIGHLAND CDO OPPORTUTNITY FUND, LTD.

ISIN	Description	Traded Shares/Par
N/A	CASH	$2,349,436.00

HIGHLAND CDO HOLDINGS COMPANY

ISIN	Description	Traded Shares/Par
US404185AD22	HFT REAL EST 3.33867 25NOV51 144A F	750,000.00 750,000.00
US65340G2057	NEXPOINT C COM USD0.001 (POST REV S)	165,395.00
US65341D1028	NEXPOINT R COM USD0.001 'WI'	220,527.00
US86280AAE73	STRATFORD CL 3.16956 01NOV21 144A F	300,000.00 300,000.00
USG44392AF82	HIGHLAND PARK C 4.93867 25NOV51 FRN	17,000,000.00 24,076,296.18
N/A	PROMISSORY NOTE – CLO HOLDCO, LTD. AS MAKER – 12/23/2025	$32,801,593.00
N/A	CASH	$539,641.00
N/A	DIVIDENDS RECEIVABLE – HIGHLAND CAPITAL MANAGEMENT, LP	$136,598.00

HIGHLAND SPECIAL OPPORTUNITIES HOLDINGS COMPANY

ISIN	Description	Traded Shares/Par
US247126AC93	DELPHI CORP DEL 7.125 01MAY29	1,500,000.00
US247126AD76	DELPHI CORP DEL 6.55 15JUN06 USD	3,000,000.00
US5431742056	LONGSTREET CDO I LTD PFD 144A	1,570.00
US8729623038	TOUSA INC 8.0 PFD 144A	5,349.00
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46 144A	5,000,000.00 5,000,000.00
N/A	CASH	$295,136.00

HIGHLAND FINANCIAL CORP.

ISIN	Description	Traded Shares/Par
N/A	CASH	$80,144.00
N/A	TAX REFUND RECEIVABLE – HIGHLAND CAPITAL MANAGEMENT, LP	$477,637.00

HIGHLAND FINANCIAL PARTNERS, L.P.

ISIN	Description	Traded Shares/Par
N/A	CASH	$29,252.00

DEF017823

SCHEDULE A

HIGHLAND CDO OPPORTUTNITY MASTER FUND, L.P.

ISIN	Description	Traded Shares/Par
KY009A1KXYH6	ABERDEEN LN FDG LTD PFD	12,000,000.00
KY84427P2029	SOUTHFORK CLO LTD CUM PFD 144A	10,000.00
KYG829101032	SOUTHFORK CLO LTD PFD	9,000.00
US00306M3007	ABERDEEN LN FDG LTD PFD	5,000.00
US3624682098	GSC ABS CDO 2006-4U LT CUM PFD 144A	16,000.00
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US69763NAD30	PAM CAP FDG LP 0.0 01MAY13 144A	48,500,000.00
	FRN	42,868,390.80
US8729623038	TOUSA INC 8.0 PFD 144A	1,337.00
US91914QAA40	VALHALLA CLO LTD 0.0 01AUG23	6,000,000.00
	144A	6,000,000.00
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46	6,000,000.00
	144A	6,000,000.00
N/A	HIGHLAND CREDIT OPPORTUNITIES CDO LTD. PARTNERSHIP INTEREST	24,313.00
	$2,157,088 PROMISSORY NOTE (GOVERNANCE RE, LTD. AS MAKER) AND CASH OF $539,272 – RE: NEXPOINT MULTIFAMILY CAPITAL TRUST INTEREST	269,636.00
N/A	NEXPOINT REAL ESTATE STRAT – Z	97,257.00
N/A	HIGHLAND GEMINI PROGRAM (POLLUX)	65,314.00
N/A	$2,399,996 PROMISSORY NOTE (THE DUGABOY INVESTMENT TRUST AS MAKER) AND CASH OF $599,999 – RE: SURVIOS INTEREST	2,999,995.00
BCC0MVTX4	CAMBR 5X FLOATING – 12/2045	19,350,000.00
N/A	CASH	$7,779,722.00

HIGHLAND CDO OPPORTUTNITY FUND, LTD.

ISIN	Description	Traded Shares/Par
N/A	CASH	$2,349,436.00

HIGHLAND CDO HOLDINGS COMPANY

ISIN	Description	Traded Shares/Par
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US65341D1028	NEXPOINT R COM USD0.001 'WI'	220,527.00
US86280AAE73	STRATFORD CL 3.16956 01NOV21	300,000.00
	144A F	300,000.00
USG44392AF82	HIGHLAND PARK C 4.93867	17,000,000.00
	25NOV51 FRN	24,076,296.18
N/A	PROMISSORY NOTE – CLO HOLDCO, LTD. AS MAKER – 12/23/2025	$32,801,593.00
N/A	CASH	$539,641.00
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HIGHLAND SPECIAL OPPORTUNITIES HOLDINGS COMPANY

ISIN	Description	Traded Shares/Par
US247126AC93	DELPHI CORP DEL 7.125 01MAY29	1,500,000.00
US247126AD76	DELPHI CORP DEL 6.55 15JUN06 USD	3,000,000.00
US5431742056	LONGSTREET CDO I LTD PFD 144A	1,570.00
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US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46	5,000,000.00
	144A	5,000,000.00
N/A	CASH	$295,136.00

HIGHLAND FINANCIAL CORP.

ISIN	Description	Traded Shares/Par
N/A	CASH	$80,144.00
N/A	TAX REFUND RECEIVABLE – HIGHLAND CAPITAL MANAGEMENT, LP	$477,637.00

HIGHLAND FINANCIAL PARTNERS, L.P.

ISIN	Description	Traded Shares/Par
N/A	CASH	$29,252.00

How Did We Get Here: Fraudulent Overpayment

UBS Ex. 3

HIGHLAND CAPITAL

MEMORANDUM

FROM: Shawn Raver
TO: Tax Files
DATE: June 30, 2018
RE: Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets

Facts

On March 14, 2008, UBS Securities, LLC and certain affiliates ("UBS"), Highland Capital Management, L.P. ("HCM"), Highland CDO Opportunity Master Fund, L.P. ("CDO"), and Highland Special Opportunities Holding Corporation ("SOHC") entered into a series of agreements as part of a collateralized debt obligation transaction (the "Transaction").[1] One such agreement included a Cash Warehouse Agreement.[2] The Cash Warehouse Agreement governed the parties' rights and obligations concerning the accumulation, warehousing, sale and/or liquidation of certain collateral obligations ("Collateral Obligations") in connection with the Transaction. It was UBS's obligation to accumulate and warehouse certain Collateral Obligations pursuant to the Cash Warehouse Agreement.[3]

The Engagement Letter required CDO Fund and SOHC to bear 100% of the losses experienced by the CDO Securities (51% borne by CDO Fund and 49% by SOHC).[4] In order to secure the obligations of CDO Fund and SOHC, each was required to transfer cash or certain securities as collateral.[5] In addition, upon each $100 million increment of mark to market losses on the CDO Securities, UBS could make margin calls on CDO Fund and SOHC requesting additional collateral.[6]

As the value of the warehoused assets declined, UBS began to make margin calls upon HCM, CDO Fund and SOHC.[7] The first margin call was issued on September 17, 2008 and requested $10 million from each of CDO Fund and SOHC.[8] On or about October 21, 2008, UBS issued a second margin call, again requesting $10 million from each of CDO Fund and SOHC.[9] The second margin call was satisfied by CDO Fund and SOHC posting assets with a fair market value of approximately $20 million (the assets had an aggregate notional value of $49.97

[1] See Exhibit 1 (structure chart of Highland CDO Opportunity Master Fund, L.P. and Highland Special Opportunities Holding Company).
[2] See Exhibit 2 (Cash Warehouse Agreement).
[3] See Exhibit 2, section 2(A); Exhibit 34 (Amended Answer and Counterclaims of Highland Capital Management, L.P.), paragraph 65.
[4] Id. at paragraph 39.
[5] Id. at paragraph 24.
[6] See Exhibit 2, section 12(C).
[7] Id. at paragraph 25.
[8] See Exhibit 5 (Letter from UBS).
[9] See Exhibit 6 (Letter from UBS).

UBSPROD4837352

HIGHLAND CAPITAL

MEMORANDUM

FROM: Shawn Raver
TO: Tax Files
DATE: June 30, 2018
RE: Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets

The aggregate purchase price paid by Sentinel for the Assets was $25,000,000. The aggregate fair market value of the assets on the date of the Transaction was $105,647,679. The document effectuating the Transaction did not allocate the purchase price among the Assets acquired by Sentinel. The Seller Entities intend to allocate the purchase price among the Assets sold as follows:

DEF017825

How Did We Get Here: Debtor Controls Funds

Jim Seery
CEO of HCMLP

Q. Mr. Seery, it's true that Highland Capital Management has control of Multi-Strat by virtue of its two roles one the indirect 100 percent owner of Multi-Strat general partner and two as Multi-Strat's investment manager correct?

A. I believe that's fair. Certainly as investment manager basically for control over Multi-Strat, yes.

Q. And Highland Capital Management has control of CDO fund as a director and direct owner of CDO funds general partner, correct?

A. Yes, CDO fund, yes.

Seery Dep. Tr. 133:2-13

DEF017826

How Did We Get Here: Temporary Restraining Order

Order Granting TRO (UBS Ex. 40)

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed April 9, 2021

United States Bankruptcy Judge

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

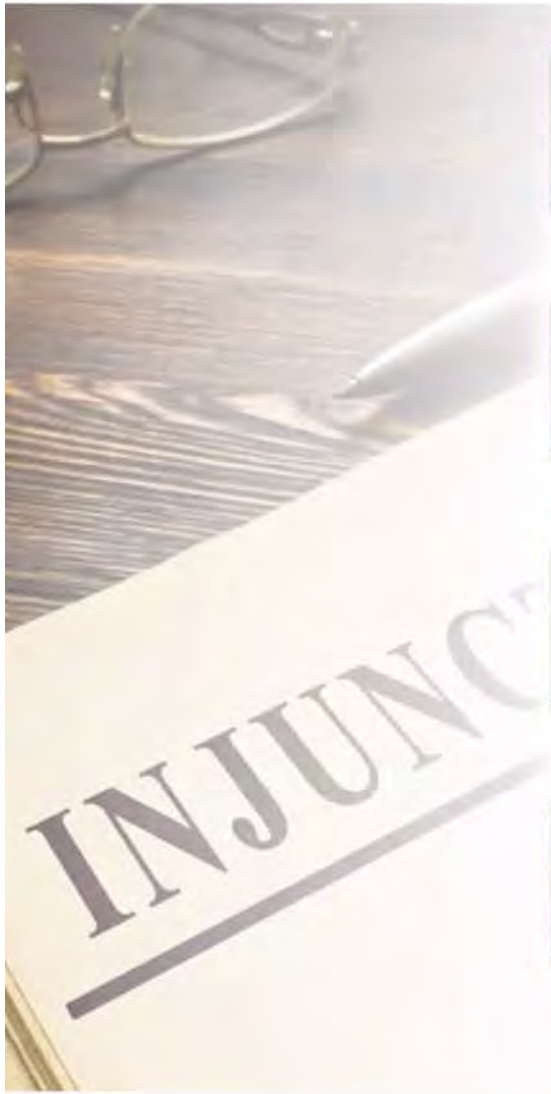
In re	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-SGJ11
Debtor.	§	
UBS SECURITIES LLC AND UBS AG LONDON BRANCH,	§	Adversary Proceeding
Plaintiffs,	§	No. 21-03020-sgj
vs.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Defendant.	§	

[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.

2. The Debtor is temporarily enjoined and restrained from making or allowing funds under its management or control (including, but not limited to, Multi-Strat and CDO Fund) to make any payments or further transfers to Sentinel or any of its affiliates or any transferees of the Sentinel Entities consisting of, resulting from, or relating to the Transferred Assets until this Court's decision on UBS's requested preliminary injunction.

DEF017827

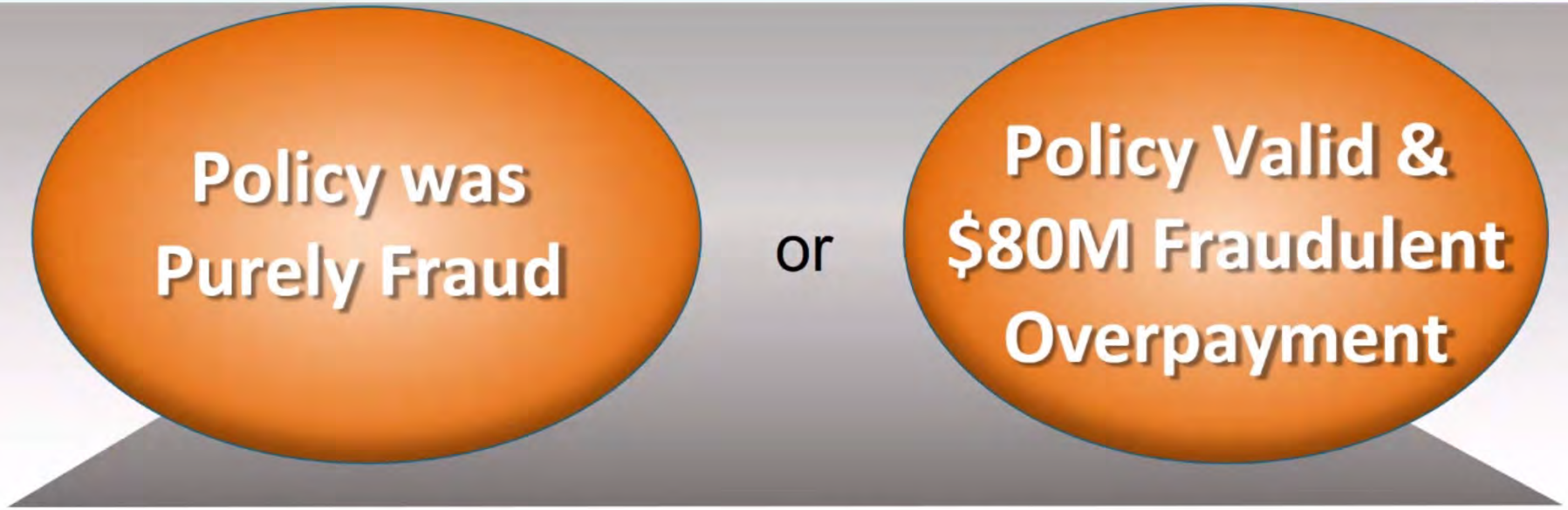
What Now: A Permanent Injunction Is Warranted



1. Success on the merits;
2. Irreparable injury;
3. Weighing of Harms;
4. Public interest.

Env't Tex. Citizen Lobby, Inc. v. ExxonMobil Corp., 824 F.3d 507, 535 (5th Cir. 2016)

UBS Will Succeed On The Merits

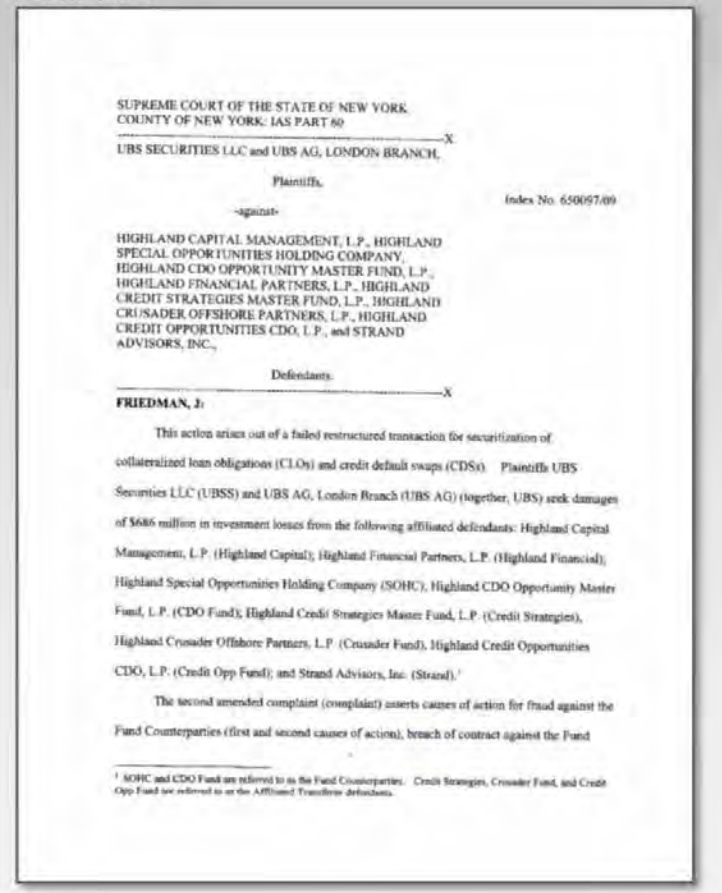


- Knowledge of a creditor claim and transferor's inability to pay
- Suspicious timing of transfers
- Transfer in anticipation of litigation
- Close relationship of transaction parties
- Secrecy, haste, unusualness of transaction
- Use of dummy parties
- Inadequate consideration
- Pattern or series of transactions
- Transfers outside the usual course of business
- Transferor retaining control of conveyed property

DEF017829

Knowledge Of Claim: UBS Defeats Summary Judgment

UBS Ex. 5



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 60

UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiffs,

-against-

Index No. 650097/09

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY, HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P., HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., and STRAND ADVISORS, INC.,

Defendants.

FRIEDMAN, J:

This action arises out of a failed restructured transaction for securitization of collateralized loan obligations (CLOs) and credit default swaps (CDSs). Plaintiffs UBS Securities LLC (UBSS) and UBS AG, London Branch (UBS AG) (together, UBS) seek damages of $686 million in investment losses from the following affiliated defendants: Highland Capital Management, L.P. (Highland Capital); Highland Financial Partners, L.P. (Highland Financial); Highland Special Opportunities Holding Company (SOHC); Highland CDO Opportunity Master Fund, L.P. (CDO Fund); Highland Credit Strategies Master Fund, L.P. (Credit Strategies); Highland Crusader Offshore Partners, L.P. (Crusader Fund); Highland Credit Opportunities CDO, L.P. (Credit Opp Fund); and Strand Advisors, Inc. (Strand).[1]

The second amended complaint (complaint) asserts causes of action for fraud against the Fund Counterparties (first and second causes of action), breach of contract against the Fund

[1] SOHC and CDO Fund are referred to as the Fund Counterparties. Credit Strategies, Crusader Fund, and Credit Opp Fund are referred to as the Affiliated Transferee defendants.

ORDERED that the motion for summary judgment of defendants Highland Special Opportunities Holding Company and Highland CDO Opportunity Master Fund, L.P. (motion sequence number 027) is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
March 13, 2017

DEF017830

Knowledge Of Claim: Funds/HCM Expected Trial Loss

Isaac Leventon
Former Assistant
General Counsel

Dep. Tr. 86:14-87:4, 94:24-95:6

Q. Let's start with liability and then we'll talk about damages. Did you ever give a recommendation that UBS was likely to win on its breach of contract claims against CDO Fund and SOHC in Phase 1?

A. Yes, I did.

Q. And what was that recommendation?

A. That liability was likely to be found.

Q. Who did you make that to?

A. I don't recall. It certainly would have been -- well, I don't recall who it was.

Q. You said it certainly would have been?

A. No, I believe it probably was Mr. Ellington and Mr. Dondero.

...

Q. How many times did you have discussions with Mr. Dondero in which you expressed your view that liability was likely to be determined against CDO Fund and SOHC?

A. I don't recall.

Q. Roughly?

A. It would have been more than one and probably less than five.

DEF017831

Knowledge Of Claim: Funds/HCM Expected Trial Loss

Scott Ellington
Former General Counsel

Q. And you said a number of times that it didn't surprise you at all about the size or the magnitude of the damages verdict; correct?

A. Correct.

Q. And you had warned Mr. Dondero, in words or substance, that this was likely to occur before the verdict came; correct?

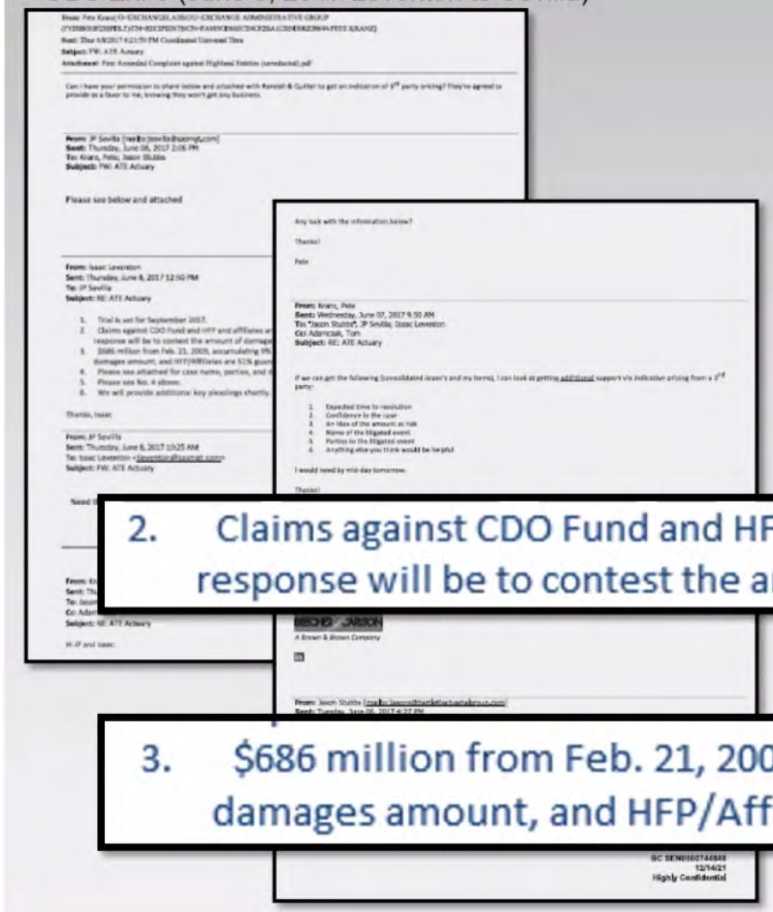
A. Yes.

Ellington Dep. Tr. 116:6-13

Jim Dondero
Former President
& CEO of HCM

Knowledge of Claim: UBS Had Strong Claims & High Damages

UBS Ex. 6 (June 8, 2017 Leventon to Sevilla)



Isaac Leventon
Former Assistant
General Counsel

JP Sevilla
Former Assistant
General Counsel

2. Claims against CDO Fund and HFP and affiliates are very strong. They are guarantee claims. The defendants' primary response will be to contest the amount of damages.

3. $686 million from Feb. 21, 2009, accumulating 9% simple interest per annum. CDO Fund is a 49% guarantor of the damages amount, and HFP/Affiliates are 51% guarantors.

DEF017833

Transferors' Inability to Pay: The Funds Were Insolvent

UBS Ex. 44

HIGHLAND FINANCIAL

January 27, 2009

Dear Investors,

This letter provides a periodic update for the limited partners of Highland Financial Partners, L.P. ("HFP" or "the Partnership"). The Partnership's largest limited partner is Highland Capital Management, L.P. ("HCMLP" or "Highland"). Highland is also an investment manager of other hedge funds and retail funds that operate as separate legal entities, independent of HFP. It is important to note that this letter applies only to HFP.

The past three months have been extremely challenging for HFP. During October, our adjusted book value decreased from $5.78 to $.07, and from $.07 to $0.00 during November, driven primarily by declining marks (unrealized losses) in our securities' portfolio. We expect our December 31, 2008 balance sheet will reflect liabilities greatly exceeding our assets. With the deteriorating condition of the credit markets overall and the global loss of liquidity in almost every market, we currently see no impetus for a reversal in the mark trends. In addition, as discussed in the second quarter financial statements that we recently distributed[1], HFP has begun to experience significant liquidity issues due to the continued deterioration of the credit markets and the economy as a whole.

The purpose of this letter is to provide a brief overview of the conditions in the leveraged loan and Collateralized Loan Obligation ("CLO")[2] markets and the effect they have had on HFP's recent operating performance.

A. Overview of the Leveraged Loan and CLO Markets

The global financial crisis has generated unprecedented volatility in the fixed income markets, with credit spreads at their highest levels in recent history. The anticipated increase of corporate loan default rates and the collapse of the structured credit market have driven prices on these asset classes to all time lows. The downward trends in the prices of leveraged loans and CLO securities that we are currently experiencing began in October 2007 and have accelerated rapidly over the past 90 days. In the fourth quarter of 2008, the average S&P LSTA Leveraged Loan Index[3] bid fell by approximately 25.1%, from 82.44[4] to 61.74[4] and is now comparable to the trading price of high yield bonds. By comparison, the fall in the average loan bid price from December 31, 2007 through September 30, 2008 was approximately 12.7%.

[1] A complete copy of the financial statements is available on our website www.hfplp.com.
[2] Collateralized loan obligations ("CLOs") are a form of securitization where payments from multiple loans are pooled together and passed on to different classes of owners in various tranches.
[3] The S&P/LSTA Leveraged Loan Index (LLI) is a leveraged loan index which covers the U.S. loan market. The index reflects the market-weighted performance of institutional leveraged loans in the U.S. loan market based upon real-time market weightings, spreads and interest payments. All of the index components are the institutional tranches (Term Loan A, Term Loan B and higher and Second Lien) of loans syndicated to U.S. loan investors. If a loan that consists of tranches is syndicated both in the U.S. and Europe (i.e., a cross-border transaction), the US dollar portion that is syndicated in the U.S. market is tracked by the LLI and the Euro portion that is syndicated in the European market is tracked by the ELLI. The LLI series currently calculates total return daily with an inception date of 1 January 1997. Total return is the product of two components: interest income return and market value return.
[4] As of September 30, 2008.

ONFIDENTIAL UBSPROD5028123

UBS Ex. 45

HIGHLAND CAPITAL

February 4, 2009

Dear Highland CDO Opportunity Fund Investor:

The unprecedented market volatility and disruption to the financial system, and the market for structured products assets in particular, have so significantly deteriorated the CDO Opportunity Fund's asset values that the Fund has been rendered insolvent.

Therefore, Highland CDO Opportunity Fund GP, L.P., the general partner of Highland CDO Opportunity Fund, L.P. ("CDO Fund US"), and the board of directors of Highland CDO Opportunity Fund, Ltd. ("CDO Fund Bermuda" and together with CDO Fund US, the "CDO Funds" or the "Funds"), in each such case, in consultation with Highland Capital Management, L.P. (the "Investment Manager"), have determined that it is in the best interests of the CDO Funds to wind down the Funds. In connection with this process, all of the Fund's available assets will be distributed to the Fund's remaining financing counterparties and other senior and trade creditors in an orderly liquidation. Regretfully, as of December 31, 2008, the amount of these liabilities exceeded the assets of the Fund to such a degree that no assets remain available to satisfy any unpaid redemptions of the Fund or to distribute amounts to any current investors in the Fund.

We are extremely disappointed in the Funds' performance and this outcome, but believe there is no viable path to any recovery for investors in the Fund. As you are aware, Highland Capital and its affiliates had among the largest exposure to the Fund, which has been rendered worthless.

If you have any questions regarding these matters, please contact your relationship manager, and email us at HighlandCDOOpportunityFunds@hcmlp.com.

Respectfully,

Highland Capital Management, L.P.

Two Galleria Tower • 13455 Noel Road, Suite 800, Dallas, TX 75240 • office 972 628 4100 • fax 972 628 4147 • www.hcmlp.com

IFIDENTIAL UBSPROD505[illegible]

Transferors' Inability to Pay: The Funds Were Insolvent

UBS Ex. 44

HIGHLAND FINANCIAL

January 27, 2009

Dear Investors,

Due to events and circumstances described in this letter, we have concluded as of December 31, 2008, it is likely that all future inflows of cash to HFP will be used to pay creditors and that there is no prospect of return to holders of HFP units. As such, the value of HFP units has suffered a permanent impairment. It should be noted that HCMLP and its employees have participated materially in every capital raise by HFP and also been adversely affected by these events. Net of base management fees received in prior periods, HCMLP and its employees have lost approximately $121 million that they invested in HFP.

The purpose of this letter is to provide a brief overview of the conditions in the leveraged loan and Collateralized Loan Obligation ("CLO")[2] markets and the effect they have had on HFP's recent operating performance.

A. Overview of the Leveraged Loan and CLO Markets

The global financial crisis has generated unprecedented volatility in the fixed income markets, with credit spreads at their highest levels in recent history. The anticipated increase of corporate loan default rates and the collapse of the structured credit market have driven prices on these asset classes to all time lows. The downward trends in the prices of leveraged loans and CLO securities that we are currently experiencing began in October 2007 and have accelerated rapidly over the past 90 days. In the fourth quarter of 2008, the average S&P LSTA Leveraged Loan Index[3] bid fell by approximately 25.1%, from 82.44[4] to 61.74[5] and is now comparable to the trading price of high yield bonds. By comparison, the fall in the average loan bid price from December 31, 2007 through September 30, 2008 was approximately 12.7%.

[1] A complete copy of the financial statements is available on our website www.hfpl.com.
[2] Collateralized loan obligations ("CLOs") are a form of securitization where payments from multiple loans are pooled together and passed on to different classes of owners in various tranches.
[3] The S&P/LSTA Leveraged Loan Index (LLI) is a leveraged loan index which covers the U.S. loan market. The index reflects the market-weighted performance of institutional leveraged loans in the U.S. loan market based upon real-time market weightings, spreads and interest payments. All of the index components are the institutional tranches (Term Loan A, Term Loan B and higher and Second Lien) of loans syndicated to U.S. loan investors. If a loan that consists of tranches is syndicated both to the U.S. and Europe (i.e., a cross-border transaction), the US dollar portion that is syndicated in the U.S. market is tracked by the LLI and the Euro portion that is syndicated in the European market is tracked by the ELLI. The LLI series currently calculates total return daily with an inception date of 1 January 1997. Total return is the product of two components: interest income return and market value return.
[4] As of September 30, 2008.

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UBS Ex. 45

HIGHLAND CAPITAL

February 4, 2009

Therefore, Highland CDO Opportunity Fund GP, L.P., the general partner of Highland CDO Opportunity Fund, L.P. ("CDO Fund US"), and the board of directors of Highland CDO Opportunity Fund, Ltd. ("CDO Fund Bermuda" and together with CDO Fund US, the "CDO Funds" or the "Funds"), in each such case, in consultation with Highland Capital Management, L.P. (the "Investment Manager"), have determined that it is in the best interests of the CDO Funds to wind down the Funds. In connection with this process, all of the Fund's available assets will be distributed to the Fund's remaining financing counterparties and other senior and trade creditors in an orderly liquidation. Regretfully, as of December 31, 2008, the amount of these liabilities exceeded the assets of the Fund to such a degree that no assets remain available to satisfy any unpaid redemptions of the Fund or to distribute amounts to any current investors in the Fund.

IFIDENTIAL UBSPROD

DEF017835

Suspicious Timing and Anticipation of Litigation: Plan Hatched After SJ Loss As Trial Loomed

UBS Ex. 7

Settlement Analysis

UBS vs.

April 19, 2017

If Highland does not settle…

AND UBS WINS:

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

OR HIGHLAND WINS:

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

Suspicious Timing and Anticipation of Litigation: Plan Hatched After SJ Loss As Trial Loomed

UBS Ex. 7

Settlement Analysis

UBS vs. H

April 19, 2017

UBS Settlement: Structure Summary

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

ATE premium = all assets in HFP/CDO Fund

Step 2: Negotiate settlement amount with UBS

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

Step 4: Sentinel pays settlement amount to UBS

Step 5: Sentinel pays Lackey legal bills

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

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

Close Relationship Among Parties: Ellington Devises Plan

Scott Ellington
Former General Counsel

Dep. Tr. 86:21-87:6

Q. [T]he idea first came to have a insurance policy issued by Sentinel, Mr. Leventon was involved in that initial conversation; correct?

A. I had that initial conversation with Mr. Leventon because it was my idea.

Q. It was your idea to have Sentinel issue an insurance policy with respect to the UBS litigation that was then pending in New York; correct?

A. Yes.

DEF017838

Close Relationship Among Parties: Dondero Approves Plan

Q. [W]ho made the decision to obtain an ATE policy with respect to the UBS litigation in New York?

A. My understanding is that Mr. Dondero made that decision.

Q. What's that understanding based on?

A. I believe that was communicated to me by Mr. Ellington.

Q. When?

A. Back around the time, probably right after the policy was implemented.

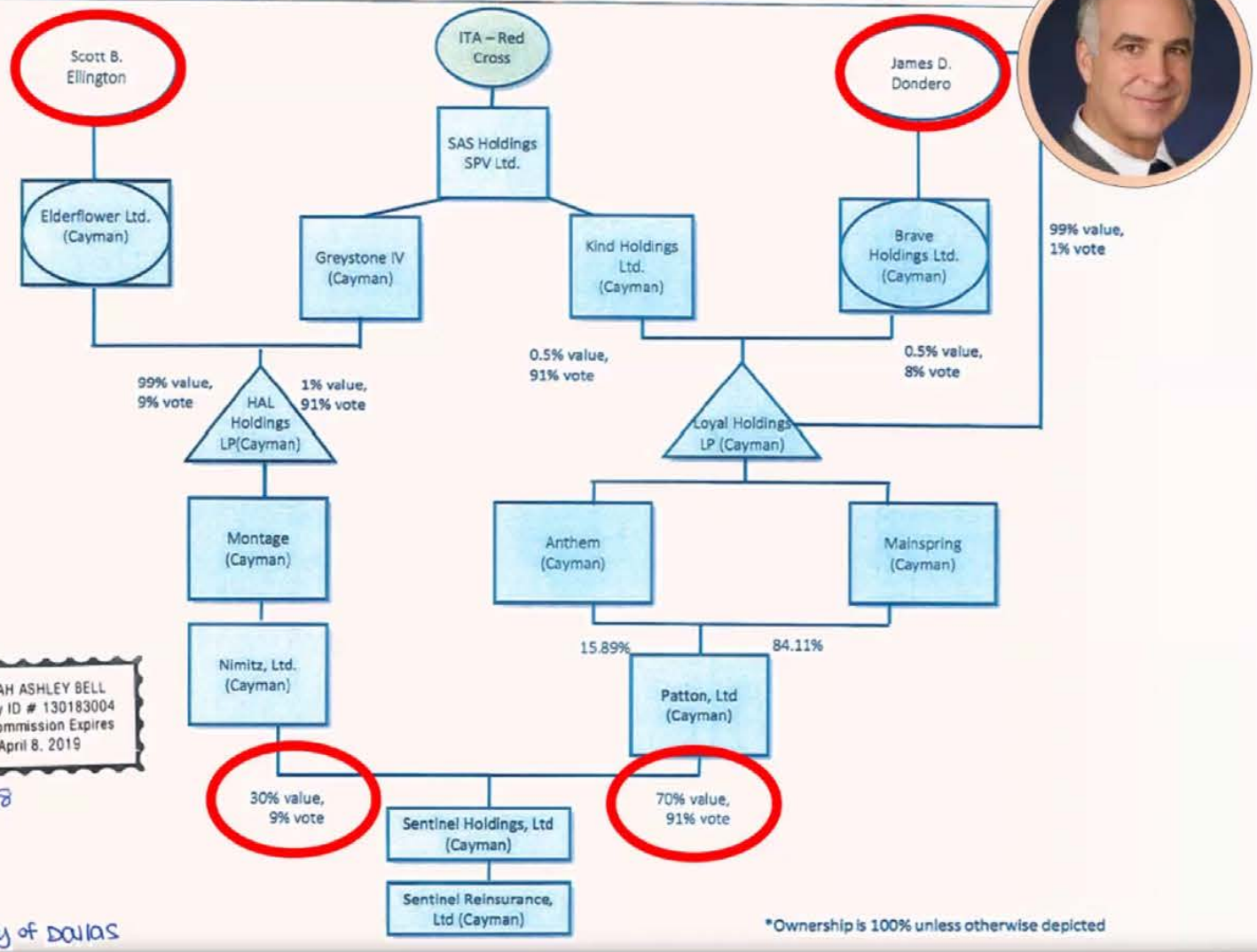
Leventon Dep. Tr. 147:8-19

Jim Dondero
Former President
& CEO of HCM

DEF017839

UBS Ex. 8

ORIGINAL STRUCTURE



SARAH ASHLEY BELL
Notary ID # 130183004
My Commission Expires
April 8, 2019

01/09/2018

Sarah Bell

Sarah Bell

State of Texas, County of Dallas

*Ownership is 100% unless otherwise depicted

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel Insurance Manager)

Dep. Tr. at 18:10-25

Q. Was it common that employees of Highland Capital would do things on behalf of Sentinel?

A. Well, a captive insurance company does not generally have any employees, so all of the employees are typically from a sponsoring organization. In this case it was Highland Capital that was that sponsoring organization.

	Highland	Sentinel
Matt DiOrio	Former Managing Director	Sentinel Director (Dec. 8, 2017 – June 25, 2021)
JP Sevilla	Former Assistant General Counsel	"[T]he point person, I guess, for things that had to happen with Sentinel. . .he helped with the formation, as I understand it. He was part of the team." DiOrio Dep. Tr. 182:6-18
Isaac Leventon	Former Assistant General Counsel	Each year end, would work with Sentinel's actuary to "determine the scenarios for the outcome of the case and with the end goal being to determine what the loss, ultimate loss, would end up being that Sentinel would record in their financial statements." Adamczak Dep. Tr. 97:13-20
Katie Irving	Former Managing Director	A member[] of Highland "knowledgeable . . . of the activities centering around Sentinel" Beecher Dep. Tr. 293:7-294:6 Attended multiple meetings between Sentinel and CIMA Irving Dep. Tr. 37:24-38:21

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel Insurance Manager)

Dep. Tr. at 124:14-125:4

Q. Does Beecher have any other clients that issue ATE policies?
A. No.
Q. Sentinel is the only one?
A. The only one that I am aware of.
Q. And how many ATE policies did Sentinel produce?
A. Just one.
Q. And it's this one we are looking at here?
A. Correct.

UBS Ex. 9

SENTINEL REINSURANCE, LTD

FINANCIAL STATEMENTS

December 31, 2016

SENTINEL REINSURANCE, LTD
BALANCE SHEETS
As Of

	December 2016	December 2015
ASSETS		
Cash - operating account	$4,630,345.65	$3,579,212.35
Cash - investment account	1,256,400.74	1,439,568.64
Total cash & cash equivalents	5,886,746.39	5,018,780.99
Investments at fair market value [Pg. 10]	12,818,303.90	10,892,340.50
Intercompany receivable [Pg. 11]	114,235.16	6,843,735.16
Accrued investment income	346,732.90	2,853,722.07
Insurance balances receivable	0.00	0.00
Prepaid expenses and other assets [Pg. 4]	27,804.88	22,453.05
Total Assets	$19,193,823.23	$26,731,032.77
LIABILITIES		
IBNR reserves	$360,724.00	$649,647.00
Unearned premium reserves	1,328,041.83	1,087,930.66
Other liabilities [Pg. 4]	33,641.05	311,821.98
Total Liabilities	1,722,366.83	1,749,399.64
SHAREHOLDERS' EQUITY		
Contributed surplus	20,364,758.89	15,628,055.00
Unrealized loss	(3,902,077.10)	(6,130,839.44)
Retained earnings	9,284,457.15	5,188,729.49
Dividends declared and paid	(11,566,683.89)	(4,000,000.00)
Year-to-date net income	4,190,841.35	5,096,408.48
Total Shareholders' Equity	(3,371,456.43)	23,981,832.71
Total Liabilities and Shareholders' Equity	$19,193,823.23	$26,731,032.77

HCMUBS001071

	December 2016
ASSETS	
Cash - operating account	$4,630,345.65
Cash - investment account	1,256,400.74
Total cash & cash equivalents	5,886,746.39
Investments at fair market value [Pg. 10]	12,818,303.90
Intercompany receivable [Pg. 11]	114,235.16
Accrued investment income	346,732.90
Insurance balances receivable	0.00
Prepaid expenses and other assets [Pg. 4]	27,804.88
Total Assets	**$19,193,823.23**

Former CAO

Q. Had Mr. Sevilla's instructions been to transfer all the assets at the relevant funds?

A. Yes, that was – that's my recollection, yes.

Q. And in that instruction Mr. Sevilla wanted all funds or all assets transferred regardless of the value of those assets?

A. That's right, yes.

Stoops Dep. Tr. 26:5-12

Former MO

Q. To the extent that this is a transfer of all of the funds of a particular entity, would you say it was common while you were at Highland for Highland to transfer all of the assets out of a Highland entity?

A. I don't believe I -- so I have seen funds wind down before, but I don't believe I have seen another transfer like this before.

Ringheimer Dep. Tr. at 26:14-20

Former MO

Q. Do you recall what the urgency was for executing the transfer that day?

A. I do not.

Q. No one communicated to you why it was urgent?

A. If they did, I don't remember.

Ringheimer Dep. Tr. at 29:14-18

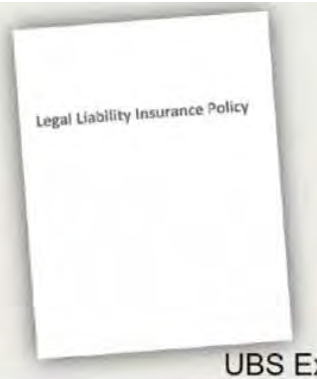
UBS Ex. 1

Insured

Highland CDO Opportunity Master Fund LP
Highland CDO Holding Company; and
Highland Special Opportunities Holding Company

Defendants

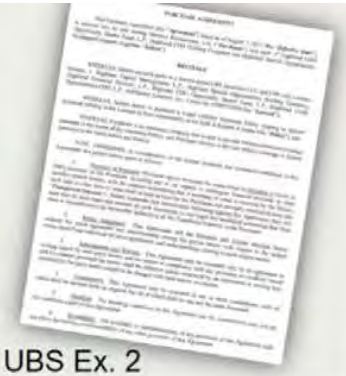
- Highland Special Opportunities Holding Company,
- Highland Financial Partners, LP.,
- Highland CDO Opportunity Master Fund, L.P.,
- Highland Credit Opportunities CDO, L.P.,
- Strand Advisors, Inc.



UBS Ex. 1

Insured

Highland CDO Opportunity Master Fund LP
Highland CDO Holding Company; and
Highland Special Opportunities Holding Company



UBS Ex. 2

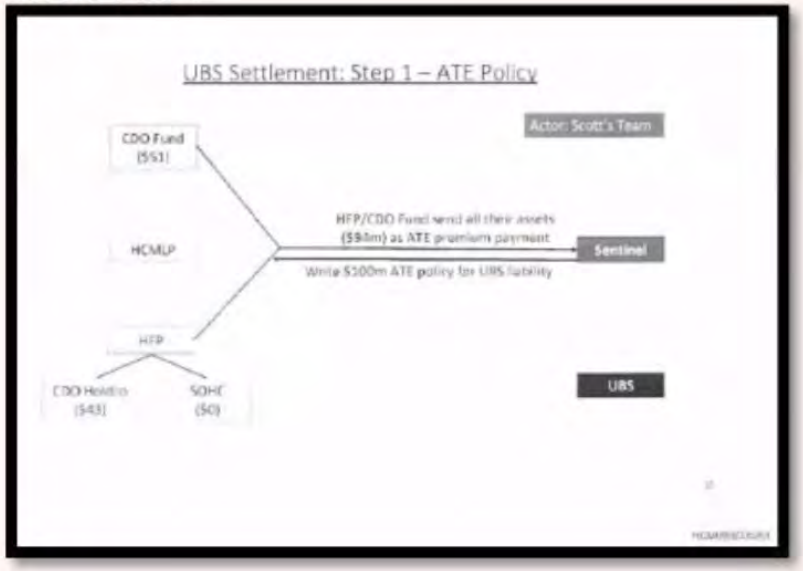
Paid For Insurance

- Highland CDO Opportunity Master Fund, L.P.,
- Highland CDO Holdings Company
- Highland Special Opportunities Holdings Company
- Highland Financial Corp.
- Highland Financial Partners, L.P.
- Highland CDO Opportunity Fund, LTD

Settlement Analysis

UBS v. H

UBS Ex. 7



Settlement Analysis

UBS v. H

UBS Ex. 7

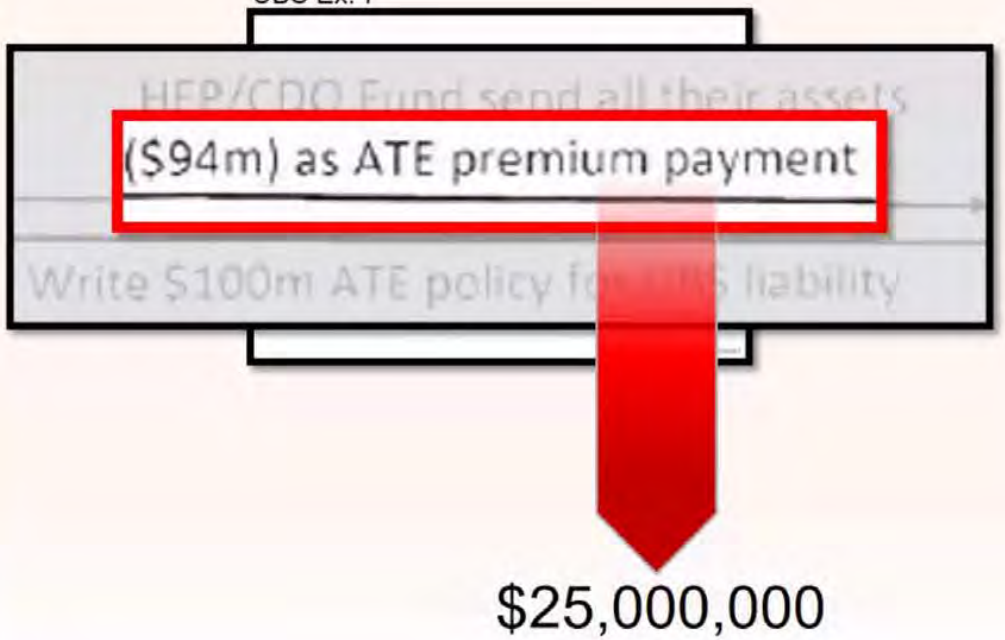
HFP/CDO Fund send all their assets ($94m) as ATE premium payment

Write $100m ATE policy for UBS liability

Settlement Analysis

UBS v.

UBS Ex. 7



UBS Ex. 3

HIGHLAND CAPITAL

MEMORANDUM

FROM: Shawn Raver
TO: Tax Files
DATE: June 30, 2018
RE: Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets

The aggregate purchase price paid by Sentinel for the Assets was $25,000,000. The aggregate fair market value of the assets on the date of the Transaction was $105,647,679. The document effectuating the Transaction did not allocate the purchase price among the Assets acquired by Sentinel. The Seller Entities intend to allocate the purchase price among the Assets sold as follows:

UBS Ex. 11

CAYMAN ISLANDS MONETARY AUTHORITY

FINAL PRUDENTIAL INSPECTION REPORT FOR:

SENTINEL REINSURANCE, LTD.

Conducted on:

4 March 2019 to 11 March 2019

Issued on:

6 May 2019

PREPARED BY:

INSURANCE SUPERVISION DIVISION

This Prudential Inspection Report ("Report") and its contents are the property of the Cayman Islands Monetary Authority (the "Authority"). This Report and its contents may not be shared with any other person other than those persons named in the front of this report and the Licensee's external auditors without the prior written consent of the Cayman Islands Monetary Authority. Copyright 2019.

Requirement (High Priority – MRIA):

5.2.1.3 **Within two weeks** from the date of the Final Inspection Report, the Authority requires the Licensee to provide the Authority with a written explanation of the ownership of the US$68.3 million used in settlement of the ATE policy premiums prior to being transferred to the Licensee. The explanation should be supported by evidence of ownership of the investments and cash prior to transfer to the Licensee and the basis of valuation at the point of transferring the assets to the Licensee.

anagement comments

2.1.4 At the time the ATE policy was drafted, premium had been established at $25 million based on a pricing study conducted by the Licensee's actuary. The insureds did not have sufficient cash to pay the $25 million in premium without having to dispose of certain investments held. It was determined that as consideration for the premium receivable, the insureds would transfer all assets: cash, securities, and miscellaneous receivables, to the Licensee. The market value of the assets transferred was unknown at the time of transfer, but could potentially exceed the $25 million of receivable owed on the ATE policy. The decision to accept the assets as full payment of premium receivable was largely due to the nature of the securities. As there exists a limited market for the securities, the need for a quick sale would be considered a distressed sale and would likely result in a below market return for the securities. From the Licensee's standpoint, they could in turn, hold the securities and find a more optimal time to dispose of the securities, such that the proceeds would more accurately reflect a market return. As the value of the total assets received was unknown, the policy premium was finalized at $25 million. The Licensee, on the recommendation of the Insurance Manager, Beecher Carlson, would engage an independent investment valuation expert should the ATE policy be executed and the investments be transferred.

Once the assets were transferred to the Licensee, Valuation Research Corp (VRC) was engaged to value the assets. The CLOs were determined to be assets with value that neither generated its own Net Asset Value (NAV), nor were traded on a stock exchange. The remaining transferred assets were determined to be worthless and would be carried at $0 on the Licensee's books. Once valuations were completed, the final value of the transferred assets was determined to be approximately $68.3 million, which was higher than the original $25 million ATE premium. Financial statements had initially been prepared assuming and transferred asset value in excess or below the original $25 million of premium would be recorded as a gain or loss on the transaction in the Licensee's books. It was at the recommendation of the auditors that the proper way to record the transfer was to record the premium for the full value of the transferred assets and correspondingly amend the policy.

Premium was being earned over the appropriate risk period with IBNR being accrued over he same period toward the actuarially determined ultimate loss pick. During testing of the oss activity, the auditors raised the issue of needing to record the full actuarially etermined ultimate loss up front, instead of over the appropriate risk period. This was ue to the fact that there had been payments made on the ATE policy related to defense the litigated matter, and under GAAP, payment of claims expenses triggered the "loss ent", requiring the full loss to be recognized. During discussions with the client, it came o light that the ATE coverage is to provide protection against an unfavorable outcome of particular litigated matter and any payments made prior to that outcome (settlement, cision, etc.), are simply risk-mitigation costs (costs incurred to prevent a loss event). As

a result, the estimated risk mitigation costs were removed from the indemnity limit and recorded separately as Pre-funded Risk Mitigation costs. The policy was subsequently amended to reflect this adjustment.

Initial pricing was not deemed to be insufficient though any of these transactions. Discussions were held with the actuary to determine if this posed any problems from the standpoint of risk transfer and it was determined that there still was a sufficient chance of a full limit loss.

Highland Multi-Strategy Credit Fund, Ltd

Highland Multi-Strategy Credit Fund, Ltd. (the Fund) is a security held by the Licensee, a portion of which was transferred in as premium on the ATE policy. As part of the inter- workings of the Fund, once the Licensee took ownership of the Fund shares, the expense rate tied to the shares went from one of no fees assessed, one that charges fees. In the process, the shares were essentially revalued at $1000 per share NAV with the corresponding change in value increasing the number shares held. This resulted in no net change to the Licensee's holding value. What it did do though, was cause the holdings to have a lower NAV than all other shares within the Fund. This caused a disconnect as the auditors, in their valuation testing utilizing the audited financial statements of the Fund, calculated a holding to the Licensee of an amount approximately $6.7 million higher than the Licensee's actual holding. As the Licensee believes its holding is correct (while conservatively lower than the auditor's calculation), chose not to post an adjustment to artificially inflate the value. The result was part of the qualification to the auditor's report for valuation.

As explained above, the basis for the valuation of the transferred assets on or about August 1, 2017 is due to valuations obtained from VRC for investments that neither generate their own NAV, nor are traded on a stock exchange. As the Fund generates its own NAV, it was not one the securities valued by VRC.

Furthermore, the information relied on by the Licensee to value the holdings of the securities transferred to the Licensee as settlement of premium receivable, including the Fund, were provided to the auditors. The auditors were unable to rely on the information as their calculation utilizing the audited financial statements of the Fund yielded a materially different result, albeit a much larger result.

Prior ownership of transferred assets

The entire portfolio of assets, consisting of cash, securities, and miscellaneous receivables transferred to the Licensee in lieu of cash for payment of premiums, were previously owned by Highland CDO Opportunity Master Fund, L.P.; Highland CDO Opportunity Fund, Ltd.; Highland CDO Holdings Company; Highland Special Opportunities Holding Company; Highland Financial Corp.; and Highland Financial Partners, L.P. (the ATE Insureds).

We will provide a formal response regarding the ownership of the assets prior to transfer to the Licensee as well as provide documents supporting that ownership.

The Licensee acknowledges that it had not undertaken documenting the ownership of premiums prior to being transferred to the Licensee for settlement of the ATE program. Furthermore the Licensee does not agree that it is out of compliance with Section 1(c)(3) of the AML Guidance Notes as the policyholder is within a common Financial Group as the insured is controlled by an individual who is also an ultimate beneficial owner of the

UBS Ex. 11

Credit Fund, Ltd. could not be valued. Those charged with the Licensee's governance, could not explain the basis upon which the investments had been valued on or about August 1, 2017 for the purpose of premium settlement. Also, they could not explain the reason why the information that was relied on to value the investments for the purpose of premium settlement could not be readily provided to the auditors upon request considering that the policy inception and the financial statements audit were only a few months apart.

-78819

Management comments

-78819

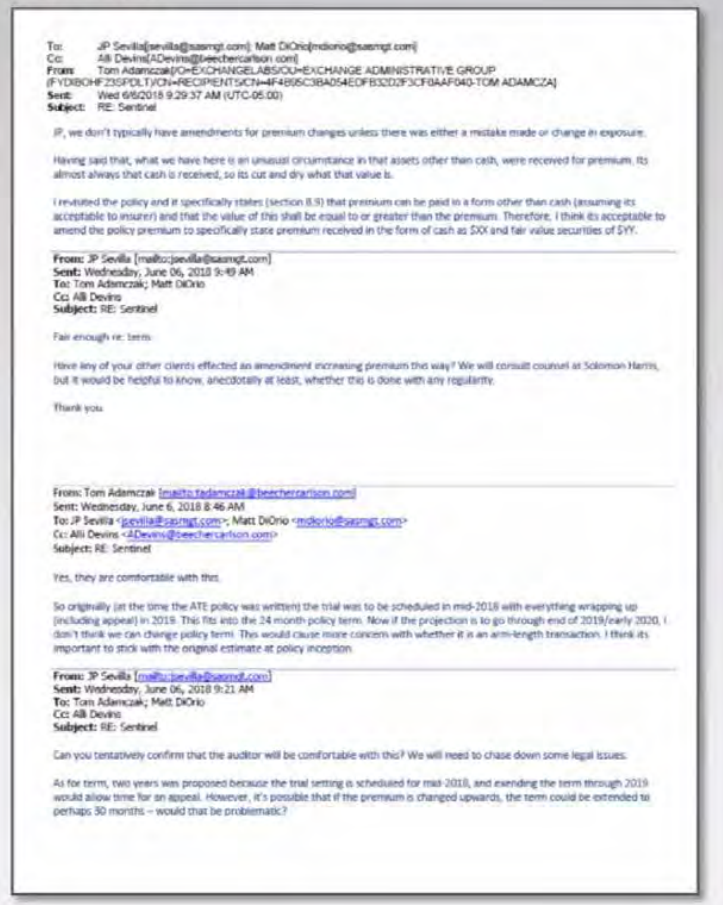
5.2.1.4 At the time the ATE policy was drafted, premium had been established at $25 million based on a pricing study conducted by the Licensee's actuary. The insureds did not have

Authority's response

5.2.1.4 On April 4, 2019, the Authority held a telephone interview with Mr. Jason D. Stubbs of Risk International; the Licensee's actuary. During the interview, Mr. Stubbs informed the Authority that he was not involved in the determination of premium pricing for the Licensee to any extent at all, but rather his role was limited to technical reserving. He added that his involvement arose after premium decisions had been finalized by the Licensee. The Authority notes with concern that the management's assertion that the ATE policy premium of US$25 million was established based on a pricing study conducted by the Licensee's actuary contradicts the actuary's position.

-78822

UBS Ex. 12



To: JP Sevilla[jsevilla@sasmgt.com]; Matt DiOrio[mdiorio@sasmgt.com]
Cc: Alli Devins[ADevins@beechercarlson.com]
From: Tom Adamczak[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4F4B95C3BA054EDFB32D2F3CF0AAF040-TOM ADAMCZA]
Sent: Wed 6/6/2018 9:29:37 AM (UTC-05:00)
Subject: RE: Sentinel

JP, we don't typically have amendments for premium changes unless there was either a mistake made or change in exposure.

Having said that, what we have here is an unusual circumstance in that assets other than cash, were received for premium. Its almost always that cash is received, so its cut and dry what that value is.

I revisited the policy and it specifically states (section 8.5) that premium can be paid in a form other than cash (assuming its acceptable to insurer) and that the value of this shall be equal to or greater than the premium. Therefore, I think its acceptable to amend the policy premium to specifically state premium received in the form of cash as $XX and fair value securities of $YY.

From: JP Sevilla [mailto:jsevilla@sasmgt.com]
Sent: Wednesday, June 06, 2018 9:49 AM
To: Tom Adamczak; Matt DiOrio
Cc: Alli Devins
Subject: RE: Sentinel

Fair enough re: term.

Have any of your other clients effected an amendment increasing premium this way? We will consult counsel at Solomon Harris, but it would be helpful to know, anecdotally at least, whether this is done with any regularity.

Thank you.

From: Tom Adamczak [mailto:tadamczak@beechercarlson.com]
Sent: Wednesday, June 6, 2018 8:46 AM
To: JP Sevilla <jsevilla@sasmgt.com>; Matt DiOrio <mdiorio@sasmgt.com>
Cc: Alli Devins <ADevins@beechercarlson.com>
Subject: RE: Sentinel

Yes, they are comfortable with this.

So originally (at the time the ATE policy was written) the trial was to be scheduled in mid-2018 with everything wrapping up (including appeal) in 2019. This fits into the 24 month policy term. Now if the projection is to go through end of 2019/early 2020, I don't think we can change policy term. This would cause more concern with whether it is an arm-length transaction. I think its important to stick with the original estimate at policy inception.

From: JP Sevilla [mailto:jsevilla@sasmgt.com]
Sent: Wednesday, June 06, 2018 9:21 AM
To: Tom Adamczak; Matt DiOrio
Cc: Alli Devins
Subject: RE: Sentinel

Can you tentatively confirm that the auditor will be comfortable with this? We will need to chase down some legal issues.

As for term, two years was proposed because the trial setting is scheduled for mid-2018, and exending the term through 2019 would allow time for an appeal. However, it's possible that if the premium is changed upwards, the term could be extended to perhaps 30 months – would that be problematic?

From: Tom Adamczak [mailto:tadamczak@beechercarlson.com]
Sent: Tuesday, June 5, 2018 3:24 PM
To: JP Sevilla <jsevilla@sasmgt.com>; Matt DiOrio <mdiorio@sasmgt.com>
Cc: Alli Devins <ADevins@beechercarlson.com>
Subject: Sentinel
Importance: High

JP and Matt,

I just spoke with Lisa (Sr. Mgr at Crowe) regarding the Sentinel audit and they one particular area that is causing them issues. It relates to the gain that we have recognized on the transfer of securities into Sentinel as premium. The value of securities we have transferred in amounted to just over $40m (as valued by VRC on CLOs and other sources). The problem is that the premium was only $25m, creating a gain on the transaction. Because there is no return of overpayment of premium, it gives rise to the question "is this an arms-length transaction?" Essentially Sentinel has been overpaid by approximately $15m. Although there doesn't appear to be anything in GAAP preventing the recording of a gain, it does create a significant amount of questions as well as a ton of additional disclosures in the audit report.

Alternatively, if we could adjust the premium to $40m, it would resolve the issue on their end. Lisa doesn't see any negatives for increasing premium (no premium tax or income tax position concerns) and I think she may be on to something. I know the pricing study showed $25m and I can run it by the actuary too, but don't think it will matter to him.

UBS Ex. 14

Endorsement No. 1

The following is hereby understood and agreed:

The premium, as stated in the schedule, is adjusted to $68,362,333.62 to include the total fair value of received assets. Premium received consists of cash of $11,083,855.74, miscellaneous receivables of $1,753,020.00, and an investment portfolio of $55,525,457.88 as measured at fair value on the transfer date.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Attaches to and forming part of the Legal Liability Insurance Policy dated August 1, 2017 of Sentinel Reinsurance, Ltd.

(Authorized Signature)

Lesley Thompson
Director

Endorsement No. 2

The following is hereby understood and agreed:

The **premium**, as stated in the schedule, is reduced to $59,362,333.62.

$9,000,000.00 has been prepaid by the **insured** to the **insurer** to cover risk mitigation costs, which include, but are not limited to, legal defense costs.

The limit of indemnity is reduced to $91,000,000.00 in the aggregate to correlate with prefunding the risk mitigation costs of $9,000,000.00.

The **insurer** will have sole responsibility to settle all risk mitigation costs with respect **legal action**.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Attaches to and forming part of the Legal Liability Insurance Policy dated August 1, 2017 of Sentinel Reinsurance, Ltd.

(Authorized Signature)

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel Insurance Manager)

Q. Is this something that you have done before on other policies, change the premium to reflect assets transferred?

A. This is the first situation like this that we have seen where there were assets that were taken in as opposed to cash.

Q. And have you ever seen anything like it since?

A. I have not.

221:3-11

Q. Did anyone at the insureds agree with the policy premium could increase by three times without increasing the coverage amount?

A. I am not aware if that was presented to the insureds.

239:18-22

UBS Ex. 15

ASSET TRANSFER AGREEMENT

Dated as of 31 December 2019

PARTIES:

1. **SENTINEL REINSURANCE, LTD.**, an exempted company incorporated in the Cayman Islands whose registered office is c/o CO Services Cayman Limited, PO Box 10008, Willow House, Cricket Square, Grand Cayman KY1-1001, Cayman Islands (the "**Seller**"); and

2. **SEBASTIAN CLARKE LTD.** an exempted company incorporated in the Cayman Islands whose registered office is c/o CO Services Cayman Limited, PO Box 10008, Willow House, Cricket Square, Grand Cayman KY1-1001, Cayman Islands (the "**Purchaser**").

Words and expressions used in this Agreement shall be interpreted in accordance with Schedule 4.

WHEREAS, on 31 December 2019, the Seller agreed to sell certain assets to the Purchaser for the consideration and upon the terms set out in this Agreement.

IT IS AGREED:

1. SALE AND PURCHASE

1.1 The Seller shall sell, and the Purchaser shall purchase, all of the Seller's right, title and interest to, in and under the following assets with effect from Closing on the terms of this Agreement (including, in particular, clauses 1, 2 and 4):

(a) the benefit and burden of the each of position to which the Seller is a counterparty as set forth in Schedule 2 hereto (together, the "**Positions**");

(b) the Purchaser Claims; and

(c) the Asset Information.

together, the "**Assets**".

2. PRICE

2.1 The price for the Assets (the "**Purchase Price**") shall be the amount specified in Schedule 1 as the "Purchase Price".

2.2 On the Effective Date, the Purchaser shall pay to the Seller the Purchase Price.

ASSET TRANSFER AGREEMENT

Dated as of 31 December 2019

SCHEDULE 2

ASSETS

ISIN/CUSIP	*NAME*	*Acquired*	*Par/Face*
US3624682098	GSC ABS CDO 2006-4U LT CUM PFD 144A	8/11/2017	16,000
US5431742056	LONGSTREET CDO I LTD PFD 144A	8/11/2017	4,570
US43009L2034	HIGHLAND FINL PARTNERS LP	8/11/2017	615,733
US43009L9898	HIGHLAND FINL PARTNERS LP NPV	8/11/2017	3,000,000
US69763NAD30	PAM CAP FDG LP 0.0 01MAY13 144A	8/11/2017	48,500,000
N/A	Dugaboy Investment Trust Promissory Note	8/11/2017	2,399,996
N/A	CLO Hold Co, Ltd. Promissory Note	8/11/2017	32,801,593
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46	8/11/2017	11,000,000
USG44392AF82	HIGHLAND PARK C 4.93867	8/11/2017	17,000,000
KY009A1KXYH6	ABERDEEN LN FDG LTD PFD	8/11/2017	12,000,000

Purchase Price from Purchaser to Seller (clause 2) 3.00

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel Insurance Manager)

A. This document was a sales agreement to transfer certain securities that we were told to be worthless to remove them from the balance sheet of Sentinel.

Q. Who told you that they were worthless?

A. That direction would have come from Matt DiOrio.

Q. As part of the valuation services that -- the Valuation Research Corp. had done had they determined that those -- these assets were worthless?

A. They had not been engaged to perform valuations on those investments and it was discussed that if those investments were worthless there was no point in obtaining a valuation.

276:17-277:6

Q. Did Beecher do anything independent to confirm that they were worthless?

A. We had no way of confirming anything.

281:21-23

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel Insurance Manager)

Dep. Tr. 286:10-24

Q. These assets, I believe you testified, have been sent back to Sentinel now, is that right?

A. That is correct.

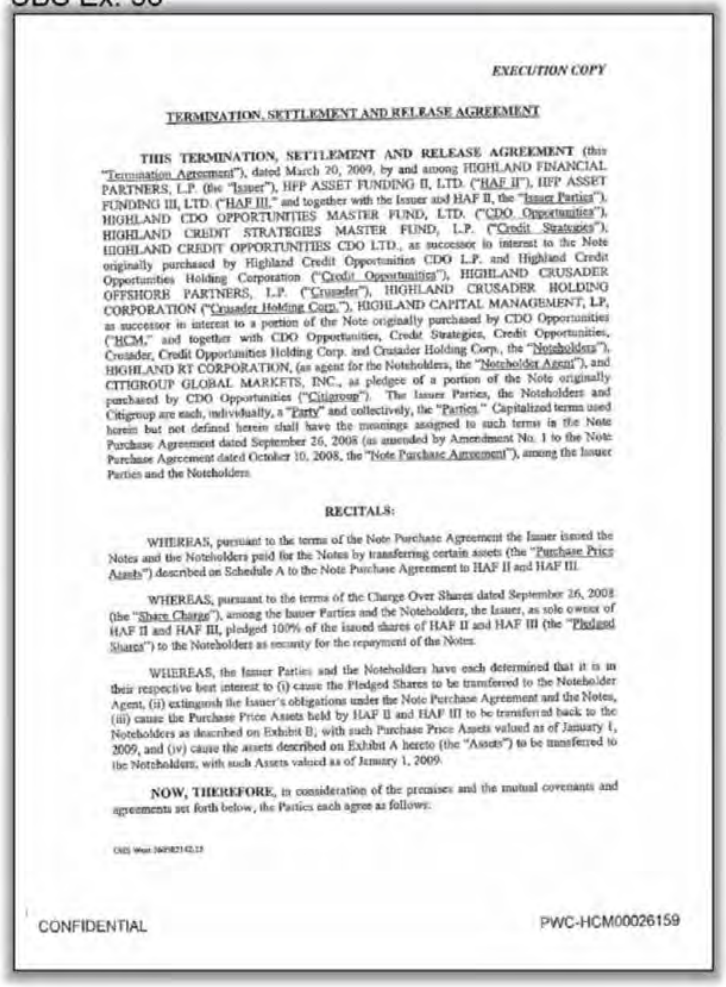
Q. When did that happen?

A. That happened at some point in later 2021, I think the effective date may have been November, 2021.

Q. Why were they transferred back to Sentinel?

A. Based on the discussions that the new directors had with counsel and others, I am not sure who, but the determination was that they would try to recover those assets in anticipation of the outcome of the discussions with UBS.

UBS Ex. 53



EXECUTION COPY

TERMINATION, SETTLEMENT AND RELEASE AGREEMENT

THIS TERMINATION, SETTLEMENT AND RELEASE AGREEMENT (this "Termination Agreement"), dated March 20, 2009, by and among HIGHLAND FINANCIAL PARTNERS, L.P. (the "Issuer"), HFP ASSET FUNDING II, LTD. ("HAF II"), HFP ASSET FUNDING III, LTD. ("HAF III," and together with the Issuer and HAF II, the "Issuer Parties"), HIGHLAND CDO OPPORTUNITIES MASTER FUND, LTD. ("CDO Opportunities"), HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P. ("Credit Strategies"), HIGHLAND CREDIT OPPORTUNITIES CDO LTD., as successor in interest to the Note originally purchased by Highland Credit Opportunities CDO L.P. and Highland Credit Opportunities Holding Corporation ("Credit Opportunities"), HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P. ("Crusader"), HIGHLAND CRUSADER HOLDING CORPORATION ("Crusader Holding Corp."), HIGHLAND CAPITAL MANAGEMENT, LP, as successor in interest to a portion of the Note originally purchased by CDO Opportunities ("HCM," and together with CDO Opportunities, Credit Strategies, Credit Opportunities, Crusader, Credit Opportunities Holding Corp. and Crusader Holding Corp., the "Noteholders"), HIGHLAND RT CORPORATION, (as agent for the Noteholders, the "Noteholder Agent"), and CITIGROUP GLOBAL MARKETS, INC., as pledgee of a portion of the Note originally purchased by CDO Opportunities ("Citigroup"). The Issuer Parties, the Noteholders and Citigroup are each, individually, a "Party" and collectively, the "Parties." Capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Note Purchase Agreement dated September 26, 2008 (as amended by Amendment No. 1 to the Note Purchase Agreement dated October 10, 2008, the "Note Purchase Agreement"), among the Issuer Parties and the Noteholders.

RECITALS:

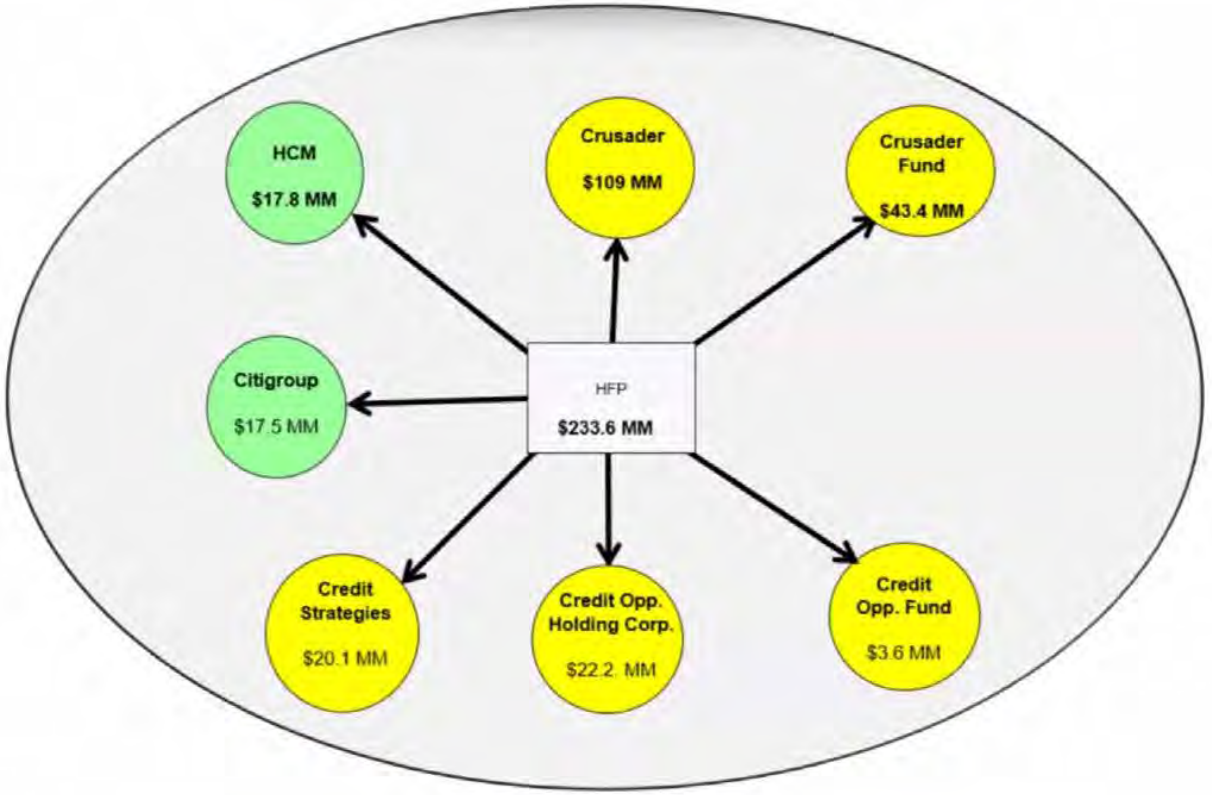
WHEREAS, pursuant to the terms of the Note Purchase Agreement the Issuer issued the Notes and the Noteholders paid for the Notes by transferring certain assets (the "Purchase Price Assets") described on Schedule A to the Note Purchase Agreement to HAF II and HAF III.

WHEREAS, pursuant to the terms of the Charge Over Shares dated September 26, 2008 (the "Share Charge"), among the Issuer Parties and the Noteholders, the Issuer, as sole owner of HAF II and HAF III, pledged 100% of the issued shares of HAF II and HAF III (the "Pledged Shares") to the Noteholders as security for the repayment of the Notes.

WHEREAS, the Issuer Parties and the Noteholders have each determined that it is in their respective best interest to (i) cause the Pledged Shares to be transferred to the Noteholder Agent, (ii) extinguish the Issuer's obligations under the Note Purchase Agreement and the Notes, (iii) cause the Purchase Price Assets held by HAF II and HAF III to be transferred back to the Noteholders as described on Exhibit B, with such Purchase Price Assets valued as of January 1, 2009, and (iv) cause the assets described on Exhibit A hereto (the "Assets") to be transferred to the Noteholders, with such Assets valued as of January 1, 2009.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth below, the Parties each agree as follows:

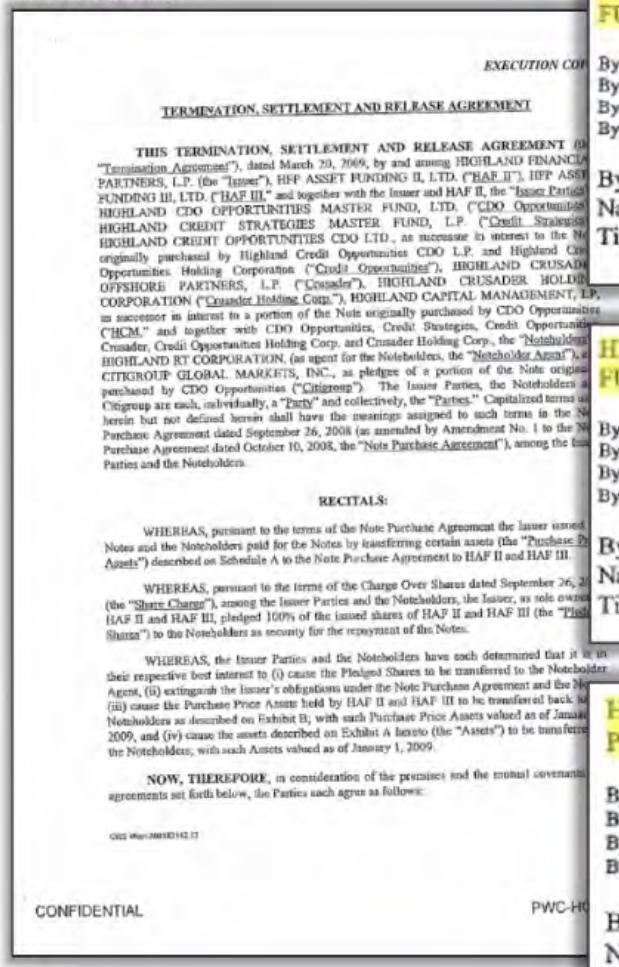
CONFIDENTIAL PWC-HCM00026159



Compiled from UBS Ex. 52

Pattern: The 2009 Fraudulent Conveyances

UBS Ex. 53



TERMINATION, SETTLEMENT AND RELEASE AGREEMENT

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RECITALS:

WHEREAS, pursuant to the terms of the Note Purchase Agreement the Issuer issued Notes and the Noteholders paid for the Notes by transferring certain assets (the "Purchase Price Assets") described on Schedule A to the Note Purchase Agreement to HAF II and HAF III.

WHEREAS, pursuant to the terms of the Charge Over Shares dated September 26, 2008 (the "Share Charge"), among the Issuer Parties and the Noteholders, the Issuer, as sole owner of HAF II and HAF III, pledged 100% of the issued shares of HAF II and HAF III (the "Pledged Shares") to the Noteholders as security for the repayment of the Notes.

WHEREAS, the Issuer Parties and the Noteholders have each determined that it is in their respective best interest to (i) cause the Pledged Shares to be transferred to the Noteholder Agent, (ii) extinguish the Issuer's obligations under the Note Purchase Agreement and the Notes, (iii) cause the Purchase Price Assets held by HAF II and HAF III to be transferred back to the Noteholders as described on Exhibit B, with such Purchase Price Assets valued as of January 1, 2009, and (iv) cause the assets described on Exhibit A hereto (the "Assets") to be transferred to the Noteholders, with such Assets valued as of January 1, 2009.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth below, the Parties each agree as follows:

CONFIDENTIAL

HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: Highland CDO Opportunity Fund GP, L.P., its general partner
By: Highland CDO Opportunity Fund GP, LLC., its general partner
By: Highland Capital Management, L.P. its sole member
By: Strand Advisors, Inc., its general partner

By
Name: James Dondero
Title: President

HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: Highland General Partner LP, its general partner
By: Highland GP Holdings LLC, its general partner
By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner

By
Name: James Dondero
Title: President

HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.

By: Highland Crusader Fund GP, L.P., its general partner
By: Highland Crusader GP, LLC, its general partner
By: Highland Capital Management, L.P. its sole member
By: Strand Advisors, Inc., its general partner

By
Name: James Dondero
Title: President

HIGHLAND FINANCIAL PARTNERS, L.P.

By
Name: James Dondero
Title: Chairman of the Board of Directors

HFP ASSET FUNDING II, LTD.

By
Name: James Dondero
Title: Director

HIGHLAND CREDIT OPPORTUNITIES CDO, LTD.

By
Name: James Dondero
Title: President

HIGHLAND RT CORPORATION, as Agent for the Noteholders

By
Name: James Dondero
Title: President

HIGHLAND CRUSADER HOLDING CORPORATION

By
Name: James Dondero
Title: President

HIGHLAND CAPITAL MANAGEMENT, LP
By: Strand Advisors, Inc., its general partner

By
Name: James Dondero
Title: President

HFP ASSET FUNDING III, LTD.

By
Name: James Dondero
Title: Director

DEF017860

Outside Usual Course of Business: CIMA Questions Legitimacy

UBS Ex. 11, § 5.2.1.1 (at -78819)

Credit Fund, Ltd. could not be valued. Those charged with the Licensee's governance, could not explain the basis upon which the investments had been valued on or about August 1, 2017 for the purpose of premium settlement. Also, they could not explain the reason why the information that was relied on to value the investments for the purpose of premium settlement could not be readily provided to the auditors upon request considering that the policy inception and the financial statements audit were only a few months apart.

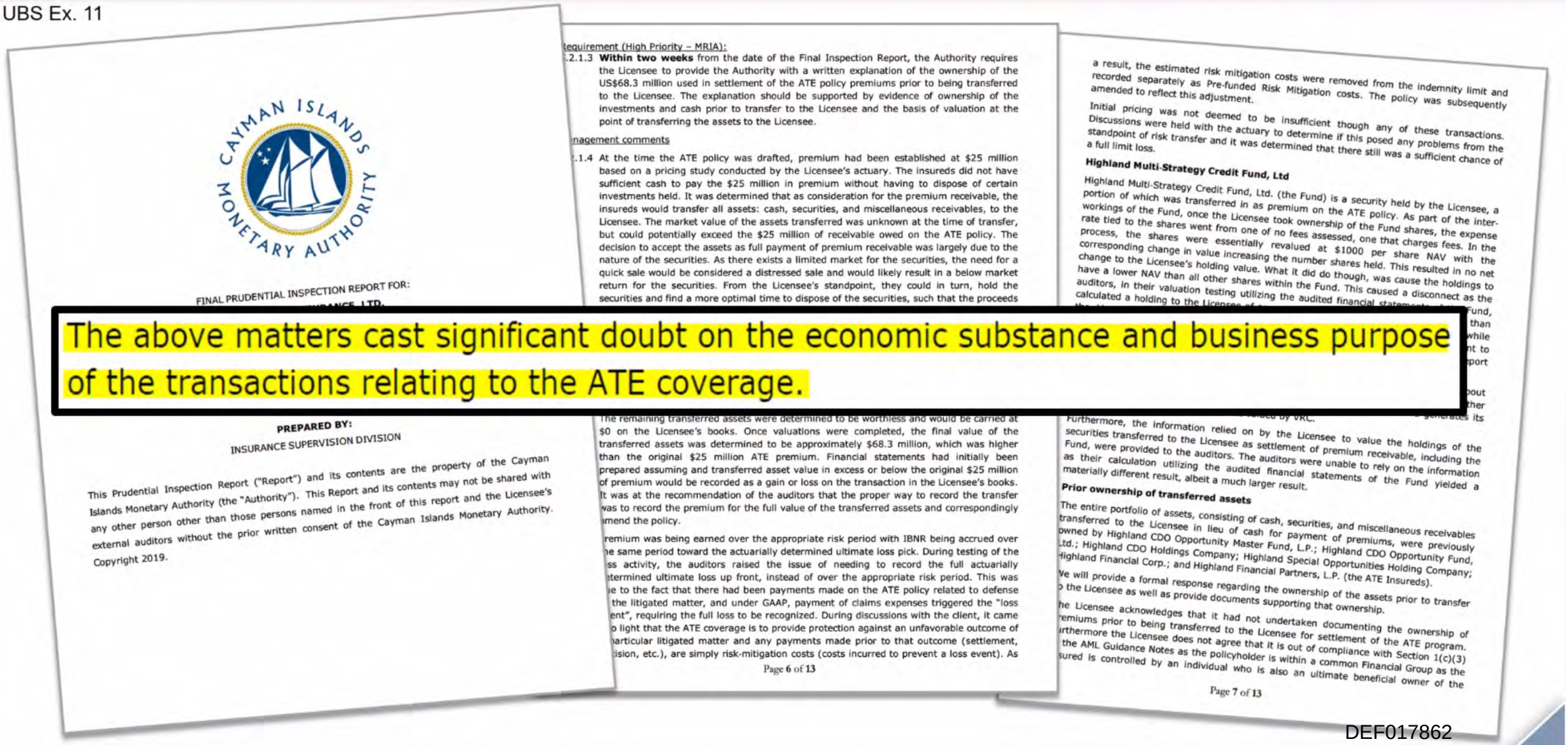
legal defense costs for a then ongoing case. Those charged with governance could not explain why the premium was adjusted from US$25 million to US$68.3 million without a commensurate adjustment to the indemnity limit provided or why the initial pricing for the policy was subsequently deemed not sufficient.

In addition, in any case, to amend an insurance policy to artificially inflate the premium amount to equal the value of the investments transferred to the Licensee without any justifiable business purpose and economic substance is at the very least questionable.

DEF017861

Outside Usual Course of Business: CIMA Questions Legitimacy

UBS Ex. 11



CAYMAN ISLANDS MONETARY AUTHORITY

FINAL PRUDENTIAL INSPECTION REPORT FOR:

PREPARED BY:

INSURANCE SUPERVISION DIVISION

This Prudential Inspection Report ("Report") and its contents are the property of the Cayman Islands Monetary Authority (the "Authority"). This Report and its contents may not be shared with any other person other than those persons named in the front of this report and the Licensee's external auditors without the prior written consent of the Cayman Islands Monetary Authority.

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equirement (High Priority – MRIA):

.2.1.3 **Within two weeks** from the date of the Final Inspection Report, the Authority requires the Licensee to provide the Authority with a written explanation of the ownership of the US$68.3 million used in settlement of the ATE policy premiums prior to being transferred to the Licensee. The explanation should be supported by evidence of ownership of the investments and cash prior to transfer to the Licensee and the basis of valuation at the point of transferring the assets to the Licensee.

nagement comments

.1.4 At the time the ATE policy was drafted, premium had been established at $25 million based on a pricing study conducted by the Licensee's actuary. The insureds did not have sufficient cash to pay the $25 million in premium without having to dispose of certain investments held. It was determined that as consideration for the premium receivable, the insureds would transfer all assets: cash, securities, and miscellaneous receivables, to the Licensee. The market value of the assets transferred was unknown at the time of transfer, but could potentially exceed the $25 million of receivable owed on the ATE policy. The decision to accept the assets as full payment of premium receivable was largely due to the nature of the securities. As there exists a limited market for the securities, the need for a quick sale would be considered a distressed sale and would likely result in a below market return for the securities. From the Licensee's standpoint, they could in turn, hold the securities and find a more optimal time to dispose of the securities, such that the proceeds

The remaining transferred assets were determined to be worthless and would be carried at $0 on the Licensee's books. Once valuations were completed, the final value of the transferred assets was determined to be approximately $68.3 million, which was higher than the original $25 million ATE premium. Financial statements had initially been prepared assuming and transferred asset value in excess or below the original $25 million of premium would be recorded as a gain or loss on the transaction in the Licensee's books. It was at the recommendation of the auditors that the proper way to record the transfer was to record the premium for the full value of the transferred assets and correspondingly mend the policy.

remium was being earned over the appropriate risk period with IBNR being accrued over he same period toward the actuarially determined ultimate loss pick. During testing of the ss activity, the auditors raised the issue of needing to record the full actuarially etermined ultimate loss up front, instead of over the appropriate risk period. This was e to the fact that there had been payments made on the ATE policy related to defense the litigated matter, and under GAAP, payment of claims expenses triggered the "loss ent", requiring the full loss to be recognized. During discussions with the client, it came o light that the ATE coverage is to provide protection against an unfavorable outcome of articular litigated matter and any payments made prior to that outcome (settlement, ision, etc.), are simply risk-mitigation costs (costs incurred to prevent a loss event). As

Page 6 of 13

a result, the estimated risk mitigation costs were removed from the indemnity limit and recorded separately as Pre-funded Risk Mitigation costs. The policy was subsequently amended to reflect this adjustment.

Initial pricing was not deemed to be insufficient though any of these transactions. Discussions were held with the actuary to determine if this posed any problems from the standpoint of risk transfer and it was determined that there still was a sufficient chance of a full limit loss.

Highland Multi-Strategy Credit Fund, Ltd

Highland Multi-Strategy Credit Fund, Ltd. (the Fund) is a security held by the Licensee, a portion of which was transferred in as premium on the ATE policy. As part of the inter- workings of the Fund, once the Licensee took ownership of the Fund shares, the expense rate tied to the shares went from one of no fees assessed, one that charges fees. In the process, the shares were essentially revalued at $1000 per share NAV with the corresponding change in value increasing the number shares held. This resulted in no net change to the Licensee's holding value. What it did do though, was cause the holdings to have a lower NAV than all other shares within the Fund. This caused a disconnect as the auditors, in their valuation testing utilizing the audited financial

Furthermore, the information relied on by the Licensee to value the holdings of the securities transferred to the Licensee as settlement of premium receivable, including the Fund, were provided to the auditors. The auditors were unable to rely on the information as their calculation utilizing the audited financial statements of the Fund yielded a materially different result, albeit a much larger result.

Prior ownership of transferred assets

The entire portfolio of assets, consisting of cash, securities, and miscellaneous receivables transferred to the Licensee in lieu of cash for payment of premiums, were previously owned by Highland CDO Opportunity Master Fund, L.P.; Highland CDO Opportunity Fund, Ltd.; Highland CDO Holdings Company; Highland Special Opportunities Holding Company; Highland Financial Corp.; and Highland Financial Partners, L.P. (the ATE Insureds).

We will provide a formal response regarding the ownership of the assets prior to transfer o the Licensee as well as provide documents supporting that ownership.

he Licensee acknowledges that it had not undertaken documenting the ownership of remiums prior to being transferred to the Licensee for settlement of the ATE program. urthermore the Licensee does not agree that it is out of compliance with Section 1(c)(3) the AML Guidance Notes as the policyholder is within a common Financial Group as the sured is controlled by an individual who is also an ultimate beneficial owner of the

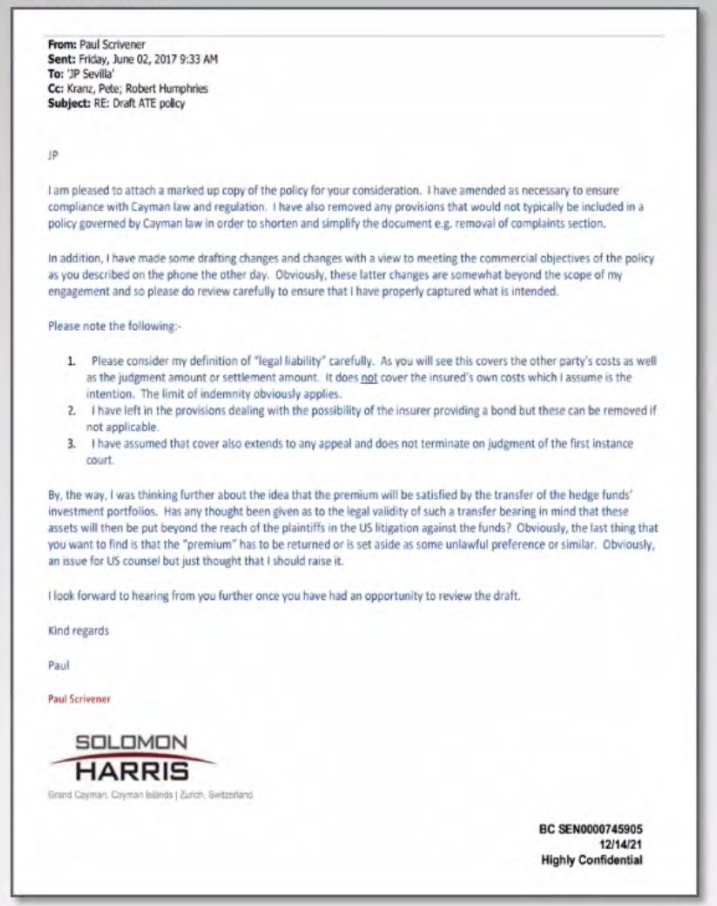
Page 7 of 13

The above matters cast significant doubt on the economic substance and business purpose of the transactions relating to the ATE coverage.

DEF017862

Outside Usual Course of Business: Sentinel's Lawyers Warn Of Fraud

UBS Ex. 10



From: Paul Scrivener
Sent: Friday, June 02, 2017 9:33 AM
To: 'JP Sevilla'
Cc: Kranz, Pete; Robert Humphries
Subject: RE: Draft ATE policy

JP

I am pleased to attach a marked up copy of the policy for your consideration. I have amended as necessary to ensure compliance with Cayman law and regulation. I have also removed any provisions that would not typically be included in a policy governed by Cayman law in order to shorten and simplify the document e.g. removal of complaints section.

In addition, I have made some drafting changes and changes with a view to meeting the commercial objectives of the policy as you described on the phone the other day. Obviously, these latter changes are somewhat beyond the scope of my engagement and so please do review carefully to ensure that I have properly captured what is intended.

Please note the following:-

1. Please consider my definition of "legal liability" carefully. As you will see this covers the other party's costs as well as the judgment amount or settlement amount. It does not cover the insured's own costs which I assume is the intention. The limit of indemnity obviously applies.
2. I have left in the provisions dealing with the possibility of the insurer providing a bond but these can be removed if not applicable.
3. I have assumed that cover also extends to any appeal and does not terminate on judgment of the first instance court.

By, the way, I was thinking further about the idea that the premium will be satisfied by the transfer of the hedge funds' investment portfolios. Has any thought been given as to the legal validity of such a transfer bearing in mind that these assets will then be put beyond the reach of the plaintiffs in the US litigation against the funds? Obviously, the last thing that you want to find is that the "premium" has to be returned or is set aside as some unlawful preference or similar. Obviously, an issue for US counsel but just thought that I should raise it.

I look forward to hearing from you further once you have had an opportunity to review the draft.

Kind regards

Paul

Paul Scrivener

SOLOMON HARRIS

Grand Cayman, Cayman Islands | Zurich, Switzerland

BC SEN0000745905
12/14/21
Highly Confidential

From: Paul Scrivener
Sent: Friday, June 02, 2017 9:33 AM
To: 'JP Sevilla'
Cc: Kranz, Pete; Robert Humphries
Subject: RE: Draft ATE policy

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I look forward to hearing from you further once you have had an opportunity to review the draft.

Kind regards

Paul

Paul Scrivener

SOLOMON HARRIS

Grand Cayman, Cayman Islands | Zurich, Switzerland

DEF017863

Secrecy: Dondero Knew About Policy But Never Told Board

Q. Did you ever tell Mr. Dondero that there was an insurance policy issued by Sentinel that could potentially satisfy that judgment?

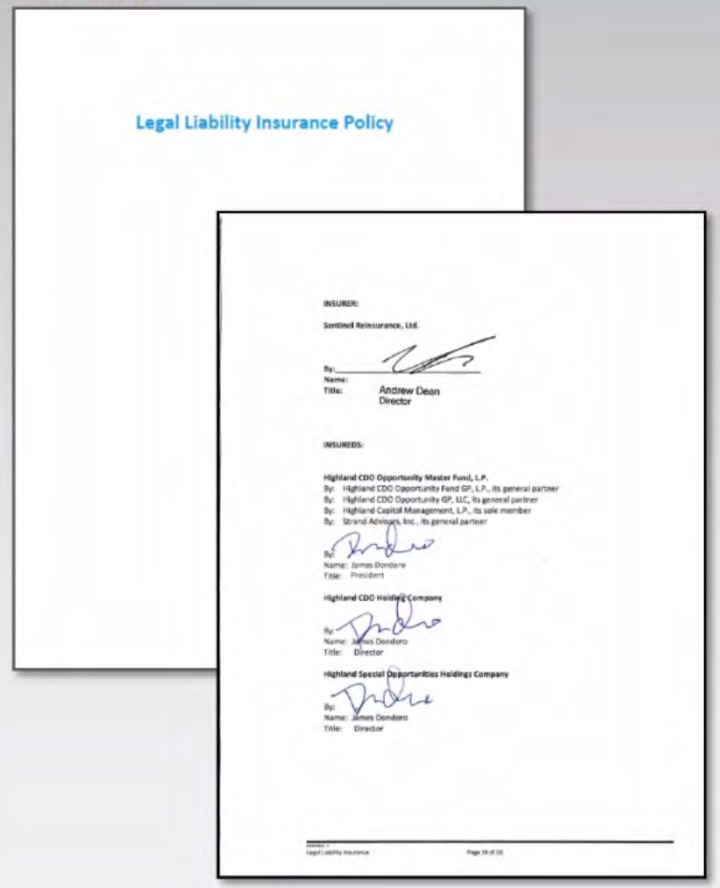
A. I didn't need to tell Mr. Dondero. He was aware of it since inception.

Ellington Dep. Tr. 83:21-25

Jim Dondero
Former President
& CEO of HCM

Secrecy: Dondero Knew About Policy But Never Told Board

UBS Ex. 1



Highland CDO Opportunity Master Fund, L.P.
By: Highland CDO Opportunity Fund GP, L.P., its general partner
By: Highland CDO Opportunity GP, LLC, its general partner
By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner

By:
Name: James Dondero
Title: President

Highland CDO Holding Company

By:
Name: James Dondero
Title: Director

Highland Special Opportunities Holdings Company

By:
Name: James Dondero
Title: Director

DEF017865

Secrecy: Sevilla Was Sentinel's Point Person

Q. You said earlier that Mr. Sevilla had some role in the day-to-day with Sentinel. What was that role?

A. I think it was kind of an unofficial -- like he was the point person, I guess, for things that had to happen with Sentinel. I don't know exactly what, but --

Q. Do you know how he got that role?

A. I think he was -- he helped with the formation, as I understand it. He was part of the team.

DiOrio Dep. Tr. 182:6-18

JP Sevilla
Former Assistant General Counsel at HCM

Secrecy: Sevilla Hides Policy

JP Sevilla
Former Assistant General Counsel at HCM

Q. And so between the time that the independent board was appointed and your departure from the company, did you ever disclose to any of the members of the independent board that you were aware of the existence of the Sentinel insurance policy ostensibly providing for coverage for the loss of the UBS litigation?

A. No.

Dep. Tr. 278:20-279:3

Secrecy: Dondero And His Legal Team's Cover Up

Oct. 16, 2019
HCM files Ch. 11

Nov 14, 2019
Phase I decision

Feb. 10, 2020
$1B judgment

August 2020
Leventon lies about Funds' assets

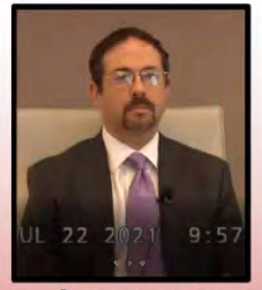
2019 2020 2021

Oct 2019 - Feb 2021

Actively Conceal Existence of ATE

Dondero

Sevilla



Leventon

DEF017868

Secrecy: Leventon Lies About Assets and Hides Policy

UBS Ex. 16

- Cash: 2012 – 2015. Fund has unaudited financials from 2009 – 2011 (attached). From 2012 – 2015, the fund had $10.5 million in cash from cash-on-hand plus sales proceeds. $16.6 million in legal fees paid (trying to determine source of additional funds to pay fees).
- One asset unaccounted for: Lehman BK claim. Our system is just not built to track this asset type easily. I am still working on it.
- Support: A 2011 unaudited financial prepared in support of HCMLP's audit. Trade tickets to support each 2011 asset not still in the fund. List of legal fee payments by date, amount, payor.

- SOHC

  - Current Assets: written off bonds of Delphi and Tousa; Longstreet CDO Mezz. (zero value).
  - 2009 v. 2019: Have position statements from 2009 – 2012. The remaining non-cash positions in 2012 were the Delphi Bonds, still in the fund.
  - Cash: We have a cash flow statement showing all payments from 2009 – 2018 (last payment date). Last remaining $295,000 in cash was paid in 2017. Since then the fund has received $109.10 in dividend payments. That means SOHC currently has enough gross assets to buy a steak dinner, as long as it does not order the wine.
  - Support: Position statements, cash flow statement.

From: Isaac Leventon
Sent: Wednesday, August 5, 2020 2:54 PM
To: 'James Seery' <jpseeryjr@gmail.com>; James Romey <jromey@DSIConsulting.com>; David Klos <DKlos@HighlandCapital.com>; Gregory V. Demo <GDemo@pszjlaw.com>
Cc: Bradley Sharp <bsharp@DSIConsulting.com>
Subject: RE: UBS Supplemental Information Request

+ Greg Demo.

- UBS's current requests for information exceed what it was entitled to under the Special Master Discovery Order (attached). UBS is asking for documents from 12/31/07 – 12/31/19. UBS already received these documents from 12/31/06 – 5/31/09, which was the relevance cut-off for proving liability on alter ego. The relevance time period was defined as the time period in which the alleged fraudulent transfers took place. UBS has all of the documents to which the special master deemed it was entitled.

- HFP (the parent of SOHC) and CDO Fund both informed their investors in 2009 that they had zero net asset value. I have attached the letters for reference. I know the HFP letter was part of the earlier production to UBS; I am trying to verify if the CDO Fund letter was produced.

- I have been tracking the assets through on SOHC and CDO Fund. I am putting together a report with supporting documents.

  - SOHC had $295,000 in cash, all since paid in legal fees. It has four worthless securities, two bonds in bankrupt companies (Delphi and Tousa) and two CDO mezz tranches.
  - I found a CDO Fund work book from 2011. CDO Fund had ten assets as of end of 2011 (plus $1.2 m in cash). Four were sold and the proceeds (plus $1.2m cash-on-hand) used to pay legal fees. One asset, a claim in the Lehman BK, I still am trying to track down. Five assets remain in the Fund, three with zero value, as well as $11m in Greenbriar CLO equity and some amount of Multi-Strat equity ($11m as of 2011, I am trying to figure out the value today). Greenbriar's portfolio is made up almost entirely of Highland-managed private equity names (Carey, Cornerstone, Omnimax, etc). Multi-Strat's portfolio should be familiar, but it is primarily MGM, JHT, and Omnimax. Also, Multi-Strat cannot pay its equity holders until

UBSPROD495885

DEF017869

Secrecy: Leventon Lies About Assets and Hides Policy

UBS Ex. 16

- Cash: 2012 – 2015. Fund has unaudited financials from 2009 – 2011 (attached). From 2012 – 2015, the fund had $10.5 million in cash from cash-on-hand plus sales proceeds. $16.6 million in legal fees paid (trying to determine source of additional funds to pay fees).
- One asset unaccounted for: Lehman BK claim. Our system is just not built to track th[illegible] type easily. I am still working on it.
- Support: A 2011 unaudited financial prepared in support of HCMLP's audit. T[illegible] support each 2011 asset not still in the fund. List of legal fee payments by [illegible] payor.

From: Isaac Leventon
Sent: Wednesday, August 5, 2020 2:54 PM
To: 'James Seery' <jpseeryjr@gmail.com>; James Romey <jromey@DSIConsulting.com>; David Klos <DKlos@HighlandCapital.com>; Gregory V. Demo <GDemo@pszjlaw.com>
Cc: Bradley Sharp <bsharp@DSIConsulting.com>
Subject: RE: UBS Supplemental Information Request

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  - SOHC had $295,000 in cash, all since paid in legal fees. It has four worthless securities, two bonds in bankrupt companies (Delphi and Tousa) and two CDO mezz tranches.
  - I found a CDO Fund work book from 2011. CDO Fund had ten assets as of end of 2011 (plus $1.2 m in cash). Four were sold and the proceeds (plus $1.2m cash-on-hand) used to pay legal fees. One asset, a claim in the Lehman BK, I still am trying to track down. Five assets remain in the Fund, three with zero value, as well as $11m in Greenbriar CLO equity and some amount of Multi-Strat equity ($11m as of 2011, I am trying to figure out the value today). Greenbriar's portfolio is made up almost entirely of Highland-managed private equity names (Carey, Cornerstone, Omnimax, etc), Multi-Strat's portfolio should be familiar, but it is primarily MGM, JHT, and Omnimax. Also, Multi-Strat cannot pay its equity holders until

UBSPROD495885

UBS Ex. 2

PURCHASE AGREEMENT

This Purchase Agreement (the "*Agreement*") dated as of August 7, 2017 (the "*Effective Date*"), is entered into by and among Sentinel Reinsurance, Ltd. ("*Purchaser*") and each of Highland CDO Opportunity Master Fund, L.P., Highland CDO Holding Company and Highland Special Opportunities Holdings Company (together, "*Sellers*").

RECITALS

HIGHLAND SPECIAL OPPORTUNITIES HOLDINGS COMPANY

ISIN	Description	Traded Shares/Par
US247126AC93	DELPHI CORP DEL 7.125 01MAY29	1,500,000.00
US247126AD76	DELPHI CORP DEL 6.55 15JUN06 USD	3,000,000.00
US5431742056	LONGSTREET CDO I LTD PFD 144A	1,570.00
US8729623038	TOUSA INC 8.0 PFD 144A	5,349.00
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46	5,000,000.00
	144A	5,000,000.00
N/A	CASH	$295,136.00

Transferred Interests. Sellers undertake that immediately following signing this Agreement, they will each take all such steps and execute all such documents to vest legal and beneficial ownership free from liens or encumbrances (as hereinafter defined) in all the Transferred Interests in the Purchaser.

2. Entire Agreement. This Agreement and the Schedule and Exhibit attached hereto embody the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter.

3. Amendments and Waivers. This Agreement may be amended only by an agreement in writing signed by each party hereto, and no waiver of compliance with any provision or condition hereof and no consent provided for herein shall be effective unless evidenced by an instrument in writing duly executed by the party hereto sought to be charged with such waiver or consent.

4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

5. Headings. The headings contained in this Agreement are for convenience only and do not constitute a part of this Agreement.

6. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

Exhibit #
Deposition Exhibit 02

DEF017870

Secrecy: Leventon Lies About Assets and Hides Policy

Isaac Leventon
Former Assistant General Counsel at HCM

Leventon Dep. Tr. 263:1-18; 340:9-16

Q. And you knew that there was a schedule that showed Sentinel having interest in Multi Strat (from Highland CDO Fund), correct?

A. In December I think that's fair -- sorry, December 2017. I think that's fair.

Q. [W]hen you were tasked with helping trace the assets of CDO Fund and HFP, you even talked to Mr. Ellington, in words or substance, about whether or not you should mention Sentinel, correct?

A. Correct.

...

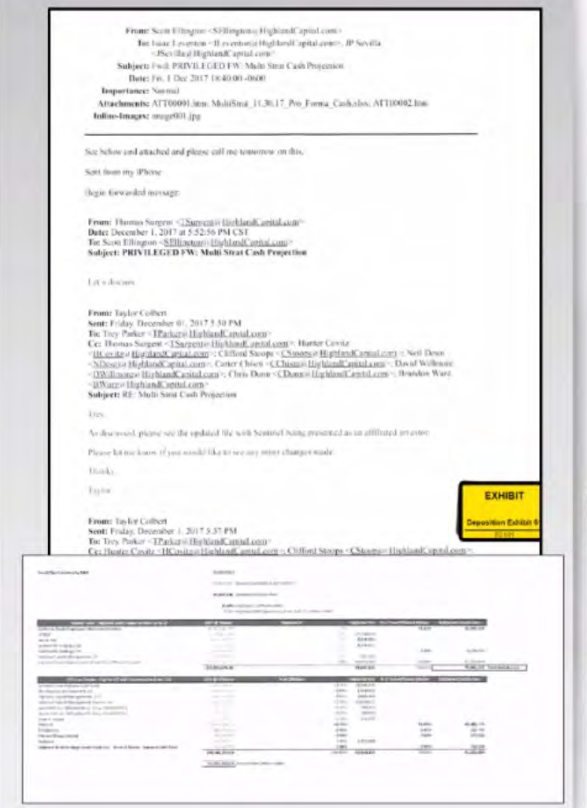
Q. You never told anyone at the Pachulski firm that assets CDO Fund held with respect to Multi Strat may have been transferred to Sentinel, correct?

A. That's correct

DEF017871

Secrecy: Leventon Lies About Assets and Hides Policy

UBS Ex. 46



From: Scott Ellington <SEllington@HighlandCapital.com>
To: Isaac Leventon <ILeventon@HighlandCapital.com>, JP Sevilla <JSevilla@HighlandCapital.com>
Subject: Fwd: PRIVILEGED FW: Multi Strat Cash Projection
Date: Fri, 1 Dec 2017 18:40:00 -0600
Importance: Normal
Attachments: ATT00001.htm; MultiStrat_11.30.17_Pro_Forma_Cash.xlsx; ATT00002.htm
Inline-Images: image001.jpg

See below and attached and please call me tomorrow on this.

Offshore Feeder - Highland Credit Opportunities Fund, Ltd.	NAV @ Offshore	% of Offshore	Highland NAV
Sentinel (from Highland CDO Fund)	28,586,336.37	23.71%	28,586,336
The Dugaboy Investment Trust	1,008,933.59	0.84%	1,008,933
Highland Capital Management, LP 2	5,605,181.18	4.65%	5,605,181
Highland Capital Management Services, Inc.	20,694,672.07	17.17%	20,694,672
Quest IRA, Inc FBO Jennifer G. Terry, IRA #1467511	140,129.61	0.12%	140,130
Quest, IRA, Inc. FBO Joshua N. Terry, IRA #1467711	280,259.18	0.23%	280,259
Mark K. Okada	252,233.12	0.21%	252,233
PAUS LP	58,774,396.29	48.76%	-
ETI KAV Ltd.	485,695.20	0.40%	-
Pioneer Group Limited	697,829.81	0.58%	-
Highland	2,965,403.53	2.46%	2,965,404
Highland Multi-Strategy Credit Fund, Ltd. - Series A Shares - Japanese Unit Trust	1,057,323.73	0.88%	-
	120,548,392.43	100.00%	**59,533,147**

DEF017872

From: Scott Ellington <SEllington@HighlandCapitalLP.com>
To: Isaac Leventon <ILeventon@HighlandCapital.com>, JP Sevilla <JSevilla@HighlandCapital.com>
Subject: Fwd: PRIVILEGED FW: Multi Strat Cash Projection
Date: Fri, 1 Dec 2017 18:40:00 -0600
Importance: Normal
Attachments: ATT00001.htm, MultiStrat_11.30.17_Pro_Forma_Cash.xlsx, ATT00002.htm
Inline-Images: image001.jpg

See below and attached and please call me tomorrow on this.

Sent from my iPhone

Begin forwarded message:

From: Thomas Surgent <TSurgent@HighlandCapital.com>
Date: December 1, 2017 at 5:52:56 PM CST
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: PRIVILEGED FW: Multi Strat Cash Projection

Let's discuss

From: Taylor Colbert
Sent: Friday, December 01, 2017 5:50 PM
To: Trey Parker <TParker@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>; Clifford Stoops <CStoops@HighlandCapital.com>; Neil Desai <NDesai@HighlandCapital.com>; Carter Chism <CChism@HighlandCapital.com>; David Willmore <DWillmore@HighlandCapital.com>; Chris Dunn <CDunn@HighlandCapital.com>; Brandon Warz <BWarz@HighlandCapital.com>
Subject: RE: Multi Strat Cash Projection

Trey,

As discussed, please see the updated file with Sentinel being presented as an affiliated investor.

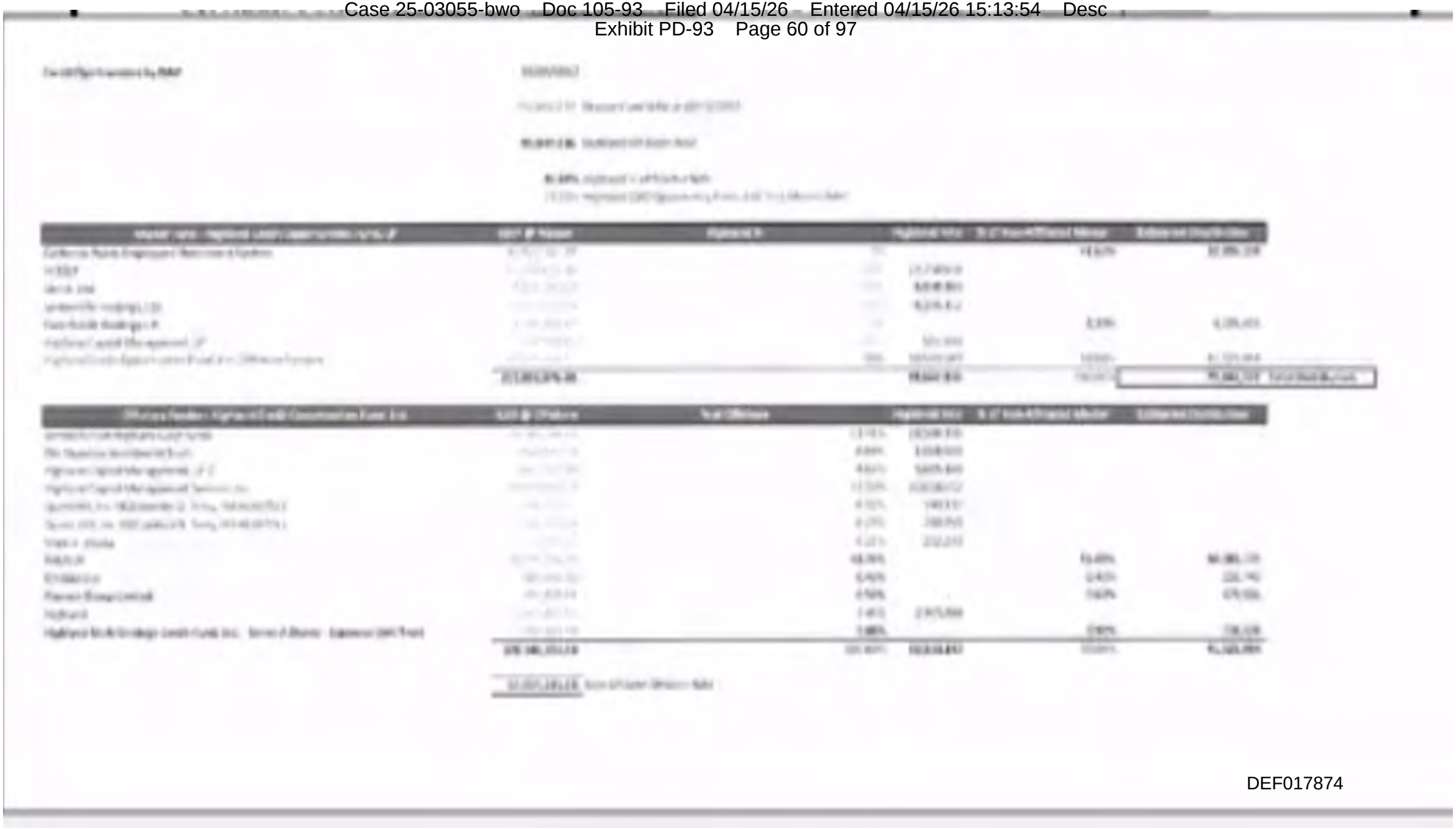
Please let me know if you would like to see any other changes made.

Thanks,

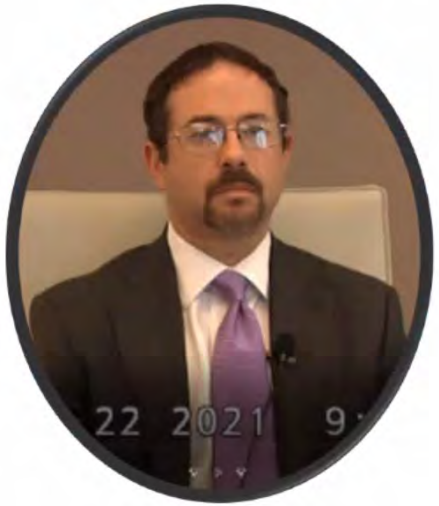
Taylor

From: Taylor Colbert
Sent: Friday, December 1, 2017 3:37 PM
To: Trey Parker <TParker@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Clifford Stoops <CStoops@HighlandCapital.com>;

EXHIBIT
Deposition Exhibit 9



Secrecy: Leventon Lies About Assets and Hides Policy



Isaac Leventon
Former Assistant General Counsel at HCM

Leventon Dep. Tr. 263:1-18; 340:9-16

Q. And you knew that there was a schedule that showed Sentinel having interest in Multi Strat (from Highland CDO Fund), correct?

A. **In December I think that's fair -- sorry, December 2017. I think that's fair.**

Q. [W]hen you were tasked with helping trace the assets of CDO Fund and HFP, you even talked to Mr. Ellington, in words or substance, about whether or not you should mention Sentinel, correct?

A. **Correct.**

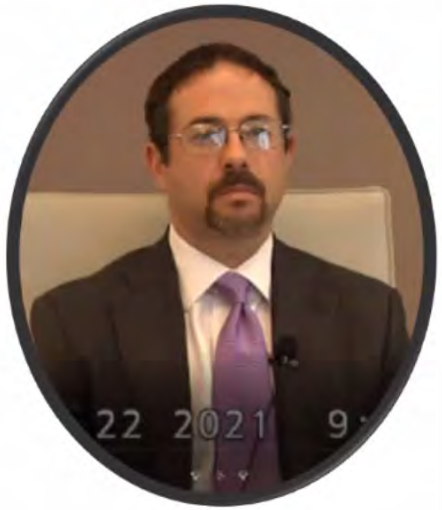
...

Q. You never told anyone at the Pachulski firm that assets CDO Fund held with respect to Multi Strat may have been transferred to Sentinel, correct?

A. **That's correct**

DEF017875

Secrecy: Leventon Lies About Assets and Hides Policy



Isaac Leventon
Former Assistant General Counsel at HCM

Leventon Dep. Tr. 138:5-12; 150:25-151:7

Q. [W]hat was the information you had about the assets of SOHC and CDO Fund from March 2009 to the present that you chose not to provide to the Pachulski firm?

A. I knew that there had been a transaction in 2017 sometime with respect to an after-the-event insurance policy with Sentinel.

...

Q. Did you ever disclose the existence of this policy to any of the independent directors?

A. I never discussed it with them one way or another.

DEF017876

Secrecy: Dondero And His Legal Team's Cover Up

Oct. 16, 2019
HCM files Ch. 11

Nov 14, 2019
Phase I decision

Feb. 10, 2020
$1B judgment

August 2020
Leventon lies about Funds' assets

August 2020
Ellington: "ghost funds"

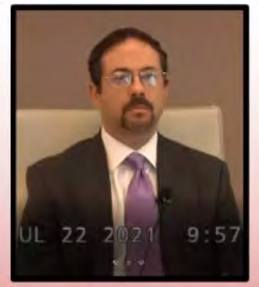
2019 2020 2021

Oct 2019 - Feb 2021

Actively Conceal Existence of ATE

Dondero

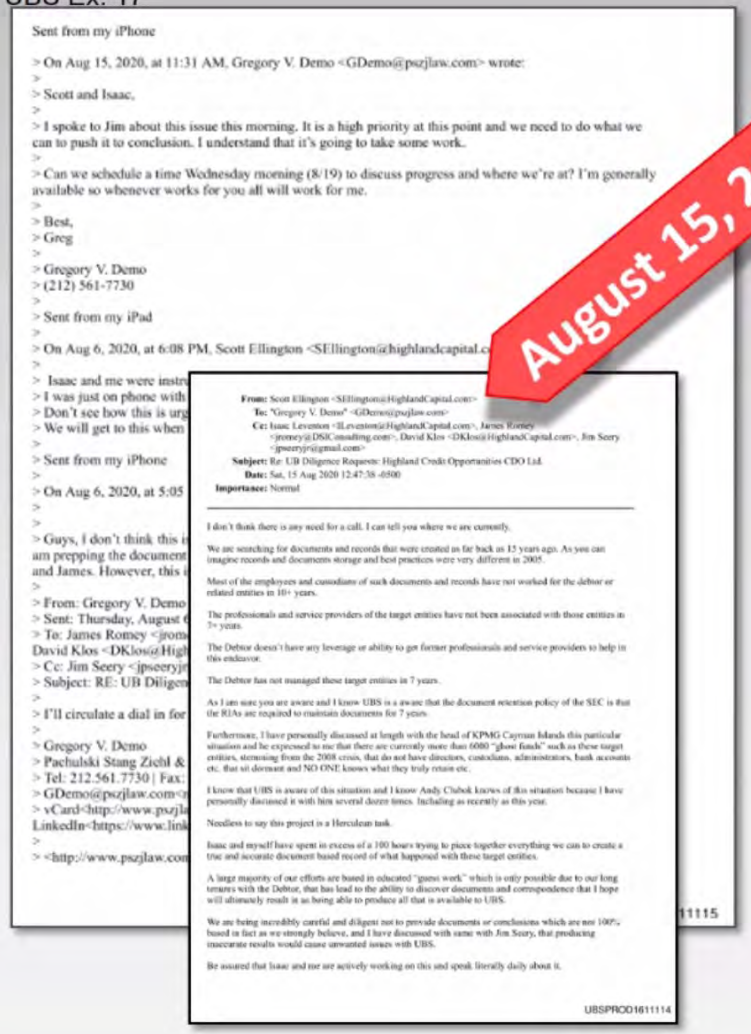
Sevilla


Leventon

Ellington

Secrecy: Ellington Lies About "Ghost Funds"

UBS Ex. 17



Sent from my iPhone

> On Aug 15, 2020, at 11:31 AM, Gregory V. Demo <GDemo@pszjlaw.com> wrote:
>
> Scott and Isaac,
>
> I spoke to Jim about this issue this morning. It is a high priority at this point and we need to do what we can to push it to conclusion. I understand that it's going to take some work.
>
> Can we schedule a time Wednesday morning (8/19) to discuss progress and where we're at? I'm generally available so whenever works for you all will work for me.
>
> Best,
> Greg
>
> Gregory V. Demo
> (212) 561-7730
>
> Sent from my iPad
>
> On Aug 6, 2020, at 6:08 PM, Scott Ellington <SEllington@highlandcapital.c
>
> Isaac and me were instr
> I was just on phone with
> Don't see how this is urg
> We will get to this when
>
> Sent from my iPhone
>
> On Aug 6, 2020, at 5:05
>
>
> Guys, I don't think this i
> am prepping the document
> and James. However, this i
>
> From: Gregory V. Demo
> Sent: Thursday, August
> To: James Romey <jrom
> David Klos <DKlos@High
> Cc: Jim Seery <jpseeryj
> Subject: RE: UB Diligen
>
> I'll circulate a dial in for
>
> Gregory V. Demo
> Pachulski Stang Ziehl &
> Tel: 212.561.7730 | Fax:
> GDemo@pszjlaw.com<
> vCard<http://www.pszjl
> LinkedIn<https://www.link
>
> <http://www.pszjlaw.com

11115

August 15, 2020

From: Scott Ellington <SEllington@HighlandCapital.com>
To: "Gregory V. Demo" <GDemo@pszjlaw.com>
Cc: Isaac Leventon <ILeventon@HighlandCapital.com>, James Romey <jromey@DSIConsulting.com>, David Klos <DKlos@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>
Subject: Re: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.
Date: Sat, 15 Aug 2020 12:47:38 -0500
Importance: Normal

I don't think there is any need for a call. I can tell you where we are currently.

We are searching for documents and records that were created as far back as 15 years ago. As you can imagine records and documents storage and best practices were very different in 2005.

Most of the employees and custodians of such documents and records have not worked for the debtor or related entities in 10+ years.

The professionals and service providers of the target entities have not been associated with those entities in 7+ years.

The Debtor doesn't have any leverage or ability to get former professionals and service providers to help in this endeavor.

The Debtor has not managed these target entities in 7 years.

As I am sure you are aware and I know UBS is aware that the document retention policy of the SEC is that the RIAs are required to maintain documents for 7 years.

Furthermore, I have personally discussed at length with the head of KPMG Cayman Islands this particular situation and he expressed to me that there are currently more than 6000 "ghost funds" such as these target entities, stemming from the 2008 crisis, that do not have directors, custodians, administrators, bank accounts etc. that sit dormant and NO ONE knows what they truly retain etc.

I know that UBS is aware of this situation and I know Andy Clubok knows of this situation because I have personally discussed it with him several dozen times. Including as recently as this year.

Needless to say this project is a Herculean task.

Isaac and myself have spent in excess of a 100 hours trying to piece together everything we can to create a true and accurate document based record of what happened with these target entities.

A large majority of our efforts are based in educated "guess work" which is only possible due to our long tenures with the Debtor, that has lead to the ability to discover documents and correspondence that I hope will ultimately result in us being able to produce all that is available to UBS.

We are being incredibly careful and diligent not to provide documents or conclusions which are not 100% based in fact as we strongly believe, and I have discussed with same with Jim Seery, that producing inaccurate results would cause unwanted issues with UBS.

Be assured that Isaac and me are actively working on this and speak literally daily about it.

UBSPROD1611114

From: Scott Ellington <SEllington@HighlandCapital.com>
To: "Gregory V. Demo" <GDemo@pszjlaw.com>
Cc: Isaac Leventon <ILeventon@HighlandCapital.com>, James Romey <jromey@DSIConsulting.com>, David Klos <DKlos@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>
Subject: Re: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.
Date: Sat, 15 Aug 2020 12:47:38 -0500

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DEF017878

From: Scott Ellington <SEllington@HighlandCapital.com>
To: "Gregory V. Demo" <GDemo@pszjlaw.com>
Cc: Isaac Leventon <ILeventon@HighlandCapital.com>, James Romey <jromey@DSIConsulting.com>, David Klos <DKlos@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>
Subject: Re: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.
Date: Sat, 15 Aug 2020 12:47:38 -0500
Importance: Normal

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Be assured that Isaac and me are actively working on this and speak literally daily about it.

UBSPROD1611114

Secrecy: Ellington Hides Policy From Board/UBS/Court

Scott Ellington
Former General Counsel at HCM

Dep. Tr. 83:15 – 84:24

Q. Did you ever tell me that there was an insurance policy issued by Sentinel that potentially could satisfy that judgment?

A. No.

Q. Did you ever tell Mr. Seery anything at all about the insurance policy that was issued by Sentinel with respect to the UBS litigation in New York?

A. No.

Q. Did you ever tell Mr. Nelms, Judge Nelms anything at all about the insurance policy that was issued by Sentinel with respect to the UBS litigation in New York?

A. No.

Secrecy: Ellington Hides Policy From Board/UBS/Court

Q. Did you, in words or substance, ever ask Mr. Ellington whether you should disclose the policy?

A. So the conversation was, is the policy relevant to the task I'm working on, and the answer, Mr. Ellington said he didn't believe that it was and therefore didn't need to be included as materials in part of that task. And then I asked, you know, you've been in conversations with Mr. Seery, I don't talk to Mr. Seery hardly ever, so is there any other thing that -- any other -- anything else that I should know or any other reason, you know, outside of my task that I should include it in the materials and Scott said no.

Leventon Dep. Tr. 154:2-17

Scott Ellington
Former General Counsel at HCM

DEF017881

Secrecy: Dondero And His Legal Team's Cover Up

Oct. 16, 2019 — HCM files Ch. 11

Nov 14, 2019 — Phase I decision

Feb. 10, 2020 — $1B judgment

August 2020 — Leventon lies about Funds' assets

August 2020 — Ellington: "ghost funds"

January 2021 — DiOrio repeatedly lies to HCMLP

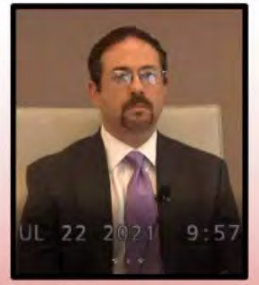
2019 2020 2021

Oct 2019 - Feb 2021

Actively Conceal Existence of ATE

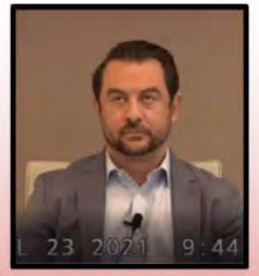
Dondero

Sevilla



Leventon

Ellington



DiOrio

DEF017882

Secrecy: DiOrio Repeatedly Lies To Seery and His Team

Matt DiOrio
Sentinel Director
(Dec. 8, 2017 – June 25, 2021)
& Former HCM Employee

UBS Ex. 18

> <jromey@DSIConsulting.com>; Vishal Patel <VPatel@HighlandCapital.com>
> Cc: David Klos <DKlos@HighlandCapital.com>
> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund
>
> It is a non-debtor, non-affiliate reinsurance company and I do not know who or how its owned.

Cc: James Romey <jromey@DSIConsulting.com>; Vishal Patel <VPatel@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>
Subject: Re: HCM - Greenbriar Pref Shares CDO Fund

Matt,

Two follow ups:

1. When was the
2. Can you please

Greg

Gregory V. Demo
(212) 561-7730

Sent from my iPad

> On Jan 27, 2021,
> Yes I believe that

From: Matt DiOrio <MDiOrio@HighlandCapital.com>
Sent: Thursday, January 28, 2021 11:22 AM
To: Gregory V. Demo
Cc: James Romey; Vishal Patel; David Klos
Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

I know he worked in ops but other than that I do not know his title and his direct boss.

From: Gregory V. Demo
Sent: Thursday, January 28, 2021 9:26 AM
To: Matt DiOrio
Cc: James Romey ; Vishal Patel ; David Klos
Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

Guys,

A few additional questions:

- What was Carter Chism's title when he worked at HCMLP or its affiliates?
- Who did Carter Chism report to?
- Who directed Carter Chism to transfer the Greenbriar shares to Maples fbo Sentinel?

Greg

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7730 | Fax: 212.561.7777
GDemo@pszjlaw.com
www.pszjlaw.com

Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

-----Original Message-----
From: Matt DiOrio [mailto:MDiOrio@HighlandCapital.com]
Sent: Wednesday, January 27, 2021 9:03 PM
To: Gregory V. Demo
Cc: James Romey; Vishal Patel; David Klos
Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

1. August 2017
2. I do not have any of these documents

-----Original Message-----
From: Gregory V. Demo <GDemo@pszjlaw.com>
Sent: Wednesday, January 27, 2021 5:13 PM
To: Matt DiOrio <MDiOrio@HighlandCapital.com>

1

DEF017883

Secrecy: DiOrio Repeatedly Lies To Seery and His Team

Matt DiOrio
Sentinel Director
(Dec. 8, 2017 – June 25, 2021)
& Former HCM Employee

UBS Ex. 18

> -----Original Message-----
> From: Matt DiOrio <MDiOrio@HighlandCapital.com>
> Sent: Wednesday, January 27, 2021 2:10 PM
> To: James Romey <jromey@DSIConsulting.com>; Vishal Patel
> <VPatel@HighlandCapital.com>; Gregory V. Demo <GDemo@pszjlaw.com>
> Cc: David Klos <DKlos@HighlandCapital.com>
> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund
>
> Hi Guys,
>
> • I am working with State Street to reissue physical certificates and will keep everyone in the loop on timing. It does not appear to be a swift process but we are moving forward. The shares are still registered to Hare and Co with CDO Opportunity Fund as beneficial owner.
> • BONY has a custody account in CDO Opportunity Fund's name and has still been receiving cash waterfall payments for the 16,250 shares.
> • The certificates were transferred in error in 2017 by Carter Chism, who no longer works at HCM, and the recipient never took delivery. The physicals were never returned which is why we are now working on reissuing them.

DEF017884

Secrecy: DiOrio Repeatedly Lies To Seery and His Team

Matt DiOrio
Sentinel Director
(Dec. 8, 2017 – June 25, 2021)
& Former HCM Employee

UBS Ex. 18

> -----Original Message-----
> From: Gregory V. Demo <GDemo@pszjlaw.com>
> Sent: Wednesday, January 27, 2021 2:37 PM
> To: Matt DiOrio <MDiOrio@HighlandCapital.com>; James Romey
> <jromey@DSIConsulting.com>; Vishal Patel <VPatel@HighlandCapital.com>
> Cc: David Klos <DKlos@HighlandCapital.com>
> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund
>
> Do we have any visibility into who Sentinel Reinsurance is? Who owns them, what do they do, etc.?

> -----Original Message-----
> From: Matt DiOrio <MDiOrio@HighlandCapital.com>
> Sent: Wednesday, January 27, 2021 3:50 PM
> To: Gregory V. Demo <GDemo@pszjlaw.com>; James Romey
> <jromey@DSIConsulting.com>; Vishal Patel <VPatel@HighlandCapital.com>
> Cc: David Klos <DKlos@HighlandCapital.com>
> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund
>
> It is a non-debtor, non-affiliate reinsurance company and I do not know who or how its owned.

DEF017885

Secrecy: DiOrio Repeatedly Lies To Seery and His Team

Matt DiOrio
Sentinel Director
(Dec. 8, 2017 – June 25, 2021)
& Former HCM Employee

DiOrio Dep. Tr. at 336:3-338:1

Q. Well, you knew that it was owned in part by Mr. Dondero?

A. Yes.

Q You knew that it was owned at least in part by Mr. Ellington?

A. That's right.

....

Q. Well, he asked who owns Sentinel Reinsurance, right?

A. Yeah.

Q. Okay. And you didn't tell him Mr. Dondero and Mr. Ellington owned part of it, right?

A. Right.

...

Q. [W]hy didn't you just explain that to Mr. Demo?

A. I wanted as little to do with Pachulski as possible, so I answered the questions and waited for the next one.

DEF017886

Secrecy: Dondero And His Legal Team's Cover Up

Oct. 16, 2019 — HCM files Ch. 11

Nov 14, 2019 — Phase I decision

Feb. 10, 2020 — $1B judgment

August 2020 — Leventon lies about Funds' assets

August 2020 — Ellington: "ghost funds"

January 2021 — DiOrio repeatedly lies to HCMLP

March 2021 — CDO Fund makes Claim

2019 — 2020 — 2021

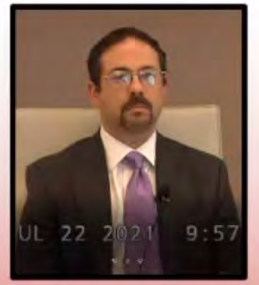
Oct 2019 - Feb 2021

Actively Conceal Existence of ATE

Discover ATE & Make Claim

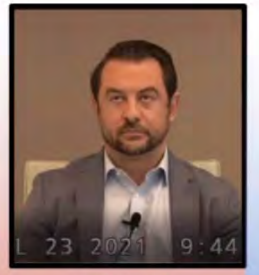
Dondero

Sevilla



Leventon

Ellington



DiOrio

Seery & Board

Transferors Retaining Control: Dondero and Ellington Ran Sentinel

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel's Insurance Manager)

Q. Has that been the case throughout Sentinel's existence that Beecher has been servicing Sentinel that Messrs Dondero and Ellington are the ultimate beneficial owners?

A. That is true.

Q. And it is still true to this day?

A. That is correct.

24:13-25

Q. What is the role of an ultimate beneficial owner?

A. The ultimate person who would call the shots for the captive.

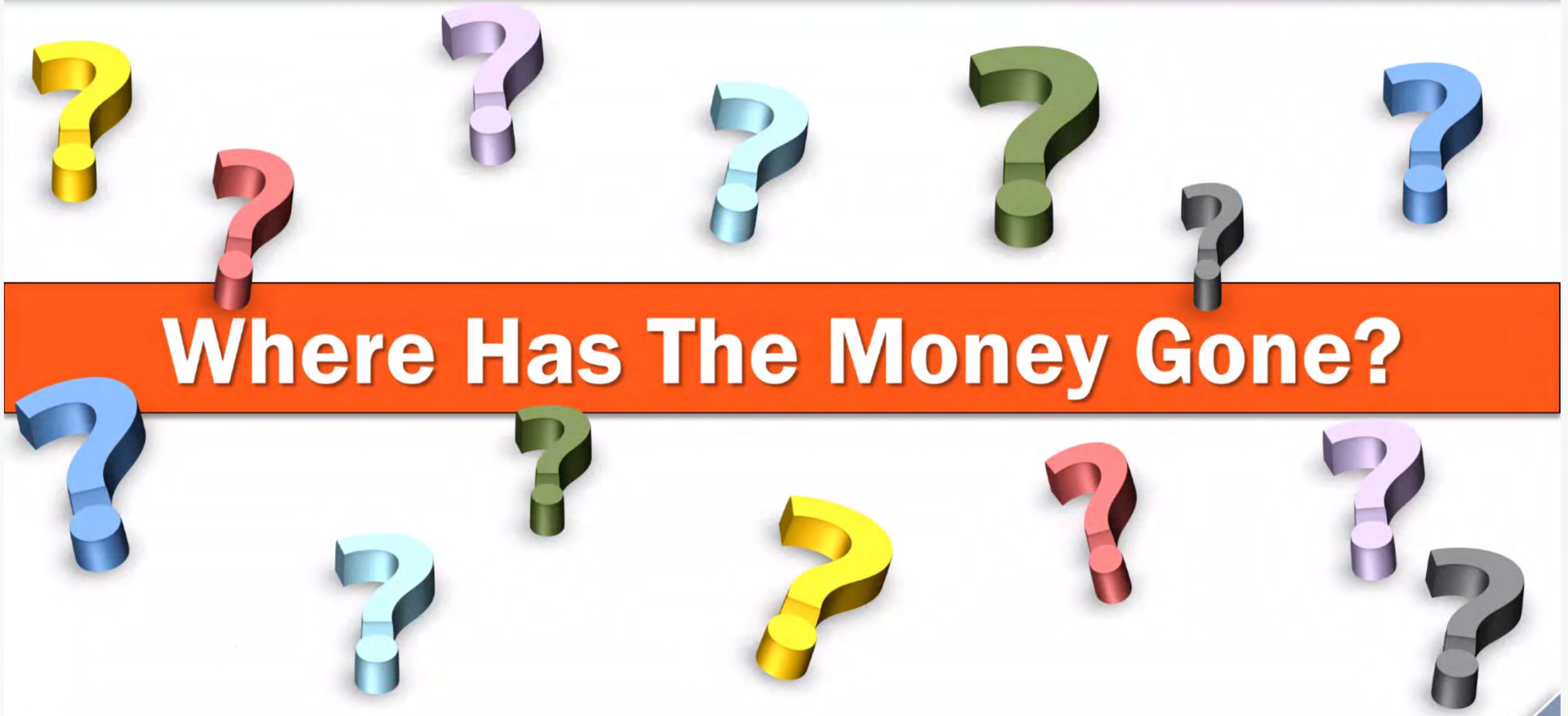
.....

Q. …Is that true with respect to Mr. Dondero and Ellington and Sentinel, that they are the ones ultimately calling the shots for Sentinel?

A. To the best of our knowledge that is correct.

22:4-7, 25:1-13

DEF017888



DEF017889

Transferors Retaining Control: Sentinel Used As Piggy-Bank

UBS Ex. 19

ELLINGTON EXPENSE REPORT

Toronto (01/15/20 - 01/19/20)

	Date	Description	TOTAL (USD)
1	01/08/20		
2	01/08/20		
3	01/14/20		
4	01/14/20		
5	01/14/20		
6	01/15/20		
7	01/16/20		
8	01/16/20		
9	01/17/20		
10	01/17/20		
11	01/17/20		
12	01/18/20		
13	01/18/20		
14	01/18/20		
15	01/19/20		
16	01/19/20		
17	01/19/20		
18	01/19/20		
19	01/19/20		
20	01/19/20		
21	01/19/20		
22	01/19/20		
23	01/19/20		
24	01/20/20		

Ellington Expenses (London & Paris)

TOTAL = $78,841.93

Date	Description	Total (USD)	Foreign	
11/17/19	BRITISH AIRWAYS [BA.COM]	$9,354.82		Risk Mitigation
12/12/19	LW THEATRES GROUP LIMITED	$495.86	£375.00	Risk Mitigation
12/13/19	CLARIDGES HOTEL - LONDON	$654.54	£495.00	Risk Mitigation
12/17/19	BROWNS HOTEL - LONDON	$994.95	£750.00	Risk Mitigation
12/22/19	SCOTTS - LONDON	$701.86	£536.51	Risk Mitigation
12/23/19	LONDON HILTON PARKLANE	$388.72	£297.14	Risk Mitigation
12/23/19	NOVIKOV BAR & GRILL - LONDON	$1,397.47	£1,072.09	Risk Mitigation
12/24/19	CLARIDGE'S HOTEL [3CPAYMENT*]	$2,629.26	£2,027.81	Risk Mitigation
12/24/19	MONCKS - LONDON	$219.89	£169.59	Risk Mitigation
12/26/19	CECCONIS MAYFAIR [3CPAYMENT*]	$171.15	£131.63	Risk Mitigation
12/26/19	CURB MOBILITY - LONDON	$24.58	£18.96	Risk Mitigation
12/26/19	BLACK CAB - LONDON	$23.86	£18.40	Risk Mitigation
12/26/19	THE CLARENCE - LONDON	$22.50	£17.35	Risk Mitigation
12/26/19	THE CLARENCE - LONDON	$29.95	£23.10	Risk Mitigation
12/27/19	BROWNS HOTEL - LONDON	$15,187.76	£11,576.04	Risk Mitigation
12/27/19	ROSTANG ET COMPAGNIE - PARIS	$2,799.92	€ 2,522.00	Risk Mitigation
12/28/19	CARS ZURICH - PARIS	$2,887.35	€ 2,600.75	Risk Mitigation
12/28/19	JULES VERNE TPE - PARIS	$1,728.58	€ 1,546.00	Risk Mitigation
12/28/19	LA TOUR D ARGENT - PARIS	$2,969.67	€ 2,656.00	Risk Mitigation
12/29/19	FOUR SEASONS HOTEL GEORGE V	$7,978.46	€ 7,135.73	Risk Mitigation
12/29/19	RESTAURANT ALLARD - PARIS	$228.43	€ 204.30	Risk Mitigation
12/30/19	34 - LONDON	$317.27	£241.82	Risk Mitigation
12/30/19	FOUR SEASONS HOTEL GEORGE V	$110.98	€ 99.00	Risk Mitigation
12/30/19	PARK CHINOIS - LONDON	$4,155.66	£3,159.48	Risk Mitigation
12/31/19	JEAN GEORGE, THE CONNAUGHT	$632.58	£680.94	Risk Mitigation
01/01/20	CABVISION - LONDON	$27.78	£21.12	Risk Mitigation
01/01/20	SEXY FISH - LONDON	$716.75	£544.93	Risk Mitigation
01/02/20	BROWNS HOTEL - LONDON	$21,991.33	£16,719.63	Risk Mitigation
		$78,841.93		

Nov 2019 to Jan 2020

UBS Ex. 20

EXPENSE REPORT

NAME: SCOTT ELLINGTON

DATE: 12/19/2019

TOTAL: $318,934.88

	DATE	DESCRIPTION	AMOUNT
1	11/13/19	FOUR SEASONS AUSTIN	$1,046.54
2	11/13/19	FOUR SEASONS AUSTIN	$1,015.40
3	11/13/19	FOUR SEASONS AUSTIN	$960.40
4	11/16/19	FOUR SEASONS AUSTIN	$30.87
5	11/16/19	JEFFREY'S	$4,124.10
6	11/16/19	RPM DINING TOO, LLC	$2,244.04
7	11/16/19	AMERICAN AIRLINES	$1,423.60
8	11/16/19	AMERICAN AIRLINES	$1,423.60
9	11/16/19	AMERICAN AIRLINES	$1,423.60
10	12/11/19	TM CAESARS LINQ - LAS VEGAS, NV	$4,000.00
11	12/12/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$80.09
12	12/12/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$152,142.13
13	12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$37.89
14	12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$1,048.14
15	12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$1,086.83
16	12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$1,087.71
17	12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$2,310.14
18	12/14/19	Omnia Las Vegas - LAS VEGAS, NV	$40,060.88
19	12/15/19	BOUCHON RESTAURANT - LAS VEGAS, NV	$1,580.38
20	12/16/19	AMERICAN AIRLINES	$522.30
21	12/16/19	AMERICAN AIRLINES	$522.30
22	12/16/19	AMERICAN AIRLINES	$564.30
23	12/16/19	Omnia Las Vegas - LAS VEGAS, NV	$24,256.53
24	12/16/19	Omnia Las Vegas - LAS VEGAS, NV	$33,388.78
25	12/16/19	SAPPHIRE - LAS VEGAS, NV	$6,185.00
26	12/16/19	SAPPHIRE - LAS VEGAS, NV	$7,440.00
27	12/16/19	SAPPHIRE - LAS VEGAS, NV	$9,050.00
28	12/16/19	SAPPHIRE - LAS VEGAS, NV	$9,820.00
29	12/16/19	SAPPHIRE - LAS VEGAS, NV	$9,829.00
30	12/17/19	PARKING CONCEPTS INC - DFW DALLAS, TX	$167.79
31	12/17/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$62.54
		TOTAL =	$318,934.88

DEF017890

Transferors Retaining Control: Sentinel Used As Piggy-Bank

UBS Ex. 19

ELLINGTON EXPENSE REPORT

Toronto (01/15/20 - 01/19/20)

Ellington Expenses (London & Paris)

TOTAL = $78,841.93

Date	Description	Total (USD)	Foreign	
11/17/19	BRITISH AIRWAYS (BA.COM)	$9,354.82		Risk Mitigat
12/12/19	LW THEATRES GROUP LIMITED	$495.86	£375.00	Risk Mitiga
12/13/19	CLARIDGES HOTEL - LONDON	$654.54	£495.00	Risk Mitiga
12/17/19	BROWNS HOTEL - LONDON	$994.95	£750.00	Risk Mitiga
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		$388.72	£297.14	Risk Mitigation
01/01/20	SEXY FISH - LONDON	$716.75		
12/24/19	MONCKS - LONDON	$219.89	£169.58	Risk Mitigation
12/26/19	CECCONIS MAYFAIR [3CPAYMENT*]	$171.15	£131.63	Risk Mitigation
12/26/19	CURB MOBILITY - LONDON	$24.58	£18.96	Risk Mitigation
12/26/19	BLACK CAB - LONDON	$23.86	£18.40	Risk Mitigation
12/26/19	THE CLARENCE - LONDON	$22.50	£17.35	Risk Mitigation
12/26/19	THE CLARENCE - LONDON	$29.95	£23.10	Risk Mitigation
12/27/19	BROWNS HOTEL - LONDON	$15,187.76	£11,576.04	Risk Mitigation
12/27/19	ROSTANG ET COMPAGNIE - PARIS	$2,799.92	€ 2,522.00	Risk M
12/28/19	CARS ZURICH - PARIS	$2,887.35	€ 2,600.75	Risk M
12/28/19	JULES VERNE TPE - PARIS	$1,728.58	€ 1,546.00	Risk
12/28/19	LA TOUR D ARGENT - PARIS	$2,969.67	€ 2,655.00	Risk
12/29/19	FOUR SEASONS HOTEL GEORGE V	$7,978.46	€ 7,135.73	Risk
12/29/19	RESTAURANT ALLARD - PARIS	$228.43	€ 204.30	Risk
12/30/19	34 - LONDON	$317.27	£241.82	Ris
12/30/19	FOUR SEASONS HOTEL GEORGE V	$110.98	£ 99.00	Ris
	PARK CHINOIS - LONDON	$4,155.66	£3,159.48	Ris
01/19/20	Rebel Nightclub	$12,150.81		
01/01/20	SEXY FISH - LONDON	$21,991.33	£16,719.63	Risk Mitigation
01/02/20	BROWNS HOTEL - LONDON	$78,841.93		

Nov 2019 to Jan 2020

Ellington Expenses (London & Paris)
$78,841.93

ELLINGTON EXPENSE REPORT
Toronto
(01/15/20 - 01/19/20)
$97,492.84

UBS Ex. 20

EXPENSE REPORT

NAME: SCOTT ELLINGTON

DATE: 12/19/2019

TOTAL: $318,934.88

DATE	DESCRIPTION	AMOUNT
11/13/19	FOUR SEASONS AUSTIN	$1,046.54
11/13/19	FOUR SEASONS AUSTIN	$1,015.40
11/13/19	FOUR SEASONS AUSTIN	$960.40
11/16/19	FOUR SEASONS AUSTIN	$30.87
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12/12/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$4,000.00
12/12/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$80.09
12/16/19	SAPPHIRE - LAS VEGAS, NV	$6,185.00
12/16/19	SAPPHIRE - LAS VEGAS, NV	$7,440.00
12/16/19	SAPPHIRE - LAS VEGAS, NV	$9,050.00
12/16/19	SAPPHIRE - LAS VEGAS, NV	$9,820.00
12/16/19	SAPPHIRE - LAS VEGAS, NV	$9,829.00
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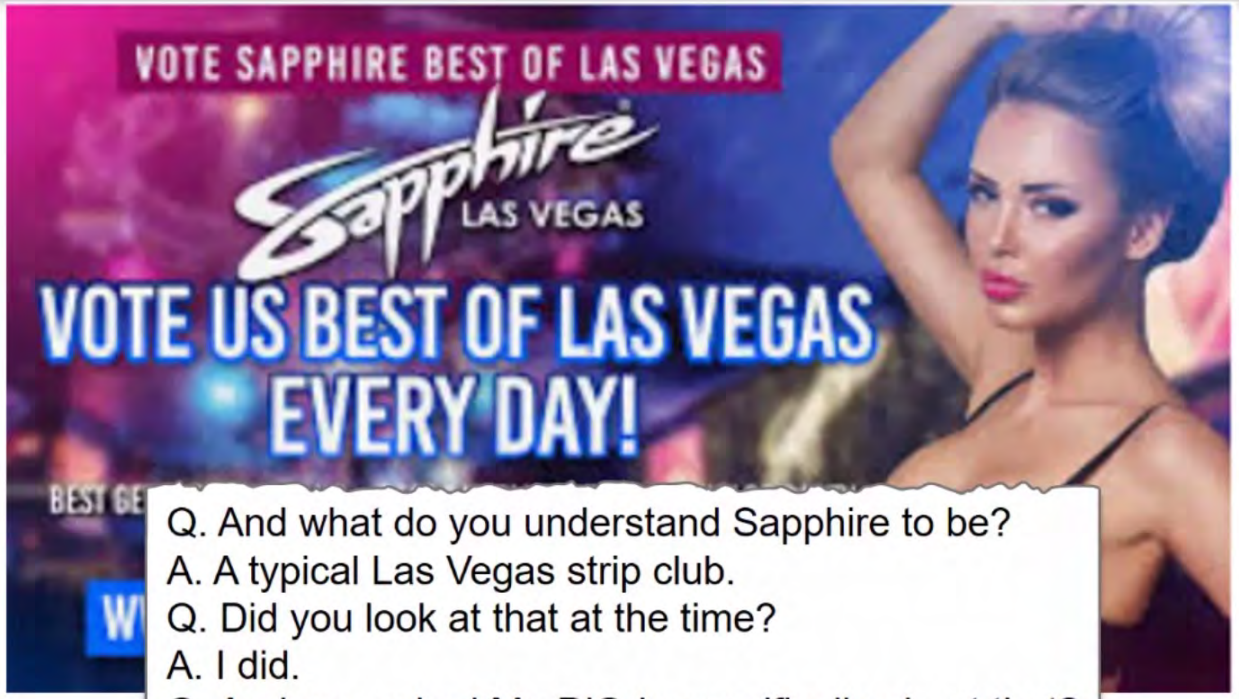
12/16/19	SAPPHIRE - LAS VEGAS, NV	$9,820.00
12/17/19	PARKING CONCEPTS INC - DFW DALLAS, TX	$9,829.00
12/17/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	$167.79
		$62.54
	TOTAL =	$318,934.88

DEF017891

Transferors Retaining Control: Sentinel Used As Piggy-Bank

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel's Insurance Manager)



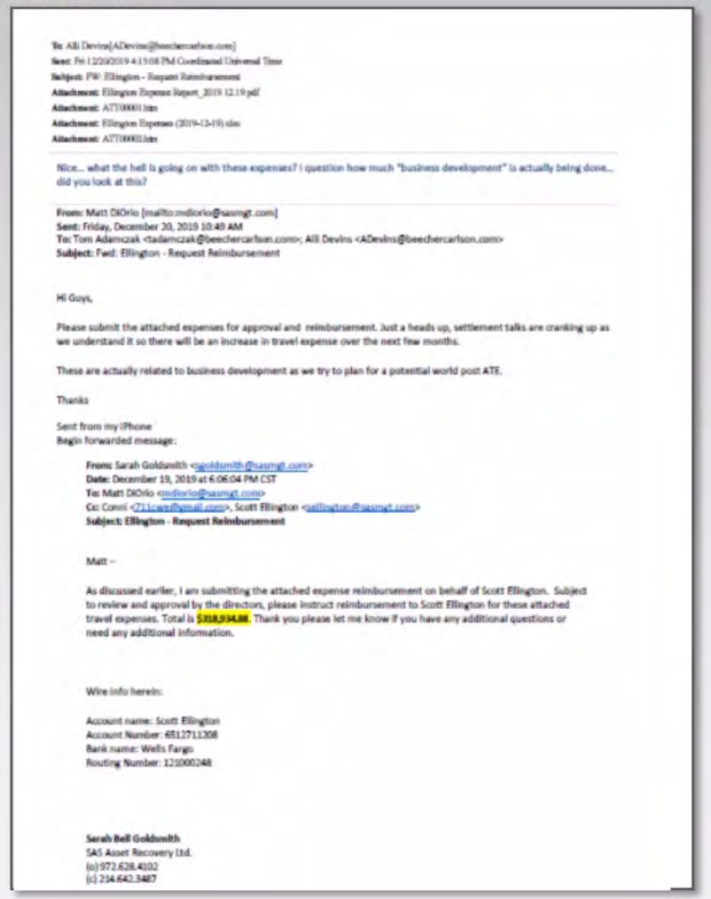
Q. And what do you understand Sapphire to be?
A. A typical Las Vegas strip club.
Q. Did you look at that at the time?
A. I did.
Q. And you asked Mr. DiOrio specifically about that?
A. I did.
Q. And his answer was that it was business development?
A. They were all business development, this is how they do business.
Q. "They" being who?
A. Highland Capital.

101:15-102:2

DEF017892

Transferors Retaining Control: Sentinel Used As Piggy-Bank

UBS Ex. 20



To: Alli Devine[ADevine@beechercarlson.com]
Sent: Fri 12/20/2019 4:15:08 PM Coordinated Universal Time
Subject: FW: Ellington - Request Reimbursement
Attachment: Ellington Expense Report_2019.12.19.pdf
Attachment: ATT00001.htm
Attachment: Ellington Expenses (2019-12-19).xlsx
Attachment: ATT00002.htm

Nice... what the hell is going on with these expenses? I question how much "business development" is actually being done... did you look at this?

From: Matt DiOrio [mailto:mdiorio@sasmgt.com]
Sent: Friday, December 20, 2019 10:49 AM
To: Tom Adamczak <tadamczak@beechercarlson.com>; Alli Devine <ADevine@beechercarlson.com>
Subject: Fwd: Ellington - Request Reimbursement

Hi Guys,

Please submit the attached expenses for approval and reimbursement. Just a heads up, settlement talks are cranking up as we understand it so there will be an increase in travel expense over the next few months.

These are actually related to business development as we try to plan for a potential world post ATE.

Thanks

Sent from my iPhone
Begin forwarded message:

From: Sarah Goldsmith <sgoldsmith@sasmgt.com>
Date: December 19, 2019 at 6:06:04 PM CST
To: Matt DiOrio <mdiorio@sasmgt.com>
Cc: Conni <711cwe@gmail.com>, Scott Ellington <sellington@sasmgt.com>
Subject: Ellington - Request Reimbursement

Matt –

As discussed earlier, I am submitting the attached expense reimbursement on behalf of Scott Ellington. Subject to review and approval by the directors, please instruct reimbursement to Scott Ellington for these attached travel expenses. Total is $318,934.88. Thank you please let me know if you have any additional questions or need any additional information.

Wire info herein:

Account name: Scott Ellington
Account Number: 6512711308
Bank name: Wells Fargo
Routing Number: 121000248

Sarah Bell Goldsmith
SAS Asset Recovery Ltd.
(o) 972.628.4102
(c) 214.642.3487

From: Sarah Goldsmith <sgoldsmith@sasmgt.com>
Date: December 19, 2019 at 6:06:04 PM CST
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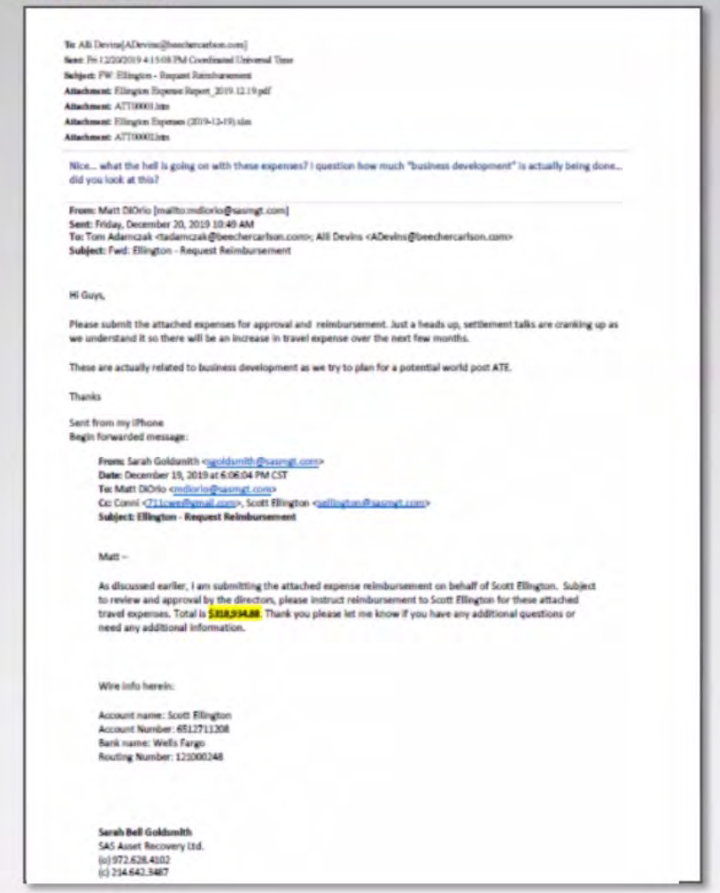
DEF017893

Transferors Retaining Control: Sentinel Used As Piggy-Bank

UBS Ex. 20



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Sarah Bell Goldsmith
SAS Asset Recovery Ltd.
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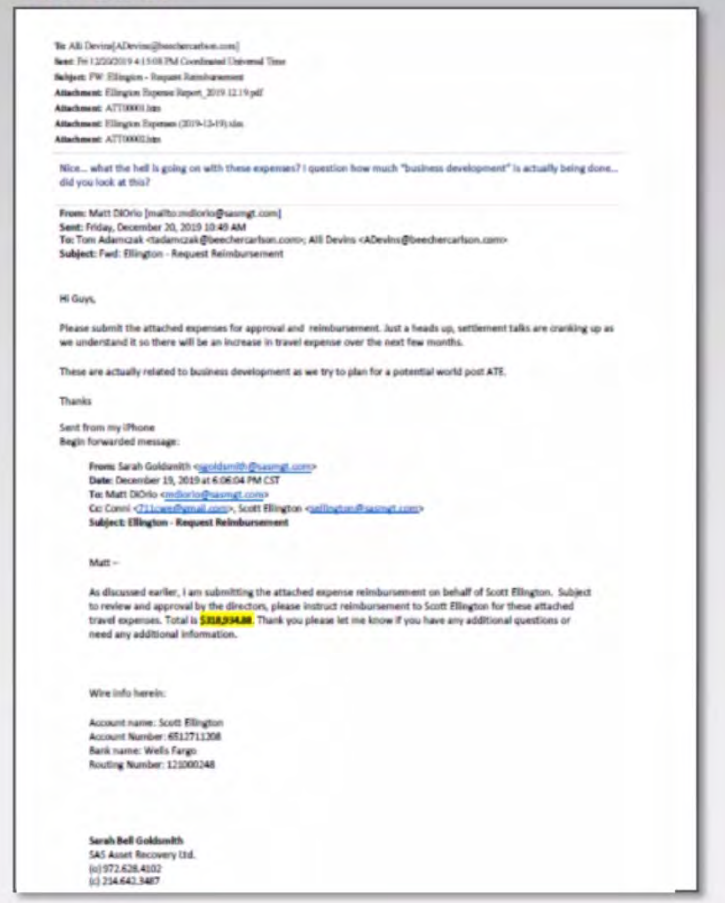
DEF017894

Transferors Retaining Control: Sentinel Used As Piggy-Bank

UBS Ex. 20



To: Alli Devins[ADevins@beechercarlson.com]
Sent: Fri 12/20/2019 4:15:08 PM Coordinated Universal Time
Subject: FW: Ellington - Request Reimbursement
Attachment: Ellington Expense Report_2019.12.19.pdf
Attachment: ATT00001.htm
Attachment: Ellington Expenses (2019-12-19).xlsx
Attachment: ATT00002.htm

Nice... what the hell is going on with these expenses? I question how much "business development" is actually being done... did you look at this?

From: Matt DiOrio [mailto:mdiorio@sasmgt.com]
Sent: Friday, December 20, 2019 10:49 AM
To: Tom Adamczak <tadamczak@beechercarlson.com>; Alli Devins <ADevins@beechercarlson.com>
Subject: Fwd: Ellington - Request Reimbursement

Hi Guys,

Please submit the attached expenses for approval and reimbursement. Just a heads up, settlement talks are cranking up as we understand it so there will be an increase in travel expense over the next few months.

These are actually related to business development as we try to plan for a potential world post ATS.

Thanks

Sent from my iPhone
Begin forwarded message:

From: Sarah Goldsmith <sgoldsmith@sasmgt.com>
Date: December 19, 2019 at 6:06:04 PM CST
To: Matt DiOrio <mdiorio@sasmgt.com>
Cc: Conni <711conni@gmail.com>, Scott Ellington <sellington@sasmgt.com>
Subject: Ellington - Request Reimbursement

Matt –

As discussed earlier, I am submitting the attached expense reimbursement on behalf of Scott Ellington. Subject to review and approval by the directors, please instruct reimbursement to Scott Ellington for these attached travel expenses. Total is $318,934.88. Thank you please let me know if you have any additional questions or need any additional information.

Wire info herein:

Account name: Scott Ellington
Account Number: 4512711308
Bank name: Wells Fargo
Routing Number: 121000248

Sarah Bell Goldsmith
SAS Asset Recovery Ltd.
(o) 972.628.4102
(c) 214.642.3487

To: Alli Devins[ADevins@beechercarlson.com]
Sent: Fri 12/20/2019 4:15:08 PM Coordinated Universal Time
Subject: FW: Ellington - Request Reimbursement
Attachment: Ellington Expense Report_2019.12.19.pdf
Attachment: ATT00001.htm
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Nice... what the hell is going on with these expenses? I question how much "business development" is actually being done... did you look at this?

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel's Insurance Manager)

DEF017895

Transferors Retaining Control: Sentinel Used As Piggy-Bank

Tom Adamczak
Corporate Representative of
Beecher Carlson
(Sentinel's Insurance Manager)
Dep. Tr. 103:4-105:2

Q. And what raised your concern there?

A. The fact that there was $318,000 worth of expenses at first, but there was a significant amount of that seemed to be club-related.

…

Q. And do you know if the directors approved it?

A. Ultimately they did, but they also questioned it.

Q. What did they question?

A. They requested the nature of those expenses as well and specifically inquired whether all or both of the UBOs would be okay with running these expenses through the captive as business development.

Q. And who did they ask that question to?

A. Matt DiOrio.

Q. And what was the answer he gave?

A. That it was appropriate.

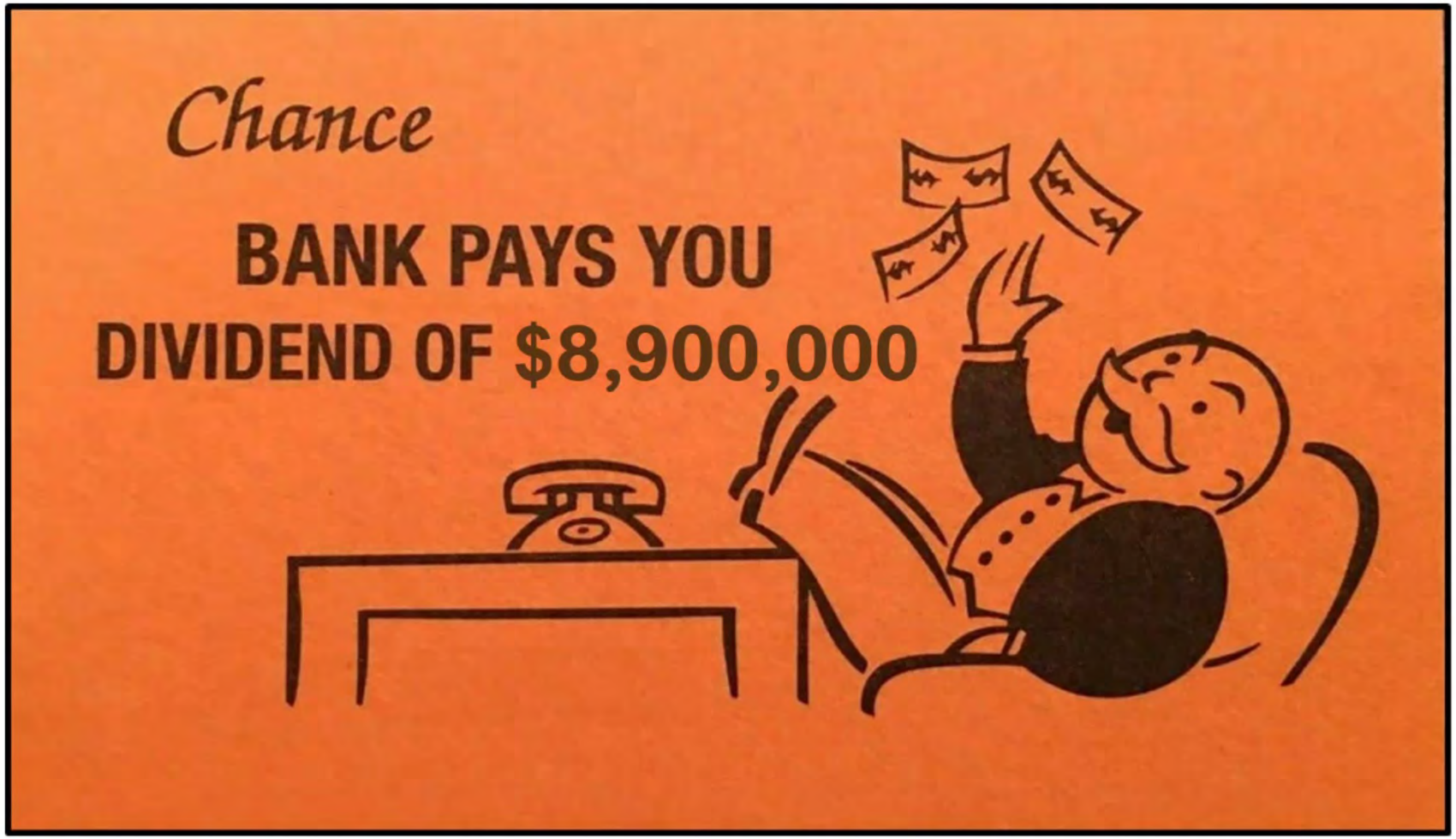
…

Q. So I guess what -- the distinction I am trying to make sure I drill down on is it's appropriate because the UBOs said it was appropriate?

A. To my knowledge, yes.

DEF017896

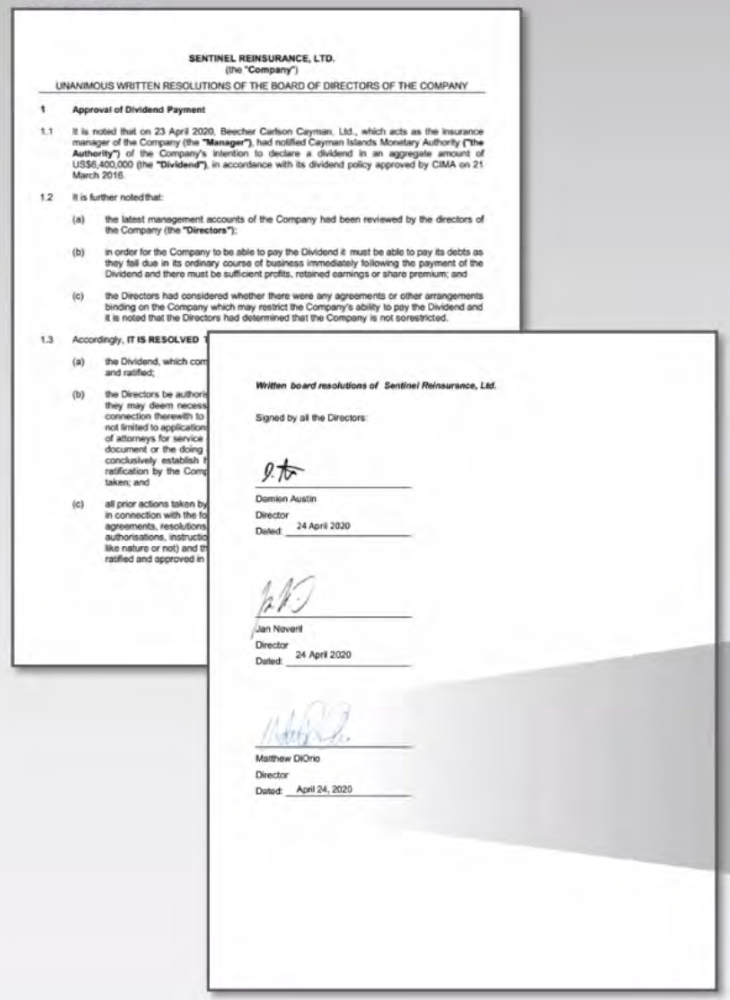
Dondero and Ellington Pay Themselves $8.9 Million Dividends Post-Judgment



DEF017897

DiOrio And Sentinel Board Approve $6.4 Million Dividend in 2020

UBS Ex. 47



SENTINEL REINSURANCE, LTD.
(the "**Company**")

UNANIMOUS WRITTEN RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY

1 Approval of Dividend Payment

1.1 It is noted that on 23 April 2020, Beecher Carlson Cayman, Ltd., which acts as the insurance manager of the Company (the **"Manager"**), had notified Cayman Islands Monetary Authority **("the Authority")** of the Company's intention to declare a dividend in an aggregate amount of US$6,400,000 (the **"Dividend"**), in accordance with its dividend policy approved by CIMA on 21 March 2016.

1.2 It is further noted that:

(a) the latest management accounts of the Company had been reviewed by the directors of the Company (the **"Directors"**);

(b) in order for the Company to be able to pay the Dividend it must be able to pay its debts as they fall due in its ordinary course of business immediately following the payment of the Dividend and there must be sufficient profits, retained earnings or share premium; and

(c) the Directors had considered whether there were any agreements or other arrangements binding on the Company which may restrict the Company's ability to pay the Dividend and it is noted that the Directors had determined that the Company is not sorestricted.

1.3 Accordingly, **IT IS RESOLVED**

(a) the Dividend, which com
and ratified;

(b) the Directors be authoris
they may deem necess
connection therewith to
not limited to applicatio
of attorneys for service
document or the doing
conclusively establish
ratification by the Com
taken; and

(c) all prior actions taken by
in connection with the fo
agreements, resolutions
authorisations, instructi
like nature or not) and th
ratified and approved in

Written board resolutions of Sentinel Reinsurance, Ltd.

Signed by all the Directors:

Damien Austin
Director
Dated: 24 April 2020

Jan Nevert
Director
Dated: 24 April 2020

Matthew DiOrio
Director
Dated: April 24, 2020

1 Approval of Dividend Payment

1.1 It is noted that on 23 April 2020, Beecher Carlson Cayman, Ltd., which acts as the insurance manager of the Company (the **"Manager"**), had notified Cayman Islands Monetary Authority **("the Authority")** of the Company's intention to declare a dividend in an aggregate amount of US$6,400,000 (the **"Dividend"**), in accordance with its dividend policy approved by CIMA on 21 March 2016.

Matt DiOrio

Matthew DiOrio
Director
Dated: April 24, 2020

DEF017898

$6.4 Million Dividend Payment To Dondero & Ellington

UBS Ex. 21

SENTINEL REINSURANCE, L

SENTINEL REINSURANCE, L
C/O MAPLES FS
BOUNDARY HALL, GRICKET
P.O. BOX 1093

Wire

Date:
Branch:
Account Number:
Currency and Amount:
Total Cost :
Beneficiary:

Beneficiary Account Number:
Remittance Information:

ADDITIONAL DETAILS

Beneficiary Bank:
Branch Reference:
Transaction Reference:
UETR:
Ordering Currency and Amount:
Value Date:
Exchange Rate:
Details Of Charges:

Date:	24/04/2020
Branch:	INT'L CORP BANKING CAYMAN ISLAND
Account Number:	*********815
Currency and Amount:	USD 4,480,000.00
Total Cost :	USD 4,480,000.00
Beneficiary:	MAINSPRING LTD SUITE 4-210 GOVERNORS SQUARE P.O BOX 32311 GRAND CAYMAN KY1-1209
Beneficiary Account Number:	
Remittance Information:	70 share of 6,400,000 dividend

UBS Ex. 22

CIBC FirstCaribbean International Bank

SENTINEL REINSURANCE, LTD.

SENTINEL REINSURANCE, LTD.
C/O MAPLES FS
BOUNDARY HALL, GRICKET SQUARE
P.O. BOX 1093

Wire Transfer Debit Advice

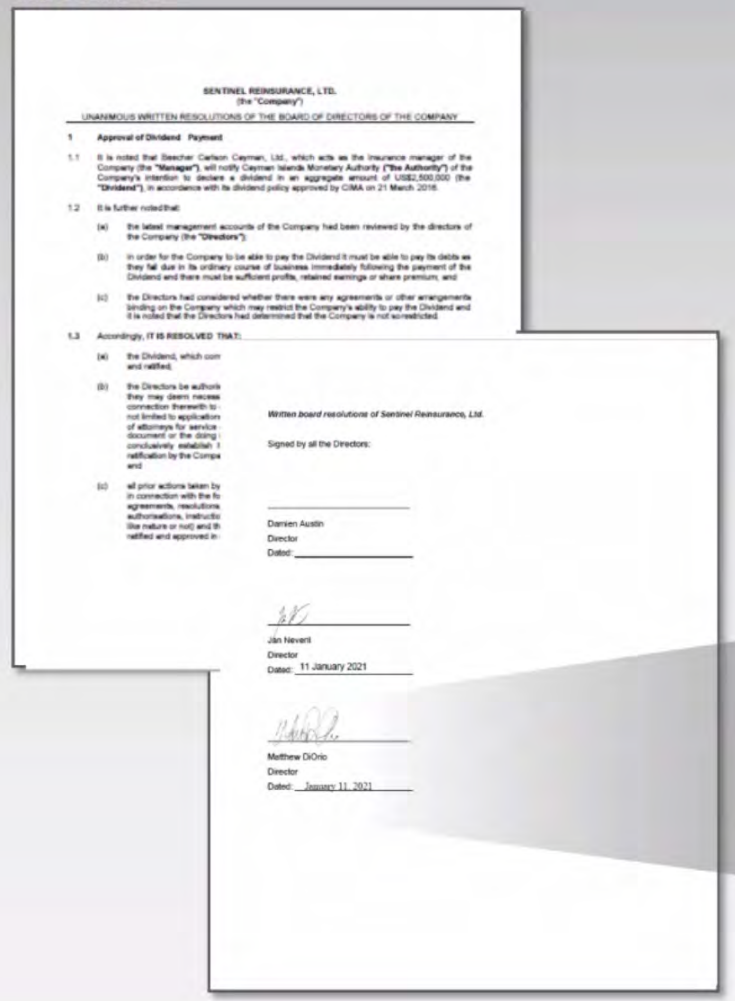
Date: 24/04/2020

Date:	24/04/2020
Branch:	INT'L CORP BANKING CAYMAN ISLAND
Account Number:	*********815
Currency and Amount:	USD 1,920,000.00
Total Cost :	USD 1,920,000.00
Beneficiary:	MONTAGE HOLDINGS LTD SUITE 4-210 GOVERNORS SQUARE P.O BOX 32311 GRAND CAYMAN KY1-1209
Beneficiary Account Number:	
Remittance Information:	30 share of 6,400,000 dividend

DEF017899

DiOrio And Sentinel Board Approve $2.5 Million Dividend in 2021

UBS Ex. 48



SENTINEL REINSURANCE, LTD.
(the "Company")

UNANIMOUS WRITTEN RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY

1 Approval of Dividend Payment

1.1 It is noted that Beecher Carlson Cayman, Ltd., which acts as the insurance manager of the Company (the **"Manager"**), will notify Cayman Islands Monetary Authority **("the Authority")** of the Company's intention to declare a dividend in an aggregate amount of US$2,500,000 (the **"Dividend"**), in accordance with its dividend policy approved by CIMA on 21 March 2016.

1.2 It is further noted that:

(a) the latest management accounts of the Company had been reviewed by the directors of the Company (the **"Directors"**);

(b) in order for the Company to be able to pay the Dividend it must be able to pay its debts as they fall due in its ordinary course of business immediately following the payment of the Dividend and there must be sufficient profits, retained earnings or share premium; and

(c) the Directors had considered whether there were any agreements or other arrangements binding on the Company which may restrict the Company's ability to pay the Dividend and it is noted that the Directors had determined that the Company is not so restricted.

1.3 Accordingly, **IT IS RESOLVED THAT:**

(a) the Dividend, which com
and ratified;

(b) the Directors be authoris
they may deem necess
connection therewith to
not limited to applications
of attorneys for service
document or the doing
conclusively establish t
ratification by the Compa
and

(c) all prior actions taken by
in connection with the fo
agreements, resolutions
authorisations, instructio
like nature or not) and th
ratified and approved in

Written board resolutions of Sentinel Reinsurance, Ltd.

Signed by all the Directors:

Damien Austin
Director
Dated:

Jan Nevert
Director
Dated: 11 January 2021

Matthew DiOrio
Director
Dated: January 11, 2021

1 Approval of Dividend Payment

1.1 It is noted that Beecher Carlson Cayman, Ltd., which acts as the insurance manager of the Company (the **"Manager"**), will notify Cayman Islands Monetary Authority **("the Authority")** of the Company's intention to declare a dividend in an aggregate amount of US$2,500,000 (the **"Dividend"**), in accordance with its dividend policy approved by CIMA on 21 March 2016.

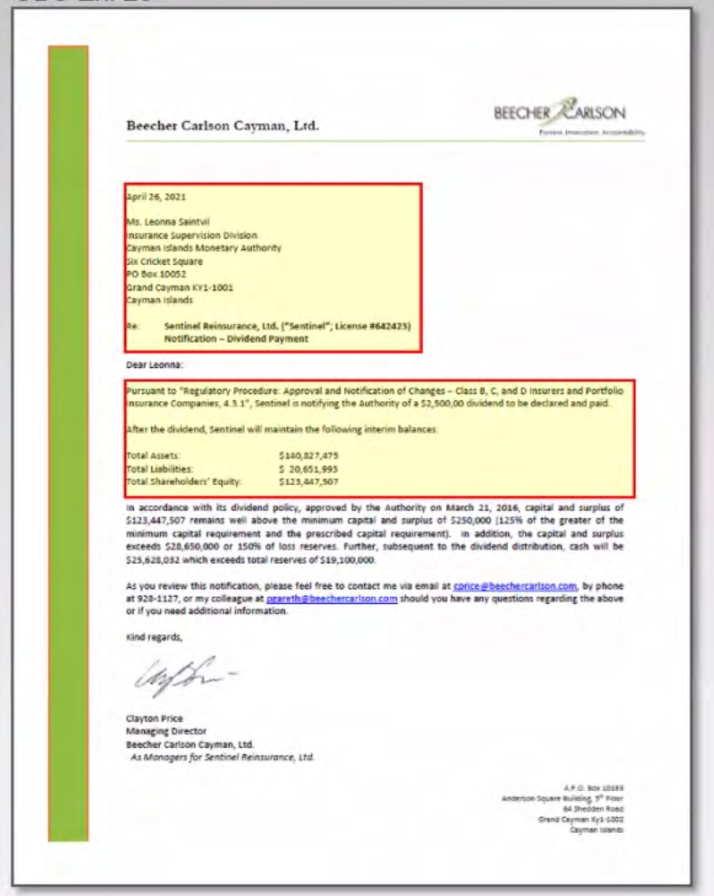
Matt DiOrio

Matthew DiOrio
Director
Dated: January 11, 2021

DEF017900

$2.5 Million Dividend Payment To Dondero & Ellington

UBS Ex. 23



Beecher Carlson Cayman, Ltd.

BEECHER CARLSON

April 26, 2021

Ms. Leonna Saintvil
Insurance Supervision Division
Cayman Islands Monetary Authority
Six Cricket Square
PO Box 10052
Grand Cayman KY1-1001
Cayman Islands

Re: Sentinel Reinsurance, Ltd. ("Sentinel"; License #642423)
Notification – Dividend Payment

Dear Leonna:

Pursuant to "Regulatory Procedure: Approval and Notification of Changes – Class B, C, and D Insurers and Portfolio Insurance Companies, 4.3.1", Sentinel is notifying the Authority of a $2,500,00 dividend to be declared and paid.

After the dividend, Sentinel will maintain the following interim balances:

Total Assets:	$140,827,475
Total Liabilities:	$ 20,651,993
Total Shareholders' Equity:	$123,447,507

In accordance with its dividend policy, approved by the Authority on March 21, 2016, capital and surplus of $123,447,507 remains well above the minimum capital and surplus of $250,000 (125% of the greater of the minimum capital requirement and the prescribed capital requirement). In addition, the capital and surplus exceeds $28,650,000 or 150% of loss reserves. Further, subsequent to the dividend distribution, cash will be $25,628,032 which exceeds total reserves of $19,100,000.

As you review this notification, please feel free to contact me via email at cprice@beechercarlson.com, by phone at 928-1127, or my colleague at pgareth@beechercarlson.com should you have any questions regarding the above or if you need additional information.

Kind regards,

Clayton Price
Managing Director
Beecher Carlson Cayman, Ltd.
As Managers for Sentinel Reinsurance, Ltd.

A.P.O. Box 10189
Anderson Square Building, 3rd Floor
64 Shedden Road
Grand Cayman KY1-1002
Cayman Islands

April 26, 2021

Ms. Leonna Saintvil
Insurance Supervision Division
Cayman Islands Monetary Authority
Six Cricket Square
PO Box 10052
Grand Cayman KY1-1001
Cayman Islands

Re: **Sentinel Reinsurance, Ltd. ("Sentinel"; License #642423)**
Notification – Dividend Payment

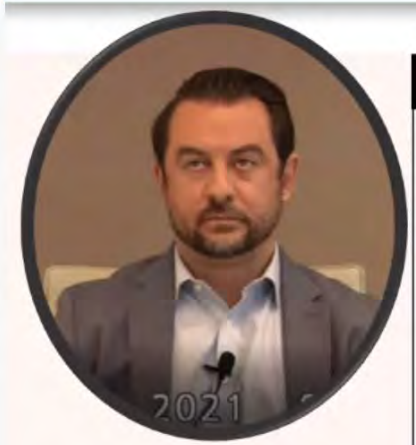
Pursuant to "Regulatory Procedure: Approval and Notification of Changes – Class B, C, and D Insurers and Portfolio Insurance Companies, 4.3.1", Sentinel is notifying the Authority of a $2,500,00 dividend to be declared and paid.

After the dividend, Sentinel will maintain the following interim balances:

Total Assets:	$140,827,475
Total Liabilities:	$ 20,651,993
Total Shareholders' Equity:	$123,447,507

DEF017901

Sentinel Money Used To Try To Frustrate These Proceedings



UBS Ex. 49

From: Matt DiOrio

Cc: Gareth Pereira[pgareth@beechercarlson.com]; Wade Kenny[wkenny@calderwood.ky]; Stephen Leontsinis[Stephen.Leontsinis@collascrill.com]; JS de Jager CSI[js@csi.ky]; Tom Adamczak[tadamczak@beechercarlson.com]; Clayton Price[cprice@beechercarlson.com]
To: Casey McDonald[cmcdonald@calderwood.ky]
From: Matt DiOrio[mattdiorio40@gmail.com]
Sent: Thur 6/24/2021 9:23:56 PM Coordinated Universal Time
Subject: Re: Sentinel Expenses for Approval

[External]

This is in order and should be settled. The company indemnified a group of former employees, myself included, a while back and it relates to our defense with respect to today's hearing that I mentioned.

CC: Matt DiOrio

From: Gareth Pereira <pgareth@beechercarlson.com>
Sent: Thursday, 24 June 2021 11:38 AM
To: Casey McDonald <cmcdonald@calderwood.ky>
Cc: Wade Kenny <wkenny@calderwood.ky>; Stephen Leontsinis <Stephen.Leontsinis@collascrill.com>; 'Matt DiOrio' <mattdiorio40@gmail.com>; JS de Jager CSI <js@csi.ky>; Tom Adamczak <tadamczak@beechercarlson.com>; Clayton Price <cprice@beechercarlson.com>
Subject: RE: Sentinel Expenses for Approval

EXHIBIT 96

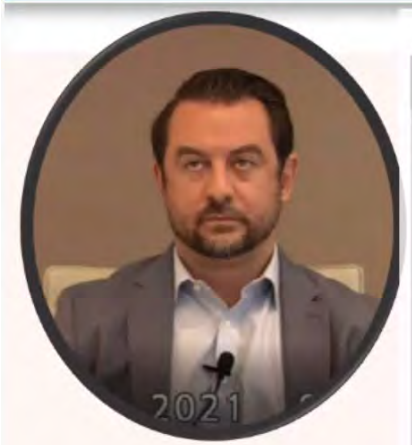
Good morning Casey

Following on from last week, please can you provide your approval through email and also release the following payments that have been set up in CIBC for Sentinel:

- Ross & Smith - Legal expenses – $75,854.90

DEF017902

Sentinel Money Used To Try To Frustrate These Proceedings



UBS Ex. 49

From: Matt DiOrio

06/24/2021	92 Hearing held on 6/24/2021. (RE: related document(s)74 Motion to compel Scott Ellington, Isaac Leventon, Matthew DiOrio, J. P. Sevilla and Katie Lucas (former employees) to comply with the Subpoena to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding and Subpoenas to Produce Documents, Information or Objects or to Permit Inspection in a Bankruptcy Case or Adversary Proceeding by producing documents and deposition testimony and Response to Motion of Former Employees to Quash Subpoena filed by Plaintiffs UBS AG London Branch, UBS Securities LLC filed by Plaintiff UBS Securities LLC, Plaintiff UBS AG London Branch) (Appearances: S. Tomkowiak and A. Clubok for UBS; F. Smith for 5 former employees of the Debtor; R. Feinstein for Debtor. Evidentiary hearing. Motion granted in pertinent part. Counsel to upload order.) (Edmond, Michael) (Entered: 06/28/2021)

Following on from last week, please can you provide your approval through email and also release the following payments that have been set up in CIBC for Sentinel:

- Ross & Smith Legal expenses – $75,854.90

DEF017903

UBS Has The Rightful Claim To Insurance Proceeds

"New York courts have held that insurance policies may constitute debts against which a money judgment may be enforced" under Article 52 of the CPLR.

S.T.A. Parking Corp. v. Gen. Star Indem. Co., 2019 WL 7115307, at *4 (S.D.N.Y. 2019).

A judgment debtor can enforce the subject debt—arising from the court's final judgment—against the judgment debtor's insurer pursuant to Article 52 of the CPLR.

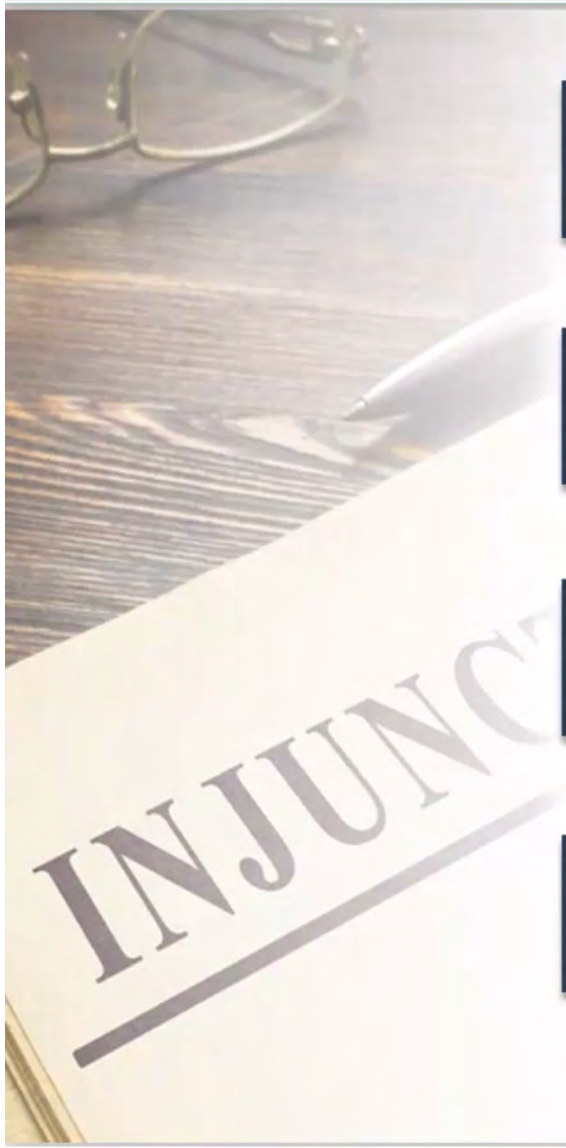
Guercio v. Hertz Corp., 40 N.Y. 2d 680, 686 (1976).

DEF017904

Even If Policy Is Valid, UBS Is Entitled To *At Least* $180M

DEF017905

A Permanent Injunction Is Warranted



1. Success on the merits;
2. Irreparable injury;
3. Weighing of Harms
4. Public interest.

Env't Tex. Citizen Lobby, Inc. v. ExxonMobil Corp., 824 F.3d 507, 536 (5th Cir. 2016)

UBS Will Suffer Irreparable Injury Without The Injunction

The irreparable injury element satisfied when defendants would "dissipate the frozen assets," and "[i]f the defendants were to dissipate or transfer these assets out of the jurisdiction, the district court would not be able to grant the effective remedy."

Janvey v. Alguire, 647 F. 3d 585, 559-600 (5th Cir. 2011)

A plaintiff suffers irreparable injury when there is "a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted."

Johnson v. Couturier, 572 F.3d 1067, 1085 (9th Cir. 2009)

UBS Will Suffer Irreparable Injury Without The Injunction

The irreparable injury element satisfied when defendants would "dissipate the frozen assets," and "[i]f the defendants were to dissipate or transfer these assets out of the jurisdiction, the district court would not be able to grant the effective remedy."

Janvey v. Alguire, 647 F. 3d 585, 559-600 (5th Cir. 2011)

A plaintiff suffers irreparable injury when there is "a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted."

Johnson v. Couturier, 572 F.3d 1067, 1085 (9th Cir. 2009)

Jim Seery
CEO of HCMLP

Q. To be clear absent the TRO Highland Capital Management would have caused the funds that are currently being restrained by the TRO to have been transferred to Sentinel, correct?

A. Yes.

Seery Dep. Tr. 134:8-12

DEF017908

A Permanent Injunction Is Warranted

1. Success on the merits;
2. Irreparable injury;
3. Weighing of Harms
4. Public interest.

Env't Tex. Citizen Lobby, Inc. v. ExxonMobil Corp., 824 F.3d 507, 536 (5th Cir. 2016)

Public Policy Served By Stopping Future Fraud

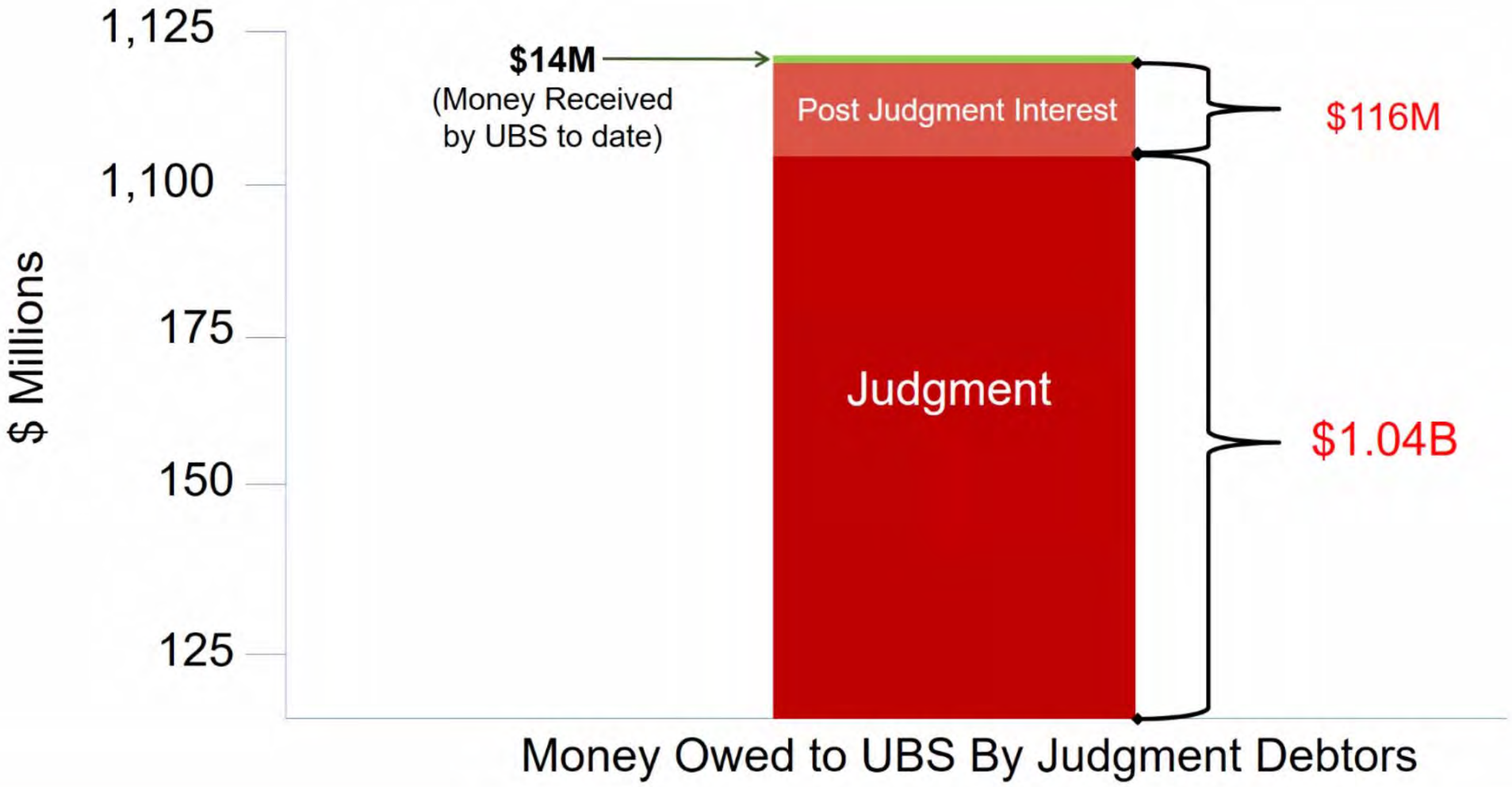
"Certainly, there is no harm to the public interest if the Court does enjoin [fraudulent] behavior."

In re Tabernash Meadows, LLC, 2005 WL 375660, at *15 (Bankr. D. Colo. Feb. 15, 2005)

"[T]he prevention of unjust enrichment by means of fraud or misappropriation, even that affecting only private entities, is in the general public interest."

F.T. Int'l, Ltd. v. Mason, 2000 WL 1514881, at *2 (E.D. Pa. Oct. 11, 2000)

So Why Are We Here?



DEF017911

EXHIBIT 60

DEFENDANT'S EXHIBIT
94
25-03055

EXECUTION VERSION

TOLLING AGREEMENT EXTENDING CLAIM OBJECTION DEADLINE

This Tolling Agreement (the "Agreement") is made as of July 27, 2022 (the "Effective Date"), by and between Patrick Hagaman Daugherty ("Mr. Daugherty"), on the one hand, and Highland Capital Management, L.P. ("Highland" or the "Debtor," as applicable) and the Highland Claimant Trust (the "Claimant Trust," and together with Highland, the "Highland Parties"), on the other. Each of Mr. Daugherty, Highland, and the Claimant Trust are individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Mr. Daugherty is a former employee and limited partner of Highland and served in other positions with affiliates and former affiliates of Highland from time to time;

WHEREAS, on October 16, 2019, Highland filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Case"), which is pending in the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court");

WHEREAS, on April 1, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against Highland in the amount of at "least $37,483,876.59," and such claim was denoted by Highland's claims agent as Proof of Claim No. 67 ("Claim No. 67");

WHEREAS, on April 6, 2020, Mr. Daugherty filed a general, unsecured, non-priority claim against Highland in the amount of at "least $37,482,876.62" that superseded Claim No. 67 and that was denoted by Highland's claims agent as Proof of Claim No. 77 ("Claim No. 77");

WHEREAS, on August 31, 2020, Highland commenced an adversary proceeding, Adv. Proc. No. 20-03107-sgj (Bankr. N.D. Tex.) (the "Adversary Proceeding"), against Mr. Daugherty by filing a complaint [Adv. Dkt. No. 1][1] (the "Complaint") in which Highland (a) objected to Claim No. 77 on various grounds, and (b) asserted a cause of action for the subordination of part of Mr. Daugherty's claim pursuant to 11 U.S.C. § 510(b);

WHEREAS, on September 29, 2020, Mr. Daugherty filed his answer to the Complaint [Adv. Dkt. No. 8] in the Adversary Proceeding;

WHEREAS, on October 23, 2020, Mr. Daugherty filed a motion seeking leave to amend Claim No. 77 [Bankr. Dkt. No. 1280][2] (the "POC Amendment Motion") and attached an amended proof of claim to the POC Amendment Motion increasing Mr. Daugherty's general, unsecured, non-priority claim against Highland to the amount of at "least $40,410,819.42" and sought to supersede Claim No. 67 and Claim No. 77;

[1] Adv. Dkt. No. refers to the docket maintained in the Adversary Proceeding.

[2] Bankr. Dkt. No. refers to the docket maintained in the Bankruptcy Case.

WHEREAS, on December 10, 2020, the Bankruptcy Court entered an order [Bankr. Dkt. No. 1533] granting the POC Amendment Motion, and Mr. Daugherty was permitted to file an amendment to his proof of claim;

WHEREAS, on December 23, 2020, Mr. Daugherty filed an amended proof of claim, designated by Highland's claims agent as Proof of Claim No. 205 ("Claim No. 205," and together with Claim No. 67 Claim No. 77, the "Daugherty Claim");

WHEREAS, Claim No. 205 superseded Claim No. 77 and increased the Daugherty Claim to $40,710,819.42;

WHEREAS, on February 22, 2021, the Bankruptcy Court entered its *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Dkt. No. 1943] (the "Confirmation Order") confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Dkt. No. 1808] (as amended, supplemented, or modified, the "Plan");

WHEREAS, on August 11, 2021, the Effective Date (as defined in the Plan) occurred [Bankr. Dkt. No. 2700];

WHEREAS, on or about November 22, 2021, Highland and Mr. Daugherty executed that certain Settlement Agreement (the "Settlement Agreement") attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Bankr. Dkt. No. 3089] filed in support of the *Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith* [Bankr. Dkt. No. 3088] (the "Settlement Motion");

WHEREAS, following an evidentiary hearing on the Settlement Motion held on March 1, 2022, the Bankruptcy Court entered its order [Bankr. Dkt. No. 3298] (the "Settlement Order") approving the Settlement Motion and the Parties' entry into the Settlement Agreement;

WHEREAS, pursuant to the Settlement Order, the Daugherty Claim, excluding the Reserved Claim,[3] was satisfied in its entirety;

WHEREAS, the Highland Parties dispute the validity and amount of the Reserved Claim and, pursuant to Section 9 of the Settlement Agreement, Mr. Daugherty and Highland reserved all rights with respect to the Reserved Claim; *provided, however*, that any litigation between Highland and Mr. Daugherty concerning the Reserved Claim was stayed until the IRS makes a final determination with respect to the dispute between the Debtor and the IRS (the "IRS Dispute") or the Highland Parties and Mr. Daugherty otherwise agree;

[3] "Reserved Claim" means the contingent and unliquidated claim as referenced in Proof of Claim No. 205 that related to an alleged claim for compensation and an audit/dispute between the Debtor and the Internal Revenue Service (the "IRS") in an amount estimated to be $2,650,353.00 as of October 23, 2020.

WHEREAS, pursuant to the Confirmation Order, the deadline to object to claims was 180 days after the Effective Date, *i.e.*, February 7, 2022, unless extended by the Bankruptcy Court (the "Claim Objection Deadline");

WHEREAS, the Claim Objection Deadline was extended by order of the Bankruptcy Court [Bankr. Dkt. No. 3198] to August 8, 2022;

WHEREAS, the Highland Parties were vested with the exclusive authority to compromise, settle, withdrew, or resolve all claims against the Debtor, including the Reserved Claim, without further order of the Bankruptcy Court pursuant to Article VII.B of the Plan;

WHEREAS, on July 6, 2022, the Highland Parties filed the *Reorganized Debtor and Claimant Trustee Joint Motion for Entry of an Order Further Extending the Claim Objection Deadline Pursuant to Confirmed Chapter 11 Plan by which Reorganized Debtor May Object to Certain Claims* [Bankr. Dkt. No. 3387] (the "Second Extension Motion");

WHEREAS, Mr. Daugherty and the Highland Parties continue to consider potential resolutions of the Reserved Claim in the absence of a resolution of the IRS Dispute;

WHEREAS, it is unknown when the IRS Dispute may be resolved; and

WHEREAS, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, and without any Party admitting liability, fault, or wrongdoing, or releasing or waiving any rights or defenses with respect to the Reserved Claim, the Parties desire to enter into this Agreement to extend the Claim Objection Deadline, solely with respect to the Reserved Claim, to January 11, 2023, at 5:00 p.m. (Central Time) (the "Objection Deadline").

NOW, THEREFORE, effective as of the Effective Date, each of the Parties agrees as follows:

1. Covenant to Reserve. In consideration of Mr. Daugherty's agreement to extend the Claim Objection Deadline (as set forth in paragraph 2 of this Agreement), the Highland Parties agree not to commence any lawsuit, action or proceeding to further object to the Reserved Claim at any time until the Objection Deadline (notwithstanding Mr. Daugherty's position that the Highland Parties would have no right to do so in any event under the Settlement Agreement until such time that the IRS resolves the IRS Dispute) and further agree to reserve $2,650,353.00 on account of the Reserved Claim in the "Disputed Claim Reserve" as such term is defined in the Plan until the Parties resolve the Reserved Claim pursuant to a signed agreement, or, alternatively, an order of the Bankruptcy Court.

2. Extension of Claim Objection Deadline. In consideration of the Highland Parties' "Covenant to Reserve" (as set forth in paragraph 1 of this Agreement), Mr. Daugherty agrees that the Claim Objection Deadline applicable to the Reserved Claim is hereby tolled as of, and extended from, the Effective Date to the Objection Deadline.

3. Acknowledgement and Waiver. Mr. Daugherty acknowledges and agrees that:

a. Regardless of whether the Second Extension Motion is approved by the Bankruptcy Court, Mr. Daugherty waives any right or ability to argue (x) that the terms of this Agreement and the extension of the Claim Objection Deadline required an order of the Bankruptcy Court; or (y) the application of the expiration of the Claims Objection Deadline to the Reserved Claim; and

b. Mr. Daugherty is estopped from arguing that this Agreement is ineffective to extend the time within which the Highland Parties must object to the Reserved Claim.

4. Acknowledgement and Waiver. The Highland Parties acknowledge and agree that regardless of whether the Second Extension Motion is approved by the Bankruptcy Court, the Highland Parties waive any right or ability to argue that the terms of this Agreement and the extension of the Claim Objection Deadline required an order of the Bankruptcy Court.

5. Representations and Warranties.

a. Mr. Daugherty represents and warrants that he has not sold, transferred, hypothecated, pledged, or assigned the Reserved Claim to any other person or entity, and that no person or entity other than Mr. Daugherty has been, is, or will be authorized to bring, pursue, or enforce the Reserved Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) Mr. Daugherty.

b. Each Party represents and warrants to the other Party that such Party is fully authorized to enter into and perform the terms of this Agreement and that, as of the Effective Date, this Agreement will be fully binding upon each Party in accordance with its terms.

6. Miscellaneous.

a. Binding Effect; Successors-in-Interest. Each of the Parties agrees that this Agreement will be binding upon the Parties, and, as applicable, upon their predecessors, successors, subsidiaries, divisions, alter egos, affiliated and related entities, and their past or present officers, directors, partners, employees, attorneys, assigns, agents, representatives, and any or all of them.

b. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the validity and amount of the Reserved Claim. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Highland Parties, Mr. Daugherty, or any other person and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Highland Parties, Mr. Daugherty, or any other person.

c. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

Mr. Daugherty

Patrick Hagaman Daugherty
[redacted]
Email: pdaugherty@glacierlakecap.com

with a copy (which shall not constitute notice) to:

McCollom D'Emilio Smith Uebler LLC
Attn: Thomas Uebler, Esquire
2751 Centerville Road, Suite 401
Wilmington, DE 19808
E-mail: tuebler@mdsulaw.com

Highland Parties

Highland Capital Management, L.P.
100 Crescent Court, Suite 1850
Dallas, Texas 75201
Attention: David Klos
E-mail: dklos@HighlandCapital.com

Highland Claimant Trust
100 Crescent Court, Suite 1850
Dallas, Texas 75201
Attention: David Klos
E-mail: dklos@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Gregory Demo, Esq.
780 Third Avenue, 34th Floor
New York, NY 10017
E-mail: gdemo@pszjlaw.com

d. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, in the negotiation of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without reservation; and (d) had the opportunity to have the terms and conditions of this Agreement explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

e. Counterparts. This Agreement may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

f. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Agreement may only be amended by an agreement in writing signed by the Parties.

g. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Agreement shall be, or deemed to be, a waiver of any rights, remedies or privileges of any of the Parties, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

h. No Waiver if Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

i. Governing Law. This Agreement will be exclusively governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Delaware, excluding Delaware's conflicts of law principles.

j. Jurisdiction. The Bankruptcy Court will retain exclusive jurisdiction over disputes relating to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IT IS HEREBY AGREED.

PATRICK HAGAMAN DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

HIGHLAND CLAIMANT TRUST

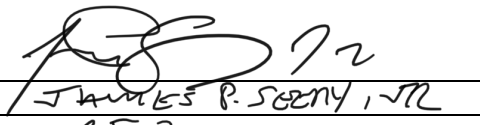
By: _____
Name: _____
Its: _____

IT IS HEREBY AGREED.

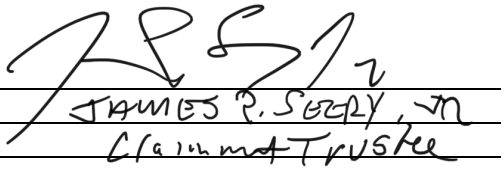
PATRICK HAGAMAN DAUGHERTY

_____

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 
Name: JAMES P. SEERY, JR
Its: CEO

HIGHLAND CLAIMANT TRUST

By: 
Name: JAMES P. SEERY, JR
Its: CLAIMANT TRUSTEE