Docket #0149 Date Filed: 1/24/2023

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

Counsel for Charitable DAF Fund, L.P. and CLO Holdco, Ltd.

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., DIRECTLY AND DERIVATIVELY	§	
	§	
Plaintiffs,	§	Adversary Proceeding No.
	§	
vs.	§	21-03067-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND HCF ADVISOR, LTD., AND HIGHLAND CLO FUNDING LTD., NOMINALLY	§	
	§	
Defendants.	§	
	§	

PLAINTIFFS' AMENDED WITNESS AND EXHIBIT LIST REGARDING HEARING ON HIGHLAND CAPITAL MANAGEMENT, L.P.'S RENEWED MOTION TO DISMISS COMPLAINT TO BE HELD ON JANUARY 25, 2023

Plaintiffs submit the following amended witness and exhibit list regarding Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint.

WITNESSES:

1. Any witness identified or called by any other party;

2. Any witness for impeachment or rebuttal.

EXHIBITS:

No.	Exhibit	Offered	Admitted
1	Excerpts from Transcript of Hearing on Application to Employ James P. Seery, Jr. on July 14, 2020 (APP_0003 – 0014)		
2	Highland CLO Funding – Members Agreement Relating to the Company (APP_0015 – 0042)		
3	HarbourVest Settlement Agreement (APP_0043 – 0061)		
4	Order Approving Debtor's Settlement with HarbourVest (APP_0062 – 0084)		
5	HCLOF Offering (APP_0085-0206)		
6	Amended and Restated Investment Advisory Agreement (APP_0207 – 0221)		
7	Transcript of January 14, 2021 hearing		
8	Testimony of Mark Patrick at June 8, 2021 hearing		
	All exhibits necessary for impeachment and/or rebuttal purposes.		
	All exhibits identified by or offered by any other party for the hearing on Highland Capital Management, L.P.'s Renewed Motion to Dismiss.		

Dated: January 24, 2023

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti
Texas Bar No. 24058096
Jonathan Bridges
Texas Bar No. 24028835
JPMorgan Chase Tower
2200 Ross Avenue – Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367
E: mas@sbaitilaw.com
jeb@sbaitilaw.com

Counsel for Plaintiffs

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, June 8, 2021
	)	9:30 a.m. Docket
Debtor.	)	
	)	- SHOW CAUSE HEARING (2255)
	)	- MOTION TO MODIFY ORDER AUTHORIZING RETENTION OF JAMES SEERY (2248)
	)	- MOTION FOR ORDER FURTHER EXTENDING THE PERIOD WITHIN WHICH DEBTOR MAY REMOVE ACTIONS (2304)

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

APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
Gregory V. Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtor: Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway, Suite 106
Dallas, TX 75231
(972) 755-7104

APPEARANCES, cont'd.:

For the Charitable DAF, CLO Holdco, Show Cause Respondents, Movants, and Sbaiti & Company:	Mazin A. Sbaiti Jonathan E. Bridges SBAITI & COMPANY, PLLC Chase Tower 2200 Ross Avenue, Suite 4900W Dallas, TX 75201 (214) 432-2899
For Mark Patrick:	Louis M. Phillips KELLY, HART & HALLMAN, LLP 301 Main Street, Suite 1600 Baton Rouge, LA 70801 (225) 338-5308
For Mark Patrick:	Michael D. Anderson KELLY, HART & HALLMAN, LLP 201 Main Street, Suite 2500 Fort Worth, TX 76102 (817) 332-2500
For James Dondero:	Clay M. Taylor Will Howell BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For the Official Committee of Unsecured Creditors:	Paige Holden Montgomery SIDLEY AUSTIN, LLP 2021 McKinney Avenue, Suite 2000 Dallas, TX 75201 (214) 981-3300
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.

our witness stand and I'll swear you in. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Please take a seat.

MARK PATRICK, DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Patrick.

A Good afternoon.

Q Can you hear me okay?

A Yes, I can.

Q Okay. You have before you several sets of binders. They're rather large. But when I deposed you on Friday, we did that virtually. Now, I may direct you specifically to one of the binders or one of the documents from time to time, so I just wanted you to know that those were in front of you and that I may be doing that.

Mr. Patrick, since March 1st, 2001 [sic], you've been employed by Highland Consultants, right?

A I believe the name is Highgate Consultants doing business as Skyview Group.

Q Okay. And that's an entity that was created by certain former Highland employees, correct?

A That is my understanding, correct.

Q And your understanding is that Mr. Dondero doesn't have an

ownership interest in that entity, correct?
A That he does not. That is correct.
Q And your understanding is that he's not an employee of that -- of Skyview, correct?
A That is correct.
Q Prior to joining Skyview on March 1st, you had worked at Highland Capital Management, LP for about 13 years, correct?
A Correct.
Q Joining in, I believe, early 2008?
A Correct.
Q Okay. I'm going to refer to Highland Capital Management, LP from time to time as HCMLP. Is that okay?
A Yes.
Q While at HCMLP, you served as a tax counselor, correct?
A No, I would like to distinguish that. I did have the title tax counsel. However, essentially all my activities were in a non-lawyer capacity, being the client representative. I would engage other outside law firms to provide legal advice.
Q Okay. So you are an attorney, correct?
A Yes, I am.
Q But essentially everything you did at Highland during your 13 years was in a non-lawyer capacity, correct?
A Correct.
Q In fact, you didn't even work in the legal department; is

that right?
A That is correct. I worked for the tax department.
Q Okay. Let's talk about how you became the authorized representative of the Plaintiffs. You are, in fact, authorized representative today of CLO Holdco, Ltd. and Charitable DAF, LP, correct?
A Charitable DAF Fund, LP. Correct.
Q And those are the two entities that filed the complaint in the United States District Court against the Debtor and two other entities, correct?
A Correct.
Q And may I refer to those two entities going forward as the Plaintiffs?
A Yes.
Q You became the authorized representative of the Plaintiffs on March 24th, 2021, the day you and Mr. Scott executed certain transfer documents, correct?
A Correct.
Q And you had no authority to act on behalf of either of the Plaintiffs before March 24th, correct?
A Correct.
Q The DAF controls about $200 million in assets, correct?
A The Plaintiffs, you mean? CLO Holdco and Charitable DAF Fund, LP.
Q Yes.

A Around there.
Q Okay. Let me try and just ask that again, and thank you for correcting me. To the best of your knowledge, the Plaintiffs control about $200 million in assets, correct?
A Net assets, correct.
Q Okay. And that asset base is derived largely from HCMLP, Mr. Dondero, or Mr. Dondero's trusts, correct?
A Can you restate that question again, Mr. Morris?
Q Sure. The asset base that you just referred to is derived largely from HCMLP, Mr. Dondero, or donor trusts?
A The way I would characterize it -- you're using the word derived. I would characterize it with respect to certain charitable donations --
Q Uh-huh.
A -- that were -- that were made at certain time periods, where the donors gave up complete dominion and control over the respective assets and at that time claimed a federal income tax deduction for that.

I do -- I do believe that, as far as the donor group, as you specified, Highland Capital Management, I recall, provided a donation to a Charitable Remainder Trust that eventually had expired and that eventually such assets went into the supporting organizations. And then I do believe Mr. Dondero also contributed to the Charitable Remainder Trust No. 2, which seeded substantial amounts of the original assets that

were eventually composed of the $200 million. And then from time to time I do believe that Mr. Dondero's trusts made charitable donations to their respective supporting organizations.

Q Okay. Thank you.

A Is that responsive?

Q It is. It's very responsive. Thank you very much. So, to the best of your knowledge, the charitable donations that were made that form the bases of the assets came from those three -- primarily from those three sources, correct?

A Well, you know, there's two different trusts. There's the Dugaboy Trust and the Get Good Trust.

Q Okay.

A Then you have Mr. Dondero and Highland Capital Management. So I would say four sources.

Q Okay. All right. Thank you. Prior to assuming your role as the authorized representative of the Plaintiff, you had never had meaningful responsibility for making investment decisions, correct?

A I'm sorry. You kind of talk a little bit fast. Please slow it down --

Q That's okay.

A -- and restate it. Thank you.

Q And I appreciate that. And any time you don't understand what I'm saying or I speak too fast, please do exactly what

you're doing. You're doing fine.

Prior to assuming your role as the authorized representative of the Plaintiffs, you never had any meaningful responsibility making investment decisions. Is that correct?

A To whom?

Q For anybody.

A Well, during my deposition, I believe I testified that I make investment decisions with respect to my family. Family and friends come to me and they ask me for investment decisions. I was -- in my deposition, I indicated to you that I was a board member of a nonprofit called the 500, Inc. They had received a donation of stock in Yahoo!, and the members there looked to me for financial guidance. As an undergrad at the University of Miami, I was a -- I was a finance major, and so I do have a variety of background with respect to investments.

Q Okay. So you told me that from time to time friends and family members come to you for investing advice. Is that right?

A That is correct.

Q And when you were a young lawyer you were on the board of a nonprofit that received a donation of Yahoo! stock and the board looked to you for guidance. Is that correct?

THE COURT: Just a moment. I think there's an objection.

MR. MORRIS: Uh-huh.

THE COURT: Go ahead.

MR. ANDERSON: So far -- relevance, Your Honor. This is way out of the bounds of the contempt proceeding. You know, what he did as a young person with Yahoo! stock. We're here to -- he authorized the lawsuit. They filed the lawsuit. That's it. Getting into all this peripheral stuff is completely irrelevant.

THE COURT: Your response?

MR. MORRIS: My response, Your Honor, is very simple. Mr. Patrick assumed responsibility, and you're going to be told that he exercised full and complete authority over a $200 million fund that was created by Mr. Dondero, --

THE COURT: Okay.

MR. MORRIS: -- that funds -- that is funded virtually by Mr. Dondero, and for which -- Mr. Patrick is a lovely man, and I don't mean to disparage him at all -- but he has no meaningful experience in investing at all.

THE COURT: All right. Counsel, I overrule. I think there's potential relevance.

And may I remind people that when you're back at counsel table, please make sure you speak your objections into the microphone. Thank you.

BY MR. MORRIS:

Q When you were a young lawyer, sir, you were on the board

of a nonprofit that received a donation of Yahoo! stock and the board looked to you for guidance, correct?

A Yes, correct.

Q And -- but during your 13 years at Highland, you never had formal responsibility for making investment decisions, correct?

A That is correct.

Q Yeah. In fact, other than investment opportunities that you personally presented where you served as a co-decider, you never had any responsibility or authority to make investment decisions on behalf of HCMLP or any of its affiliated entities, correct?

A That is correct.

Q And at least during your deposition, you couldn't identify a single opportunity where you actually had the authority and did authorize the execution of a transaction on behalf of HCMLP or any of its affiliates, correct?

A Correct.

Q And yet today you are now solely responsible for making all investment decisions with respect to a $200 million charitable fund, correct?

A Yes, but I get some help. I've engaged an outside third party called ValueScope, and they have been as -- effectively working as a "gatekeeper" for me, and I look to them for investment guidance and advice, and I informally look to Mr.

Dondero since the time period of when I took control on March 24th for any questions I may have with respect to the portfolio. So I don't feel like I'm all by myself in making decisions.

Q Okay. I didn't mean to suggest that you were, sir, and I apologize if you took it that way. I was just asking the question, you are the person now solely responsible for making the investment decisions, correct?

A Yes.

Q Okay. Let's talk about the circumstances that led to the filing of the complaint for a bit. On April 12, 2021, you caused the Plaintiffs to commence an action against HCMLP and two other entities, correct?

A Correct.

Q Okay. One of the binders -- you've got a couple of binders in front of you. If you look at the bottom, one of them says Volume 1 of 2, Exhibits 1 through 18. And if you could grab that one and turn to Exhibit 12. Do you have that, sir?

A It says -- it says the original complaint. Is that the right one?

Q That is the right one. And just as I said when we were doing this virtually last Friday, if I ask you a question about a particular document, you should always feel free to review as much of the document as you think you need to

competently and fully answer the question. Okay?

A Okay. Thank you.

Q All right. You instructed the Sbaiti firm to file that complaint on behalf of the Plaintiffs, correct?

A Correct.

Q And to the best of your recollection, the Plaintiffs returned -- retained the Sbaiti firm in April, correct?

A Correct.

Q So the Sbaiti firm was retained no more than twelve days before the complaint was filed, correct?

A Correct.

Q You personally retained the Sbaiti firm, correct?

A Correct.

Q And the idea of filing this complaint originated with the Sbaiti firm, correct?

A Correct.

Q Before filing -- withdrawn. Before becoming the Plaintiffs' authorized representative, you hadn't had any communications with anyone about potential claims that might be brought against the Debtor arising out of the HarbourVest settlement, correct?

A That is correct.

Q Now, after you became the Plaintiffs' authorized representative, Mr. Dondero communicated with the Sbaiti firm about the complaint that's marked as Exhibit 12, correct?

A Yes. After he brought certain information to myself and then that I engaged the Sbaiti firm to launch an investigation, I also wanted Mr. Dondero to work with the Sbaiti firm with respect to their investigation of the underlying facts.

Q Okay. Mr. Dondero did not discuss the complaint with you, but he did communicate with the Sbaiti firm about the complaint, correct?

A I believe -- yeah. I heard you slip in at the end "the complaint." I know he communicated with the Sbaiti firm. I can't -- I can't say what he said or didn't say with respect to the -- the actual complaint.

Q Okay. But Mr. Dondero got involved in the process initially when he brought some information to your attention concerning the HarbourVest transaction, correct?

A Correct.

Q And he came to you with the HarbourVest information after you assumed your role as the authorized representative of the Plaintiffs on March 24th, correct?

A That is correct.

Q At the time he came to you, you did not have any specific knowledge about the HarbourVest transaction, correct?

A I did not have specific knowledge with respect to the allegations that were laid out and the facts with respect to the original complaint. I think I had just had a general

awareness that there was a HarbourVest something or other, but the specific aspects of it, I was unaware.

Q Okay. And you had no reason to believe that Mr. Seery had done anything wrong with respect to the HarbourVest transaction at the time you became the Plaintiffs' authorized representative, correct?

A That is correct.

Q But you recall very specifically that some time after March 24th Mr. Dondero told you that an investment opportunity was essentially usurped or taken away, to the Plaintiffs' harm and for the benefit of HCMLP, correct?

A That is correct.

Q And after Mr. Dondero brought this information to your attention, you hired the Sbaiti firm to launch an investigation into the facts, correct?

A Correct.

Q You had never worked with the Sbaiti firm before, correct?

A That is correct.

Q And you had hired many firms as a tax counselor at HCMLP, but not the Sbaiti firm until now. Correct?

A That is correct.

Q You got to the Sbaiti firm through a recommendation from D.C. Sauter, correct?

A Correct.

Q Mr. Sauter is the in-house counsel, the in-house general

counsel at NexPoint Advisors, correct?

A Correct.

Q You didn't ask Mr. Sauter for a recommendation for a lawyer; he just volunteered that you should use the Sbaiti firm. Correct?

A That is correct.

Q And you never used -- considered using another firm, did you?

A When they were presented to me, they appeared to have all the sufficient skills necessary to undertake this action, and so I don't recall interviewing any other firms.

Q Okay. Now, after bringing the matter to your action, Mr. Dondero communicated directly with the Sbaiti firm in relation to the investigation that was being undertaken. Correct?

A That is correct.

Q But you weren't privy to the communications between Mr. Dondero and the Sbaiti firm, correct?

A I did not participate in those conversations as the -- what I, again, considered Mr. Dondero as the investment advisor to the portfolio, and he was very versant in the assets. I wanted him to participate in the investigation that the Sbaiti firm was undertaking prior to the filing of this complaint.

Q Let's talk for a minute about the notion of Mr. Dondero being the investment advisor. Until recently, the entity

known as the DAF had an investment advisory committee with HC -- an investment advisory agreement with HCMLP. Correct?

A It's my understanding that the investment advisory agreement existed with the Plaintiffs, CLO Holdco, as well as Charitable DAF Fund, LP, up and to the end of February, throughout the HarbourVest transaction.

Q Okay. And since February, the Plaintiffs do not have an investment advisory agreement with anybody, correct?

A That is correct.

Q Okay. So Mr. Dondero, if he serves as an investment advisor, it's on an informal basis. Is that fair?

A After I took control, he serves as an informal investment advisor.

Q Okay. So there's no contract that you're aware of between either of the Plaintiffs and Mr. Dondero pursuant to which he is authorized to act as the investment advisor for the Plaintiffs, correct?

A That is correct.

Q Okay. When you communicated with Grant Scott -- withdrawn. You know who Grant Scott is, right?

A Yes, I do.

Q He's the gentleman who preceded you as the authorized representative of the Plaintiffs, correct?

A Yes.

Q Okay. You communicated with Mr. Scott from time to time

during February and March 2021, correct?

A February and March are the dates? Yes.

Q Yeah. And from February 1st until March 21st -- well, withdrawn. Prior to March 24th, 2021, Mr. Scott was the Plaintiffs' authorized representative, correct?

A Correct.

Q And you have no recollection of discussing with Mr. Scott at any time prior to March 24th any aspect of the HarbourVest settlement with Mr. Scott. Correct?

A Correct.

Q And you have no recollection of discussing whether the Plaintiffs had potential claims that might be brought against the Debtor. Correct? Withdrawn. Let me ask a better question.

You have no recollection of discussing with Mr. Scott at any time prior to March 24th whether the Plaintiffs had potential claims against the Debtor. Correct?

A That is correct.

Q You and Mr. Scott never discussed whether either of -- either of the Plaintiffs had potential claims against Mr. Seery. Correct?

A Correct.

Q Okay. At the time that you became their authorized representative, you had no knowledge that the Plaintiffs would be filing a complaint against the Debtors relating to the

HarbourVest settlement less than three weeks later, correct?
A That is correct.
Q Okay. Now, if you look at Page 2 of the complaint, you'll see at the top it refers to Mr. Seery as a potential party. Do you see that?
A Yes, I do.
Q Okay. You don't know why Mr. Seery was named -- withdrawn. You don't know why Mr. Seery was not named as a defendant in the complaint, correct?
A No, I -- that's correct. I do not know why he was not named. That's in the purview of the Sbaiti firm.
Q Okay. And the Sbaiti firm also made the decision to name Mr. Seery on Page 2 there as a potential party when drafting the complaint, correct?
A That's what the document says.
Q And you weren't involved in the decision to identify Mr. Seery as a potential party, correct?
A That is correct. Again, I rely on the law firm to decide what parties to bring a suit to -- against.
Q Okay. Okay. Do you recall the other day we talked about a document called the July order?
A Yes.
Q Okay. That's in -- that's in Tab 16 in your binder, if you can turn to that. And take a moment to look at it, if you'd like. And my first question is simply whether this is

the July order, as you understand it.

(Pause.)

A Yes, it is. I was just looking for the gatekeeper provision. It looks like it's Paragraph 5. So, --

Q Okay. Thank you for that. About a week after the complaint was filed, you authorized the Plaintiffs to file a motion in the District Court for leave to amend the Plaintiffs' complaint to add Mr. Seery as a defendant. Correct?

A I authorized the filing of a motion in Federal District Court that would ask the Federal District Court whether or not Jim Seery could be named in the original complaint with respect to the gatekeeper provision cited in that motion and with respect to the arguments that were made in that motion.

Q Okay. Just to be clear, if you turn to Exhibit 17, the next tab, --

A I'm here.

Q -- do you see that document is called Plaintiffs' Motion for Leave to File First Amended Complaint?

A Yes.

Q And that's the document that you authorized the Plaintiffs to file on or about April 19th, correct?

A Correct.

Q Okay. And can we refer to that document as the motion to amend?

A Yes.
Q Okay. You were aware of the July order at Tab 16 before you authorized the filing of the motion to amend. Correct?
A Yes, because it's cited in the motion itself.
Q Okay. And at the time that you authorized the filing of the motion to amend, you understood that the July order was still in effect. Correct?
A Yes, because it was referenced in the motion, so my assumption would be it would still be in effect.
Q Okay. Before the motion to amend was filed, you're -- you are aware that my firm and the Sbaiti firm communicated by email about the propriety of filing the motion to amend?
A Before it was filed? Communications between your firm and the Sbaiti firm? I would have to have my recollection refreshed.
Q I'll just ask the question a different way. Did you know before you authorized the filing of the motion to amend that my firm and the Sbaiti firm had engaged in an email exchange about the propriety of filing the motion to amend in the District Court?
A It's my recollection -- and again, I could be wrong here -- but I thought the email exchange occurred after the fact, not before. But again, I -- I just --
Q Okay. In any event, on April 19th, the motion to amend was filed. Correct?

A Correct.
Q That's the document that is Exhibit 17. And you personally authorized the Sbaiti firm to file the motion to amend on behalf of the Plaintiffs, correct?
A Correct.
Q And you authorized the filing of the motion to amend with knowledge -- withdrawn.
Can you read the first sentence of the motion to amend out loud, please?
A Yeah. (reading) Plaintiffs submit this motion under Rule 15 of the Federal Rules of Civil Procedure for one purpose: to name as defendant one James P. Seery, Jr., the CEO of defendant Highland Capital Management, LP (HCM) and the chief perpetrator of the wrongdoing that forms the basis of the Plaintiffs' causes of action.
Q And does that fairly state the purpose of the motion?
MR. SBAITI: Objection, Your Honor. Asks him to make a legal conclusion about the purpose of the legal motion filed in court that he didn't draft.
THE COURT: Okay. I overrule. You can answer if you have an answer.
THE WITNESS: It's always been my general understanding that the purpose of filing this motion was to go to the Federal District Court and ask that Court of reference to this Court whether or not Mr. Seery could be named with

respect to the original complaint, citing again the gatekeeper provisions and citing the various arguments that we've heard much earlier.

BY MR. MORRIS:

Q Okay. You personally didn't learn anything between April 9th, when the complaint was filed, and April 19th, when the motion to amend was filed, that caused you to authorize the filing of the motion to amend, correct?

A That is correct.

Q In fact, you relied on the Sbaiti firm with respect to decisions concerning the timing of the motion to amend. Correct?

A Correct.

Q And you had no knowledge of whether anyone acting on behalf of the Plaintiffs ever served the Debtor with a copy of the motion to amend. Correct?

A Yes. I have no knowledge.

Q Okay. And you have no knowledge that the Sbaiti firm ever provided my firm with a copy of the motion to amend. Correct?

A I cannot recall one way or another.

Q Okay. You never instructed anyone on behalf -- acting on behalf of the Plaintiffs to inform the Debtor that the motion to amend had been filed, correct?

A That is correct.

Q And that's because you relied on the Sbaiti firm on

procedural issues, correct?

A That is correct.

Q You didn't consider waiting until the Debtor --

(Interruption.)

Q -- had appeared in the action before authorizing the filing of the motion --

A Yeah, --

THE COURT: Yes. Y'all are being a little bit loud. Okay.

A VOICE: Sorry.

MR. MORRIS: No problem.

MR. PHILLIPS: I've heard that before, Your Honor, and I apologize.

THE COURT: I bet you have. Thank you.

MR. MORRIS: Admonish Mr. Phillips, please.

THE COURT: Okay.

MR. MORRIS: He's always the wild card.

MR. PHILLIPS: I admonish --

MR. MORRIS: He's always the wild card.

MR. PHILLIPS: I admonish myself.

THE COURT: All right. I think he got the message. Continue.

BY MR. MORRIS:

Q You didn't consider waiting until the Debtor had appeared in the action before filing the motion to amend, correct?

A Again, I am the client and I rely upon the law firm that's engaged with respect to making legal decisions as to the timing and notice and appearance and what have you. I'm a tax lawyer.

Q Okay. You wanted the District Court to grant the relief that the Plaintiffs were seeking. Correct?

A I wanted the District Court to consider, under the gatekeeper provisions of this Court, whether or not Mr. Seery could be named in the original complaint. That's -- that, from my perspective, is what was desired.

Q All right. You wanted the District Court to grant the relief that the Plaintiffs were seeking, correct?

MR. SBAITI: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

THE WITNESS: Again, I would characterize this motion as not necessarily asking for specific relief, but asking the Federal District Court whether or not, under the gatekeeper provision, that Mr. Seery could be named on there. What happens after that would be a second step. So I kind of -- I dispute that characterization.

BY MR. MORRIS:

Q All right. I'm going to cross my fingers and hope that Ms. Canty is on the line, and I would ask her to put up Page 57 from Mr. Patrick's deposition transcript.

THE COURT: There it is.

MR. MORRIS: There it is. It's like magic. Can we go down to Lines 18 through 20?

BY MR. MORRIS:

Q Mr. Patrick, during the deposition on Friday, did I ask you this question and did you give me this answer? Question, "Did you want the Court to grant the relief you were seeking?" Answer, "Yes."

A I -- and it was qualified with respect to Lines 12 through 17. In my view, when I answered yes, I was simply restating what I stated in Line 12. I wanted the District Court to consider this motion as to whether or not Mr. Seery could be named in the original complaint or the amended complaint pursuant to the existing gatekeeper rules and the arguments that were made in that motion. That's -- that's what I wanted. And so then when I was asked, did you want the Court to grant the relief that you were seeking, when I answered yes, it was from that perspective.

Q Okay. Thank you very much. If the District Court had granted the relief that you were seeking, you would have authorized the Sbaiti firm to file the amended complaint naming Mr. Seery as a defendant if the Sbaiti firm recommended that you do so. Correct?

A If the Sbaiti firm recommended that I do so. That is correct.

Q Okay. Let's talk for a little bit about the line of succession for the DAF and CLO Holdco. Can we please go to Exhibit 25, which is in the other binder? It's in the other binder, sir.

(Pause.)

Q I guess you could look on the screen or you can look in the binder, whatever's easier for you.

A Yeah. I prefer the screen. I prefer the screen.

Q Okay.

A It's much easier.

Q All right. We've got it in both spots. But do you have Exhibit 25 in front of you, sir?

A Yes, I do.

Q All right. Do you know what it is?

A This is the organizational chart depicting a variety of charitable entities as well as entities that are commonly referred to the DAF. However, when I look at this chart, I do not look at and see just boxes, what I see is the humanitarian effort that these boxes represent.

MR. MORRIS: Your Honor, may I interrupt?

THE COURT: You may.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q I appreciate that, and when your lawyers get up to ask you questions, I bet they'll want to know just what you were about

to tell me. But I just want to understand what this chart is. This chart is the DAF, CLO Holdco, structure chart. Correct?

A Correct.

Q Okay. And you were personally involved in creating this organizational structure, correct?

A I -- yes.

Q Okay. And from time to time, the Charitable DAF Holdco Limited distributes cash to the foundations that are above it. Correct?

A Correct.

Q All right. I want to talk a little bit more specifically about how this happens. The source of the cash distributed by Charitable DAF Holdco Limited is CLO Holdco, Ltd., that entity, the Cayman Islands entity near the bottom. Correct?

MR. ANDERSON: Your Honor, I have an objection. Completely irrelevant. I'm objecting on relevance grounds. This has nothing to do with the contempt proceeding. We've already gone over that he authorized the filing of the complaint, that he authorized the filing of the motion to amend. It's all in the record. This is completely irrelevant at this point.

THE COURT: Okay. Relevance objection. Your response?

MR. MORRIS: I believe that it's relevant to the Debtor's motion to hold Mr. Dondero in contempt for pursuing

claims against Mr. Seery, in violation of the July 7 order. I think an understanding of what the Plaintiffs are, how they're funded, and Mr. Dondero's interest in pursuing claims on behalf of those entities is relevant to the -- to the -- just -- it's just against him. It's not against their clients, frankly. It's just against Mr. Dondero.

THE COURT: I overrule.

MR. MORRIS: I'll try and -- I'll try and make this quick, though.

BY MR. MORRIS:

Q CLO Holdco had two primary sources of capital. Is that right?

A Two primary sources of capital?

Q Let me ask it differently. There was a Charitable Remainder Trust that was going to expire in 2011, correct?

A That is correct.

Q And that Charitable Remainder Trust had certain CLO equity assets, correct?

A Correct.

Q And the donor to that Charitable Remainder Trust was Highland Capital Management, LP. Correct?

A Not correct. After my deposition, I refreshed my memory. There were two Charitable Remainder Trusts that existed, which I think in my mind caused a little bit of confusion. The Charitable Remainder Trust No. 2, which is the one that

expired in 2011, was originally funded by Mr. Dondero.
Q Okay. So, so the Charitable Remainder Trust that we were talking about on Friday wasn't seeded with capital from Highland Capital Management, it came from Mr. Dondero personally?
A That is correct.
Q Okay. Thank you. And the other primary source of capital was the Dallas Foundation, the entity that's in the upper left-hand corner of the chart. Is that correct?
A No.
Q The -- you didn't tell me that the other day?
A You said -- you're pointing to the Dallas Foundation. That's a 501(c)(3) organization.
Q I apologize. Did you tell me the other day that the Dallas Foundation was the second source of capital for HCLO Hold Company?
A No, I did not. You --
(Pause.)
Q Maybe I know the source of the confusion. Is the Highland Dallas Foundation something different?
A Yes. On this organizational chart, you'll see that it has an indication, it's a supporting organization.
Q Ah, okay. So, so let me restate the question, then. The second primary source of capital for CLO Holdco, Ltd. is the Highland Dallas Foundation. Do I have that right?

A Yes.
Q Okay. And the sources of that entity's capital were grantor trusts and possibly Mr. Dondero personally. Correct?
A In addition -- per my refreshing my recollection from our deposition, the other Charitable Remainder Trust, I believe Charitable Remainder Trust No. 1, which expired later, also sent a donation, if you will, or assets to -- and I cannot recall specifically whether it was just the Highland Dallas Foundation or the other supporting organizations that you see on this chart.
Q But the source of that -- the source of the assets that became the second Charitable Remainder Trust was Highland Capital Management, LP. Is that right?
A I think that is accurate from my recollection. And again, I'm talking about Charitable Remainder Trust No. 1.
Q Okay. So is it fair to say -- I'm just going to try and summarize, if I can. Is it fair to say that CLO Holdco, Ltd. is the investment arm of the organizational structure on this page?
A Yes.
Q And is it fair to say that nearly all of the assets that are in there derived from either Mr. Dondero, one of his trusts, or Highland Capital Management, LP?
A Yes. It's like the Bill Gates Foundation or the Rockefeller Foundation. These come from the folks that make

their donations and put their name on it.

Q Okay.

MR. MORRIS: Now, now, Your Honor, I'm going to go back just for a few minutes to how Mr. Scott got appointed, because I think that lays kind of the groundwork for his replacement. It won't take long.

THE COURT: Okay. I have a question either --

MR. MORRIS: Sure.

THE COURT: -- for you or the witness. I'm sorry, but --

MR. MORRIS: Sure. Yeah.

THE COURT: -- the organizational chart, it's not meant to show everything that might be connected to this substructure, right? Because doesn't CLO Holdco, Ltd. own 49.02 percent of HCLOF, --

MR. MORRIS: That --

THE COURT: -- which gets us into the whole HarbourVest transaction issue?

MR. MORRIS: You're exactly right, Your Honor.

THE COURT: Okay.

MR. MORRIS: But that's just an investment that HCLO Holdco made.

THE COURT: Right.

MR. MORRIS: Right? And so I -- let me ask the witness, actually.

THE COURT: Okay. Thank you. Thank you.

MR. MORRIS: Let me ask the witness. Yeah.

THE COURT: I just want my brain --

MR. MORRIS: Right.

THE COURT: -- to be complete on this chart.

BY MR. MORRIS:

Q Mr. Patrick, there are three entities under CLO Holdco, Ltd. Do you see that?

A Yes.

Q And does CLO Holdco, Ltd. own one hundred percent of the interests in each of those three entities?

A Yes.

Q Do you know why those three entities are depicted on this particular chart? Is it because they're wholly-owned subsidiaries?

A Correct.

Q Okay. And CLO Holdco, Ltd. has interests in other companies. Isn't that right?

A It has other investments. That is correct.

Q And the reason that they're not depicted on here is because they're not wholly-owned subsidiaries, they're just investments; is that fair?

A That is fair.

MR. MORRIS: Does that--?

THE COURT: Yes.

MR. MORRIS: Okay.

THE COURT: Uh-huh.

BY MR. MORRIS:

Q So, so let's go back to Mr. Grant for a moment. Mr. Scott, rather. Mr. Dondero was actually the original general partner. If you look at this chart, while it's still up here, you see on the left there's Charitable DAF GP, LLC?

A Yes.

Q And the Charitable DAF GP, LLC is the general partner of the Charitable DAF Fund, LP. Correct?

A Correct.

Q And on this chart, Grant Scott was the managing member of Charitable DAF GP, LLC. Right?

A Correct.

Q Okay. But Mr. Dondero was the original general partner of that entity, correct?

A That is correct. But I do want to point out, I just note that the GP interest is indicating a one percent interest and the 99 interest to Charitable DAF Holdco. I believe that's incorrect. It's a hundred percent by Charitable DAF Holdco, Ltd., and the Charitable DAF GP interest is a noneconomic interest. So that should actually reflect a zero percent to the extent it may indicate some sort of profits or otherwise.

Q Okay. Thank you for the clarification. Can you turn to Exhibit 26, please, in your binder? And is it your

understanding that that is the amended and restated LLC agreement for the DAF GP, LLC?

A Yes.

Q Okay. And this was amended and restated effective as of January 1st, 2012, correct?

A Yes.

Q And if you go to the last page, you'll see there are signatures for Mr. Scott and Mr. Dondero, correct?

A Yes.

Q And Mr. Dondero is identified as the forming -- former managing member and Mr. Scott is identified as the new managing member. Correct?

A Correct. That's what the document says.

Q And it's your understanding that Mr. Dondero had the authority to select his successor. Correct?

A Correct.

Q In fact, it's based on your understanding of documents and your recollection that Mr. Dondero personally selected Mr. Scott as the person he was going to transfer control to, correct?

A Upon advice of Highland Capital Management's tax compliance officer, Mr. Tom Surgent.

Q What advice did Mr. Surgent give?

A He gave advice that, because Mr. Dondero -- and this is what I came to an understanding after the fact of this

transaction, because I was not a part of it -- that by Mr. Dondero holding that GP interest, that it would be -- the Plaintiffs, if you will, would be an affiliate entity for regulatory purposes, and so he advised that if he -- if Mr. Dondero transferred his GP interest to Mr. Scott, it would no longer be an affiliate, is my recollection.

Q Okay. You didn't appoint Mr. Scott, did you?

A No.

Q That was Mr. Dondero. Is that right?

A Yes.

Q Okay. Let's go to 2021. Let's come back to the current time. Sometime in February, Mr. Scott called you to ask about the mechanics of how he could resign. Correct?

A That is correct.

Q But the decision to have you replace Mr. Scott was not made until March 24th, the day you sent an email to Mr. Scott with the transfer documents. Correct?

A That is correct.

Q And it's your understanding that he could have transferred the management shares and control of the DAF to anyone in the world. Correct?

A Correct.

Q That's what the docu... that he had the authority under the documentation, as you understood it, to freely trade or transfer the management shares. Correct?

A Wait. Now, let's be precise here.
Q Okay.
A Are you talking about the GP interests or the management shares held by Charitable DAF Holdco, Ltd.?
Q Let's start with the management shares. Can you explain to the Court what the management shares are?
MR. ANDERSON: Your Honor? Hang on one second. Your Honor, I want to object again on relevance. We're going way beyond the scope of the contempt issue, whether or not --
MR. MORRIS: This is about control.
MR. ANDERSON: -- the motion to amend somehow violated the prior order of this Court. Getting into the management structure, transfer of shares, that's way outside the bounds. I object on relevance.
THE COURT: Okay. Relevance objection?
MR. MORRIS: Your Honor, they have probably 30 documents, maybe 20 documents, on their exhibit list that relate to management and control. I'm asking questions about management and control. Okay? This is important, again, to (a) establish his authority, but (b) the circumstances under which he came to be the purported control person.
THE COURT: Okay. Overruled. Go ahead.
THE WITNESS: It might be helpful to look at the organizational chart, but if not -- but I'll describe it to you again. With respect to the entity called --

MR. MORRIS: Hold on one second. Can we put up the organizational chart again, Ms. Canty, if you can? There you go.

THE WITNESS: Okay. So with respect to the Charitable DAF Holdco, Ltd., it is my understanding that Mr. Scott, he organized that entity when he was the independent director of the Charitable Remainder Trust, and he caused the issuance of the management shares to be issued to himself. And then those are, again, noneconomic shares, but they are control shares over that entity.

And I think, to answer your question, is -- it -- he alone decides who he can transfer those shares to.

BY MR. MORRIS:

Q Do I have this right, that whoever holds the noneconomic management shares has the sole authority to appoint the representatives for each of the Charitable DAF entities and CLO Holdco? It's kind of a magic ticket, if you will?

A It -- I think there's a -- the answer really is no from a legal standpoint, because Charitable DAF Holdco is a limited partner in Charitable DAF Fund, LP, so it does not have authority -- authority under all -- the respective entities underneath that. It could cause a redemption, if you will, of Charitable DAF Fund. And so, really, the authority -- the trickle-down authority that you're referencing is with respect to his holding of the Charitable DAF GP, LLC interest. It's a

member-managed Delaware limited liability company. And from that, he -- that authority kind of trickles down to where he can appoint directorships.

Q All right. I think I want to just follow up on that a bit. Which entity is the issuer of the manager shares, the management shares?

A Yeah, the -- per the organizational chart, it is accurate, it's the Charitable DAF Holdco, Ltd. which issued the management shares to Mr. Scott.

Q Okay. And that's why you have the arrow from Mr. Scott into that entity?

A Correct.

Q And do those -- does the holder of the management shares have the authority to control the Charitable DAF Holdco, Ltd.?

A Yes.

Q Okay. And as the control person for the Charitable DAF Holdco, Ltd., they own a hundred -- withdrawn. Charitable DAF Holdco Limited owns a hundred percent of the limited partnership interests of the Charitable DAF Fund, LP. Correct?

A Correct.

Q And so does the holder of that hundred percent limited partnership interest have the authority to decide who acts on behalf of the Charitable DAF Fund, LP?

A I would say no. I mean, you know, just -- I would love to

read the partnership agreement again. But I, conceptually, what I know with partnerships, I would say the limited partner would not. It would be through the Charitable DAF GP, LLC interest.

Q The one on the left, the general partner?

A The general partner.

Q I see. So when Mr. Scott transferred to you the one hundred percent of the management shares as well as the title of the managing member of the Charitable DAF GP, LLC, did those two events give you the authority to control the entities below it?

A Yes.

Q Thank you. And so prior to the time that he transferred those interests to you, is it your understanding that Mr. Scott had the unilateral right to transfer those interests to anybody in the world?

A Yes.

Q Okay. And you have that right today, don't you?

A Yes, I do.

Q If you wanted, you could transfer it to me, right?

A Yes, I could.

Q Okay. But of all the people in the world, Mr. Scott decided to transfer the management shares and the managing member title of the DAF GP to you, correct?

A Restate that question again?

Q Of all the people in the world, Mr. Scott decided to transfer it to you, correct?
A Yeah. Mr. Scott transferred those interests to me.
Q Okay. And you accepted them, right?
A Yes.
Q You're not getting paid anything for taking on this responsibility, correct?
A I am not paid by any of the entities depicted on this chart.
Q And Mr. Scott used to get $5,000 a month, didn't he?
A I believe that's what he testified to.
Q Yeah. But you don't get anything, right?
A Correct.
Q In fact, you get the exact same salary and compensation from Skyview that you had before you became the authorized representative of the DAF entities and CLO Holdco. Correct?
A Correct.

MR. MORRIS: Okay. Your Honor, if I may just take a moment, I may be done.

THE COURT: Okay.

(Pause.)

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

THE COURT: All right. Pass the witness. Any examination of the witness?

CROSS-EXAMINATION

BY MR. ANDERSON:

Q Mr. Patrick, I just had a few follow-up questions. When you authorized the filing of the lawsuit against Highland Capital Management, LP, Highland HCF Advisor Limited, and Highland CLO Funding, Limited, when that lawsuit was filed in April of this year, was Mr. Seery included as a defendant?

A No.

Q Have the two Plaintiffs in that lawsuit, have they commenced any lawsuit against Mr. Seery?

A No.

Q Have they pursued any lawsuit against Mr. Seery?

A No.

Q Have they pursued a claim or cause of action against Mr. Seery?

A No.

Q At most, did the Plaintiffs file a motion for leave to add Mr. Seery as a defendant?

MR. MORRIS: Objection, Your Honor. To the extent that any of these questions are legal conclusions, I object. He's using the word pursue. If he's trying -- if he's then going to argue that, But the witness testified that he didn't pursue and that's somehow a finding of fact, I object.

THE COURT: Okay. I understand.

MR. MORRIS: Yeah.

THE COURT: But I overrule. He can answer.

MR. MORRIS: That's fine.

THE WITNESS: Can you restate the question again?

BY MR. ANDERSON:

Q Sure. On behalf of the Plaintiffs -- well, strike that. Did the Plaintiffs pursue a claim or cause of action against Mr. Seery?

A No.

Q At most, did the Plaintiffs file a motion for leave to file an amended complaint regarding Mr. Seery?

A Yes. But, again, I viewed the motion as simply asking the Federal District Court whether Mr. Seery could or could not be named in a complaint, and then the next step might be how the Federal District Court might rule with respect to that.

Q And we have -- it's Tab 17 in the binders in front of you. That is Plaintiffs' motion for leave. If you could turn to that, please.

A Yes. I've got it open.

Q Is the Court's July order, the Bankruptcy Court's July order, is it mentioned on the first page and then throughout the motion for leave to amend?

A Yes, it is. I see it quoted verbatim on Page 2 under Background.

Q Was the Court's order hidden at all from the District Court?

A The document speaks for itself. It's very transparent.

Q Was there any effort whatsoever to hide the prior order of the Bankruptcy Court?

A No.

MR. ANDERSON: Pass the witness.

THE COURT: Okay. Other examination?

MR. SBAITI: Yes, Your Honor. Just a couple of questions.

CROSS-EXAMINATION

BY MR. SBAITI:

Q Do you mind flipping to Exhibit 25, which I believe is the org chart, the one that you were looking at before?

A Okay.

Q It'll still be in --

A Okay. Yeah.

Q -- the defense binder. No reason to swap out right now.

A I've got the right binders. Some of them are repeatable exhibits, so --

Q Yeah.

A -- I have to grab the right binder. Yes.

Q As this org chart would sit today, is the only difference that Grant Scott's name would instead be Mark Patrick?

A Yes.

Q Was there ever a period of time where Jim Dondero's name would sit instead of Grant Scott's name prior?

A Yes, originally, when this -- yes.

Q So did Mr. Dondero both have the control shares of the GP, LLC and DAF Holdco Limited?
A No, I believe not. I believe he only held the Charitable DAF GP interest and that Mr. Scott at all times held the Charitable DAF Holdco, LTD interest, until he decided to transfer it to me.
Q Can you just tell us how Mr. Scott came to hold the control shares of the Charitable DAF Holdco, LTD?
A When he was the independent trustee of the Charitable Remainder Trust, he caused that -- the creation of that entity, and that's how he became in receipt of those management shares.
Q And does the Charitable DAF GP, LLC have any control over Charitable DAF Fund, LP's actions or activities?
A Yes, it does.
Q What kind of control is that?
A I would describe complete control. It's the managing member of that entity and can -- and effectively owns, you know, the hundred percent interest in the respective subsidiaries, and so the control follows down.
Q And when did Mr. Scott replace Mr. Dondero as the GP -- managing member of the GP?
A Well, I think as the -- and Mr. Morris had shown me with respect to that transfer occurring on March 2012.
Q So nine years ago?

A Yes.
Q Does Mr. Dondero today exercise any control over the activities of the DAF Charitable -- the Charitable DAF, GP or the Charitable DAF Holdco, LTD?
A No.
Q Is he a board member of sorts for either of those entities?
A No.
Q Is he a board members of CLO Holdco?
A No.
Q Does he have any decision-making authority at CLO Holdco?
A None.
Q The decision to authorize the lawsuit and the decision to authorize the motion that you've been asked about, who made that authorization?
A I did.
Q Did you have to ask for anyone's permission?
A No.

MR. SBAITI: No more questions, Your Honor.

THE COURT: Okay. Any -- I guess Mr. Taylor, no. All right. Any redirect?

REDIRECT EXAMINATION

BY MR. MORRIS:
Q Since becoming the authorized representative of the Plaintiffs, have you ever made a decision on behalf of those

entities that Mr. Dondero disagreed with?

A I have made decisions that were adverse to Mr. Dondero's financial -- financial decision. I mean, financial interests. Whether he disagreed with them or not, I don't -- he has not communicated them to me. But they have been adverse, at least two very strong instances.

Q Have you ever -- have you ever talked to him about making a decision that would be adverse to his interests? Did he tell -- did --

A I didn't -- I don't -- I did not discuss with him prior to making the decisions that I made that were adverse to his economic interests.

MR. MORRIS: Okay. No further questions, Your Honor.

THE COURT: Any further examination? Recross on that redirect?

MR. ANDERSON: No further questions.

MR. SBAITI: No further questions, Your Honor.

MR. ANDERSON: Sorry.

THE COURT: Nothing?

MR. ANDERSON: I think we're good.

THE COURT: Okay. I have one question, Mr. Patrick. My brain sometimes goes in weird directions.

EXAMINATION BY THE COURT

THE COURT: I'm just curious. What are these Cayman Island entities, charitable organizations formed in the Cayman

Islands?

THE WITNESS: Yeah. I'll keep it as simple as I can, even though I'm a tax lawyer, so I won't get into the tax rules, but the Cayman structure is modeled after what you typically see in the investment management industry, and so I -- and I won't reference specific entities here with respect to the Highland case, but I think you'll note some similarities, if you think about it. They're -- it's described as an offshore master fund structure where you have a -- and that would be the Charitable DAF Fund that's organized offshore, usually in the Cayman or Bermuda Islands, where the general partner, typically, in the industry, holds the management --

THE COURT: Yeah. Let --

THE WITNESS: Okay.

THE COURT: -- me just stop you. I've seen this enough --

THE WITNESS: Yeah, it's

THE COURT: -- to know that it happens in the investment world. But in --

THE WITNESS: Yeah.

THE COURT: You know, usually, I see 501(c)(3), you know, domestically-created entities for charitable purposes, so I'm just curious.

THE WITNESS: Yes.

THE COURT: Uh-huh.

THE WITNESS: The offshore master fund structure typically will have two different types of -- they call it foreign feeder funds. One foreign feeder fund is meant to accommodate foreign investors; the other foreign feeder fund is meant to accommodate U.S. tax-exempt investors.

Why, why is it structured that way? In order to avoid something called -- I was trying not to be wonkish -- UBTI. That's, let's see, Un -- Unrelated Trader Business Income. I probably have that slightly wrong. But it's essentially, it's a means to avoid active business income, which includes debt finance income, which is what these CLOs tend to be, that would throw off income that would be taxable normally if the exempts did not go through this foreign blocker, and it converts that UBTI income -- it's called (inaudible) income -- into passive income that flows -- that flows up to the charities.

And so it's very typical that you'll have a U.S. tax-exempt investor, when they make an investment in a fund, prefer to go through an offshore feeder fund, which is actually Charitable DAF Holdco, LTD. That's essentially what, from a tax perspective, represents as a UBTI blocker entity. And then you have the offshore investments being held offshore because there's a variety of safe harbors where the receipt of interest, the portfolio interest exception, is not taxable.

The creation of capital gains or losses under the -- they call it the trading, 864(b) trading safe harbor, is not taxable. So that's why you'll find these structures operating offshore to rely on those safe harbor provisions as well as -- as well as what I indicated with respect to the two type blocker entities. It's very typical and industry practice to organize these way. And so when this was set --

THE COURT: It's very typical in the charitable world to --

THE WITNESS: In the investment management --

THE COURT: -- form this way?

THE WITNESS: In the investment management world, when you have charitable entities that are taking some exposure to assets that are levered, to set this structure up in this way. It was modeled after -- they just call them offshore master fund structures. They're known as Mickey Mouse structures, where you'll have U.S. investors --

THE COURT: Yes. I -- yes, I --

THE WITNESS: -- enter through a U.S. partnership, and the foreign investors enter through a blocker.

THE COURT: It was really just the charitable aspect of this that I was --

THE WITNESS: Yeah. Yeah.

THE COURT: -- getting at.

THE WITNESS: Yeah. No, but I'm just trying to

emphasize if --

THE COURT: All right. It's --

THE WITNESS: Yeah.

THE COURT: -- neither here nor there. All right.

MR. SBAITI: Your Honor, may I ask a slightly clarifying leading question on that, because I think I understand what he was trying to say, just for the record?

THE COURT: Well, --

MR. MORRIS: I object.

THE COURT: -- I tell you what. Anyone who wants to ask one follow-up question on the judge's question can do so. Okay? You can go first.

MR. SBAITI: I'll approach, Your Honor.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. SBAITI:

Q Would it be a fair summary of what you were saying a minute ago that the reason the bottom end of that structure is offshore is so that it doesn't get taxed before the money reaches the charities on the U.S. side?

A Tax -- it converts the nature of the income that is being thrown off by the investments so that it becomes a tax friendly income to the tax-exempt entity. Passive income. That's --

Q So, essentially, --

THE COURT: Okay. Okay.

MR. SBAITI: -- so it doesn't get taxed before it hits the --

THE COURT: I said one question.

MR. SBAITI: Sorry, Your Honor.

THE COURT: Okay. He answered it.

MR. PHILLIPS: And I have one question, Your Honor

THE COURT: Okay.

MR. PHILLIPS: I don't know if I need to ask this question, but I'd rather not ask you if I need to ask it.

THE COURT: Go ahead.

MR. PHILLIPS: But if I do, you know, I could --

THE COURT: Go ahead.

MR. PHILLIPS: Well, okay.

RECROSS-EXAMINATION

BY MR. PHILLIPS:

Q We've talked about the offshore structure. Are the foundations in the top two tiers of the organizational chart offshore entities?

A No.

Q They're --

A They're onshore entities. They're tax-exempt entities.

Q Thank you.

A The investments are offshore.

Q Thank you.

THE COURT: Mr. Morris? One question.

FURTHER REDIRECT EXAMINATION

BY MR. MORRIS:

Q Do you hold yourself out as an expert on the organizational structures in the Caribbean for charitable organizations?

A I hold myself out as a tax professional versant on setting up offshore master fund structures. It's sort of a bread-and-butter thing. But there are plenty of people that can testify that this is very typical.

Q Uh-huh. Okay.

THE COURT: Okay. Thank you.

All right. You are excused, Mr. Patrick. I suppose you'll want to stay around. I don't know if you'll potentially be recalled today.

(The witness steps down.)

THE COURT: All right. We should take a lunch break. I'm going to put this out for a democratic vote. Forty-five minutes? Is that good with everyone?

MR. SBAITI: Do we have to leave the building to eat, Your Honor, or is there food in the building?

THE COURT: I think --

MR. SBAITI: I'm sorry to ask that question, but --

THE COURT: Yes. You know what, there used to be a very bad cafeteria, but I think it closed. Right, Mike? So,

THE COURT: I guess I'll see you Thursday on the WebEx. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 6:00 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 **06/09/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber